



Interim Student Investigative Procedures

Involving Sexual Misconduct and Interpersonal Violence

[Effective November 28, 2018]

The *Sexual Misconduct and Interpersonal Violence Policy* applies to all forms of Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender-Based Harassment, and Retaliation (“Prohibited Conduct”) at Eastern Michigan University. All matters related to that policy, including inquiries or complaints, may be referred to the University’s Title IX Coordinator:

Title IX Coordinator

Melody A. Werner

734-487-3617

Email: mwerner@emich.edu

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources. They can be reached at:

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The investigatory procedures for claims against students under the University's Sexual Misconduct and Interpersonal Violence Policy are contained in this document. The procedures for claims against faculty, staff and third parties can be found in the [Discrimination/Harassment Complaint Investigation Procedure for Complaints Against Faculty, Staff, or Visitors](#).

Introduction

The Investigatory Procedures are guided by principles of fairness and respect for all parties. Resources are available to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. Additional guidance about the role of the advisor is contained in the Appendix.

Review, Investigation, and Resolution Procedure:

The University will support any Complainant or Respondent in understanding how to navigate the Complaint Resolution Procedures. There are several options available to resolve a report of Prohibited Conduct. These options include both informal and formal resolutions processes. Upon receipt of a report, the University will conduct a Title IX Assessment. After consultation with the complainant, the University may pursue informal resolution (in limited cases only) or formal resolution (which includes a thorough review and investigation).

I. Role of the Title IX Coordinator:

The President of the University has appointed a Title IX coordinator to oversee the University's central review, investigation, and resolution of reports of sexual harassment, sexual violence, intimate partner violence, and stalking under the University's procedures for resolution of complaints. The Title IX Coordinator also coordinates the University's compliance with Title IX.

The Title IX Coordinator is:

- Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty;
- Informed of all reports of complaints of sexual harassment, sexual violence, intimate partner violence, and stalking involving students, staff, and faculty reported to responsible employees;
- Responsible for evaluating a Complainant's request that their name not be shared with the Respondent or that no investigation go forward 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 interim measures;
- Responsible for monitoring processes to ensure that the requirement for a prompt and equitable review are met;
- Knowledgeable and trained in state and federal laws that apply to matters of sexual harassment, as well as University policy and procedure;
- Available to advise any individual, including a Complainant, a Respondent or witness, about the courses of action that are available at the University, both informally and formally, and in the community, and what involvement that individual may or may not

have in the process;

- Available to provide assistance to any University employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, intimate partner violence, or stalking;
- Available to provide assistance to the Executive Director of Public Safety (or designee) regarding how to respond appropriately to reports of sexual violence;
- Responsible for coordinating policies and procedures with local law enforcement, and victim advocacy and service providers;
- Responsible for monitoring full compliance with all procedural requirements, record keeping and timeframes outlined in this procedure;
- Responsible for overseeing training, prevention, and education efforts and annual reviews of climate and culture.

Inquiries or complaints concerning the application of Title IX may be referred to the University's Title IX Coordinator:

Title IX Coordinator

Melody A. Werner

734-487-3617

Email: mwerner@emich.edu

Trained Title IX Deputy Coordinators who can also offer assistance are available in the offices of Housing, Athletics, and Human Resources.

It is the University's intention that through these procedures, any complaint will be resolved internally. However, a complaint can also be filed with the following agencies:

United State Department of Education

Clery Act Compliance Division

clery@ed.gov

Office for Civil Rights

OCR@ed.gov

The Equal Employment Opportunity Commission

info@eeoc.gov

Michigan Department of Civil Rights

www.michigan.gov/mdrc/ or 517-335-3165

Complaints with the Office for Civil Rights must be filed within one hundred eighty (180) days of the last act that the Complainant believes was discriminatory. There is no time limit for making a report to Eastern Michigan; however, if the Respondent is no longer a student or employee, the University's authority to pursue disciplinary action may be limited. Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects.

The Complaint Resolution Procedures are guided by principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or

Respondents, to provide guidance throughout the investigation and resolution of the complaint. Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The Title IX Coordinator shall assist a Complainant or Respondent in obtaining an advisor upon request. Additional guidance about the role of the advisor is contained in the Appendix.

II. Time Frame for Resolution:

Eastern Michigan University will make every effort to successfully resolve all reports (through the imposition of sanction or final remedies) that do not involve a hearing within 100 days and those that involve a hearing within 120 days. The time allotted for the appeal process is not included in the 100 and 120 day time estimate. In general, a Complainant and Respondent can expect the process will proceed according to the time frames provided in this procedure. However, any timeframe expressed in this policy, including the 100 and 120 day time estimates, 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.

III. Interim Measures:

A. **Overview**

Upon receipt of a report of sexual harassment, sexual violence, intimate partner violence, or stalking and potentially through the completion of any appeals, the University will take reasonable and appropriate interim measures to protect the parties involved. The Title IX Coordinator, or designee, will maintain consistent contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed. Interim measures may be imposed at any time regardless of whether formal disciplinary action is sought by the Complainant or the University in order to ensure the preservation of the Complainant's education experience and the overall University environment. Interim measures will be kept private to the extent that maintaining privacy would not impair the ability of the university to provide interim measures.

A Complainant or Respondent may request separation or other protection, or the University may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader University community and/or the integrity of the process. A decision to arrange for such separation or other protection need not be based on a finding of responsibility, and shall not be interpreted as a finding of fault. Interim measures are initiated based on information gathered during a report and are not intended to be permanent resolutions: hence, they may be amended or withdrawn as additional information is gathered. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The University will take immediate and responsive action to enforce a previously

implemented measure.

B. Range of Measures

Interim Measures will be implemented at the discretion of the University, and will be established by the Title IX Coordinator. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

- Imposition of “No-Contact” directives for any or all parties;
- Change in class schedule, including the ability to transfer course sections or drop a course without penalty;
- Rescheduling of exams and assignments;
- Change in work schedule or job assignment;
- Change in living arrangements;
- Limiting an individual or organization’s access to certain University facilities or activities pending resolution of the matter;
- Providing an escort to ensure safe movement between classes and activities;
- Providing counseling services and assistance in setting up an initial appointment;
- Providing academic support services, such as tutoring;
- Removal from campus housing in accordance with the policies and procedures of the University;
- Other remedies which are deemed appropriate;
- Interim suspensions –
 - An interim suspension may be imposed by the Associate Director of the Office of Wellness and Community Responsibility when there is reason to believe that the student(s)/student organization’s conduct poses a substantial threat of harm to oneself or others, threatens or endangers University property, or disrupts the stability and continuance of normal University operations and functions.
 - A student will be denied access to the residence halls, and/or to the campus (including classes), and to all other University activities or events, which the student might otherwise be eligible to participate in or attend.
 - A student will be notified of an interim suspension orally, by written notice served on the student, or by written notice sent to the email address on record. The interim sanctions or interim suspension takes effect the day they are issued.
 - A student given an interim suspension will be given an opportunity to appear before the Associate Vice-President of Student Affairs or a designee within three (3) working days in order to discuss the following issues only:
 - The reliability of the information concerning the student alleged misconduct.
 - Whether the conduct and surrounding circumstances reasonably indicate that the continued presence of the student on University premises poses a substantial and immediate threat to himself/herself, to others, or to property.
 - The Associate Vice President of Student Affairs or his/her designee may affirm or alter the interim suspensions based on the discussion with the student. If the decision is affirmed, the Associate Vice President of Student Affairs or his/her designee will inform the student of that decision at the conclusion of the discussion. If the interim suspension is affirmed by the Associate Vice President of Student Affairs, the Title IX Coordinator will expedite the investigation of the

alleged violation so that the interim suspension will not be prolonged.

IV. Complaint Resolution Procedures:

A. Overview of Options

The University is committed to providing all members of the University community with a safe place to live, learn, and work. Consistent with this priority, the University will respond promptly and equitably to all allegations of Prohibited Conduct. Any individual may make a report under the Sexual Misconduct and Interpersonal Violence Policy, which will indicate a review of the complaint as outlined in this section.

The University's response to reports of sexual harassment, sexual violence, intimate partner violence, and stalking under this policy is pursued in multiple stages: report, assessment, investigation, resolution, and appeal. At each of these stages, the University is committed to maintaining fairness for all parties and to balancing the needs and interest of the individuals involved with the safety of the community as a whole.

Although a report may come in through many sources, the University is committed to ensuring that all reports are referred to the Title IX Coordinator, who will ensure consistent application of the policy to all individuals and allow the University to respond promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects. The Title IX Coordinator will only consult with those who "need to know" in order to implement procedures under this policy.

Upon receipt of a report, the Title IX Coordinator will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of sexual harassment, sexual violence, sexual exploitation, intimate partner violence, and stalking. The assessment will consider the nature of the report, the safety of the individual and the campus community, the Complainant's expressed preference for resolution, and the necessity for any interim measure to protect the safety of the Complainant or the community.

Following the initial assessment, the University may, at the discretion of the Title IX Coordinator:

1. Seek Informal Resolution that does not involve disciplinary action against a Respondent;
or
2. Seek Formal Resolution by initiating an investigation to determine if the disciplinary action is warranted.

Each resolution process is guided by the same principles of fairness and respect for all parties. Any individual who violates these standards will be held accountable for their behavior through a process that protects the rights of both the Complainant and the Respondent. Resources are available for Complainants and Respondents, to provide support and guidance throughout the investigation and resolution of the complaint.

B. Title IX Assessment

When a report is made, the Title IX Coordinator will conduct an initial Title IX assessment. The first step of this assessment will usually be a preliminary meeting between the Complainant and the Title IX Coordinator. In the course of this assessment, the University will consider the

interest of the Complainant and the Complainant's expressed preferences for manner of resolution. Where possible and when supported by the facts and circumstances, the University will seek action consistent with the Complainant's request.

As part of the initial assessment of the facts, the University will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Notify the Complainant of the right to contact or decline to contact law enforcement if the conduct is criminal in nature, and if requested, assist them with notifying law enforcement;
- Notify the Complainant of the availability of medical treatment to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of the preservation of evidence;
- Provide the Complainant with information about on-and off-campus resources;
- Notify the Complainant of the available interim measures;
- Provide the Complainant with an explanation of the procedural options, including informal resolution and formal resolution;
- Inform the Complainant and the Respondent they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the complaint, and that the advisor may accompany them to any meeting or proceeding under this policy;
(Additional guidance about the role of the advisor is contained in the Appendix).
- Assess for pattern evidence or other similar conduct by the Respondent;
- Explain the University's policy prohibiting retaliation.

The initial interview review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the University has sufficient information to determine the best course of action.

At the conclusion of the Title IX Assessment, the Title IX Coordinator will determine the appropriate manner of resolution, which may include Informal Resolution or the initiation of an investigation to determine if disciplinary action is warranted. It is at the discretion of the Title IX Coordinator to determine which method of resolution is appropriate. Any individual wishing to explore alternative resolution methods is encouraged to discuss these options with the Title IX Coordinator.

Where the Complainant requests that their identity not be shared with the Respondent or that the University not pursue an investigation, the University must consider this request in the context of the University's responsibility to provide a safe and non-discriminatory environment for all University community members. The University, through the Title IX Coordinator, will take all reasonable steps to investigate and respond to the complaint consistent with the request not to share identifying information or pursue an investigation, but its ability to do so may be limited by the request. Under these circumstances, the Complainant's request will be balanced against the following factors:

- The seriousness of the conduct;
- The roles of the Complainant and Respondent;
- Whether there have been other complaints or reports of harassment or misconduct against the Respondent;

- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence;
- Whether the Respondent has a history or arrests or prior conduct violations (At Eastern Michigan or elsewhere) indicating a history of violence;
- Whether the alleged Respondent threatened further sexual violence or other violence against the student or others;
- Whether the sexual violence was committed by multiple individuals;
- Whether the circumstances suggest there is an increased risk of future acts of sexual violence under similar circumstances;
- Whether sexual violence was perpetrated with a weapon;
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence).

The University will take all reasonable steps to investigate and respond to the report consistent with the request not to share the identifying information or pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the University is unable to take action consistent with the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action, which may include the University seeking disciplinary action against the Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

At the conclusion of the initial Title IX assessment, the Complainant will receive a written notice of the determination about how the University plans to proceed. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict the Respondent's movements on campus, the initiation of an investigation, or the decision to request the Respondent's involvement in an Informal Resolution.

C. Informal Resolution

Informal Resolution is an alternative approach designed to stop the Prohibited Conduct without taking disciplinary action against a Respondent. An Informal Resolution does not require a full investigation. The decision whether to use Informal Resolution will be decided on a case-by-case basis. Where the Title IX assessment concludes that Informal Resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant's access to educational, extracurricular, and employment activities at the University and to eliminate a hostile environment. Depending on the form of Informal Resolution used, it may be possible for a Complainant to maintain anonymity.

Informal Resolution, even if voluntary, may not be used in cases involving sexual assault. The decision to pursue Informal Resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation is voluntary, and a Complainant or Respondent can request to end Informal Resolution and initiate an investigation at any time. Additionally, if an informal resolution is reached but either party fails to abide by the resolution, the Title IX Coordinator may initiate an

investigation and formal resolution, if deemed appropriate.

The Title IX Coordinator will maintain records of all reports and conduct referred for Informal Resolution, which will typically be completed within sixty (60) days of the conclusion of the initial Title IX assessment.

D. Formal Resolution

1. Investigation

a) Overview of Investigation:

Where the initial Title IX assessment concludes that Prohibited Conduct may have occurred, based on the University's determination that an investigation should be pursued based on the potential risk of harm or threat to public safety, the Title IX Coordinator will initiate an investigation. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. As described in the Privacy and Confidentiality section, the investigation will be conducted in a manner that is respectful of individual privacy concerns.

Throughout the investigation and resolution, a Complainant or Respondent may have an advisor of their choosing present at any meeting or proceeding. Additional guidance about the role of the advisor is contained in the Appendix.

Information gathered during the review or investigation will be used to evaluate the responsibility of the Respondent, provide for the safety of the Complainant and the University campus community, and take appropriate measures designed to end the misconduct, prevent its recurrence, and address its effects.

b) Notice of Investigation

Both the Complainant and the Respondent will receive written notice that an investigation has been initiated. The notice will include the description of the complaint, the potential policy violations at issue, the name and contact information of the assigned investigator, and a copy of the investigative procedures.

c) Investigator

The University will designate an investigator who has specific training and experience investigating allegations of Prohibited Conduct. The investigator may be an employee of the University, an external investigator engaged to assist the University in its fact gathering, or both. Any investigator chosen to conduct the investigation must be impartial and free of any actual conflict of interest.

d) Investigative Steps

The investigator will conduct the investigation in an appropriate manner in the light of the circumstances of the case. The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individual who may have information relevant to the determination. The investigator may consider prior or subsequent conduct that is relevant to evaluating the current conduct. The investigative interviews may be audio-recorded and notes of the interview will be maintained by the University until the parties have

had the opportunity to review and comment on the draft summary. The investigator will also gather any available physical evidence, including documents, communications between parties, and other electronic records as appropriate and as described more fully below. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information.

e) Complainant and Respondent Interviews

The investigator will interview the Complainant and Respondent separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow up interview(s) as needed.

f) Other Sexual History

The Sexual History of a Complainant or Respondent will never be used to prove character or reputation. An investigation under this policy may consider prior or subsequent sexual history between the parties if the investigator, with the agreement of the Title IX Coordinator, determines that there was a prior or ongoing relationship between the Complainant and Respondent and the investigator is asked to determine whether consent was sought and given. As noted in other sections of the policy, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will only be used to help understand the manner and nature of communications between the parties and the context of the relationship. If the investigator and Title IX Coordinator determine that prior or subsequent sexual history should be considered both the Complainant and Respondent will be notified and have the opportunity to provide any additional relevant information to the investigator.

g) Witness Interviews

The investigator will make a good faith effort to contact and interview any witness identified by the parties or in the documentation, including those no longer at the University. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The investigator may also interview any other individual he or she finds to be potentially relevant to the allegations of the complaint. The investigator will inform each witness that they are prohibited from retaliating against the Complainant and Respondent or other witnesses, and request that the witness respect the privacy of the parties and the integrity of the process.

h) Experts

The investigator may contact any expert they determine is necessary to ascertain the facts related to the complaint. An expert witness may be contacted for an informal consultation or for a professional opinion regarding information learned from the investigation.

i) Documents/Records Review

In addition to reviewing any documents submitted by the Complainant and Respondent, the investigator will try to obtain such other physical or medical evidence relevant to the investigation as the investigator determines, in their judgement, to be necessary, including but not limited to documents, police records, electronic or other records of communications between the parties or witnesses and records of other relevant information. In obtaining such information the investigator will comply with applicable laws and Eastern Michigan University policies.

j) Site Visits

The investigator may visit relevant sites or locations and record observations through written or electronic documentation, such as videos or photographs.

k) Consideration of Other Conduct by a Respondent

Evidence of an occurrence or occurrences of sexual or other relevant behavior so distinctive and so closely resembling either party's version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be admissible. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed relevant to the determination of policy violation or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous or subsequent incident was substantially similar to the conduct cited in the report or indicates a pattern of behavior and substantial conformity with that pattern. Where there is a prior finding of a policy violation by the Respondent for a similar act of prohibited conduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and assigning of a sanction.

l) Consolidation of Investigation

The investigator and the Title IX Coordinator have the discretion to consolidate multiple reports against a Respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident. In addition, in gathering the facts, the investigator may consider similar prior or subsequent allegations of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant.

m) Concurrent Law Enforcement Investigation

If there is a concurrent criminal investigation, at the request of law enforcement, the University may agree to defer its Title IX fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the Complainant and Respondent regarding Title IX rights, procedural options, and the implementation of interim measures to assure the safety and well-being of all affected individuals. The University will promptly resume its Title IX fact-gathering as soon as law enforcement has released the case of review following the initial criminal investigation.

n) Investigation Summary

At the conclusion of the investigation, the investigator will prepare a draft summary that summarizes the interviews with the Complainant, Respondent, witnesses, experts, and any other individuals with relevant information, and will also include any evidence collected.

o) Review of Draft Summary

Before the investigative report is finalized, the Complainant and Respondent will be given the opportunity to review the draft summary. Such review will take place in-person at a location designated by the Title IX Coordinator. Unless other arrangements are made for good cause, the Complainant and the Respondent will make arrangements to review the report within five (5) days of notification by the Title IX Coordinator. If exigent circumstances exist such that a Complainant or Respondent is unable to attend the review in person, the Title IX Coordinator in her discretion may allow for an alternate means to view the report. Consistent with FERPA

or safety concerns, identifying information about the Complainant or witnesses may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may submit any additional comment or evidence to the investigator within two (2) days of the opportunity to review the report. A Complainant and Respondent may also raise concerns about the inclusion of any evidence, even if relevant, that the party believes may be more harmful than probative. Upon request by either the Complainant or Respondent prior to the expiration of the two (2) day period, an additional three (3) days may be granted to submit additional comments or evidence to the investigator.

p) Preliminary Report

Upon receipt of any additional information or comments by the Complainant or Respondent, or after the two (2) day comment period has lapsed without comment, the investigator will prepare the Preliminary Report. In completing the Preliminary Report, the investigator, in consultation with the Title IX Coordinator, will determine whether any information included in the report should be excluded.

In preparing the Preliminary Report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigator will not include information that is irrelevant, more prejudicial than probative, or immaterial. The investigator may also redact statements of personal opinion, rather than direct observation or reasonable inferences from the facts and statements as to general reputation for any character trait, including honesty.

The investigator will submit the Preliminary Report to the Title IX Coordinator. The Preliminary Report will include (1) an investigative summary, including all investigation materials subject to the guidelines set forth in the preceding section, taking into account responses from the Complainant and Respondent; and (2) an analysis of the evidence collected during the investigation as it relates to the Sexual Misconduct and Interpersonal Violence Policy.

q) Review of Preliminary Report

The Title IX Coordinator may grant each of the Complainant and Respondent the opportunity to review the entire Preliminary Report. In such a case, the Complainant and Respondent will also each be given the opportunity to choose to participate in a Hearing and must elect to do so within 2 days after their opportunity to review the Preliminary Report.

A Hearing will **not** take place in each of the following scenarios:

- a) If both Complainant and Respondent decline to participate in a Hearing (in this case the parties have waived their opportunity to do so);
- b) If Complainant elects to participate in a Hearing but Respondent declines to do so (in this case Respondent has waived the opportunity to do so, and there will be no limitation on possible sanctions); or
- c) If Respondent elects to participate in a Hearing but Complainant declines to do so. (See below, however, for a description of the limitation on possible sanctions in this case).
- d) If the Title IX Coordinator does not grant each of the Complainant and Respondent the opportunity to review the entire Preliminary Report and to choose to participate in a Hearing. (See below, however, for a description of the limitation on possible sanctions in

this case).

In each of these four scenarios, the investigator will finalize the Preliminary Report by preparing and including in the report a written finding as to whether the Sexual Misconduct and Interpersonal Violence Policy was violated (and, if applicable, a finding as to whether any additional University policies were violated). The finding will be based on the preponderance of the evidence standard (i.e., whether it is more likely than not that a policy was violated). The final report will then be submitted to the Review Panel.

If both the Complainant and Respondent elect to participate in a Hearing, the Title IX Coordinator will schedule a Hearing.

2. Hearing

a) Hearing Panel

The Title IX Coordinator will assign each Hearing to a Hearing Panel. The members of the Hearing Panel shall be fair, impartial and neutral decision-makers. The Hearing Panel shall have received appropriate training to participate as informed, impartial and neutral decision-makers. The Hearing Panel shall be comprised of three University employees. One of Hearing Panel members will be designated as the Hearing Panel Chair. The Hearing Panel members shall have no prior experience with the parties, witnesses, or incident(s) in question that would present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Hearing Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the Hearing begins.

The Title IX Coordinator will provide each member of the Hearing Panel with a copy of the entire Preliminary Report.

b) Description of Hearing

The Hearing is for the purpose of cross-examination of witnesses only. Cross-examination is defined as: the questioning of a Party or witness by a Party or its advisor in order to ascertain the credibility of the witness's statements in the Preliminary Report. A Party and its Advisor are prohibited from conducting direct examination of witnesses (i.e., questions to a witness by the Party who the witness's testimony would tend to support). A Party and its Advisor are also prohibited from providing opening or closing statements at the Hearing. At least five days before the date of the Hearing, the Complainant and Respondent must each provide to the Title IX Coordinator a list of witnesses, which may include the Complainant and Respondent as witnesses, who the Party or its Advisor will cross-examine at the Hearing. The Title IX Investigator may not be called as a witness. Each Party must also submit a Questions List, providing each question the Party or its Advisor will ask its witness(es). There is no limitation to the number of questions that may be submitted on a Questions List, as the Questions List represents a Party's opportunity to be as thorough as that Party desires during cross-examination. (A Party will only be given a 10 minute recess per witness during the Hearing to submit follow up questions for review and approval.) The Title IX Coordinator will submit to the Hearing Panel Chair the list of witnesses and the Questions List.

The Hearing Panel Chair will review each list of witnesses and each Questions List prior to the Hearing. In general, the Hearing Panel will not permit questions that would be irrelevant, more prejudicial than probative, or immaterial. Additionally, the Hearing Panel will not permit questions that would be in violation of state or federal law, including rape shield laws. Prior to, or at the start of, the Hearing, the Hearing Panel will inform each Party of any of their respective witnesses or questions that will not be permitted.

The Hearing Panel Chair is responsible for maintaining an orderly, fair, impartial and respectful Hearing. The Hearing Panel Chair has broad authority to respond to disruptive or harassing behaviors, including adjourning the Hearing or excluding the offending person. All Hearings are closed to the public. Any recording of the Hearing is prohibited. The Title IX Coordinator may attend the hearing.

If reasonable efforts to accommodate witness schedules are not successful, the unavailability of a witness is not a ground for postponement of the Hearing. Parties shall not discourage a witness from appearing for the Hearing. The Hearing Panel may, but is not required to, draw an Adverse Inference against a Party if a witness is unavailable for cross-examination. If a Complainant has agreed to a Hearing but does not appear for cross-examination, then the Hearing Panel may not consider deferred suspension, suspension, or expulsion as a sanction. If Respondent has agreed to a Hearing but does not appear for cross-examination, Respondent has waived the right to the hearing and there will be no limitation on possible sanctions. Each Party, or its Advisor, may ask the witness only questions that the Party provided on its Questions List and which the Hearing Panel approved. A Party may also make reference at the Hearing to any evidence that is included in the Preliminary Report. After all initial questioning of a witness is complete, either Party may have only a 10 minute recess per witness to submit additional questions to the Hearing Panel for evaluation. The Hearing Panel Chair will evaluate the proposed additional questions based upon the same criteria used to evaluate the Questions List and a Party will then be permitted to ask a witness only additional questions the Hearing Panel approves.

A Party, or its Advisor, is permitted to cross-examine the other Party. A Party may request to participate as a witness by using technology that enables live testimony while allowing the Party-witness to be present in a different room.

The Hearing Panel Chair will exclude witnesses from those parts of the Hearing in which the witness does not testify. However, a Party and its Advisor may be present in the hearing room throughout the Hearing.

To establish that a Respondent violated the Sexual Misconduct and Interpersonal Violence Policy, the Hearing Panel must determine that it is more likely than not that the Respondent violated the Policy. This standard of proof is also known as a preponderance of evidence. After the Hearing the Hearing Panel will issue a Notice of Outcome (as described below).

3. Review Panel

When no Hearing takes place, the Title IX Coordinator will assign the matter to a Review Panel. The members of the Review Panel shall be fair and impartial decision-makers. The Review Panel shall have received appropriate training to participate as informed and impartial decision-makers. The Review Panel shall be comprised of three University employees. The Review Panel members shall have no prior experience with the parties, witnesses, or incident(s) in question that would

present any actual conflict of interest. The Complainant and Respondent will be informed of the composition of the Review Panel and may raise a challenge based upon bias or conflict to the Title IX Coordinator before the review begins.

The Review Panel will review the final investigation report to determine whether the investigation was conducted in a fair, impartial, and reliable manner;

- a. The information is sufficient to support the factual findings; and
- b. There is a rational basis, applying a preponderance of the evidence standard, for the recommended finding(s) of responsibility or no responsibility.

In reaching a determination, the Review Panel may elect to meet with the investigator, but the Review Panel may not conduct its own investigation or hearing.

After the Review Panel has concluded its review of the final investigative report and any additional information requested, the Review Panel shall either affirm or reject the investigator's finding(s).

Review Panel Rejection of Investigator's Report, in Whole or in Part:

The Review Panel may:

1. Accept or reject the investigator's finding in whole or in part and modify the investigative report accordingly;
2. Request that further investigation be undertaken by the same or another investigator;
3. Request that a de novo investigation be conducted.

Review Panel's Acceptance of Investigator's Report:

1. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is insufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will affirm the finding of no responsibility.
2. If the Review Panel, in consultation with the Title IX Coordinator, determines that the investigator properly concluded that there is sufficient information to find, by a preponderance of the evidence, that a policy violation occurred, the Review Panel will consider the imposition of a sanction designed to eliminate the misconduct, prevent its reoccurrence, and remedy its effects. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior.

4. Sanctions

The Hearing Panel or Review Panel is responsible for determining the appropriate sanction and remedy, subject to consultation and approval by the Title IX Coordinator.

The Hearing Panel or Review Panel may impose a sanction deemed appropriate after a consideration of all the relevant information. In general, the imposition of sanctions will take effect immediately and will not be deferred pending the resolution of the appeal.

The sanctions may include disciplinary action up to and including suspension from the University or permanent dismissal. A full list of the range of sanctions for students is contained later in this policy. However, disciplinary action imposed upon the Respondent may not include

deferred suspension, suspension, or expulsion if:

1. the Title IX Coordinator did not grant the Parties the opportunity to review the Preliminary Report and the choice to participate in a Hearing; or a Respondent elected to participate in a Hearing but the Complainant elected not to participate in a Hearing; or
2. a Respondent was not presented with the opportunity to cross-examine the Complainant as part of the Hearing.

Sanctions may be issued individually, or a combination of sanctions may be imposed. 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.

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.

For a student employee who is acting in the scope of his/her employment at the time of the incident, the sanction may include any permissible sanction from the Sexual Misconduct and Interpersonal Violence Policy or the personnel policies for employees.

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 the Wellness Center or 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 Harassment and Misconduct 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. **Other:** Such other sanctions as may be appropriate at the discretion of the University. Failure to complete any sanction may result in further disciplinary or other action.

5. Notice of Outcome

Both the Respondent and the Complainant will simultaneously receive written notice of the outcome, the sanction, and the rationale for both.

To provide notice of the outcome, University-issued email is the primary means of communication. Alternative methods may be used, if appropriate.

The notice of outcome will include the findings as to whether there has been a policy violation and the rationale for the result. The notice of outcome will also include the sanction and the rationale for the sanction. The Respondent will be informed of the date by which the requirements must be

satisfied (if applicable), and the consequences of failure to satisfy the requirements. The Complainant will be fully informed of any sanctions and remedies that directly relate to the Complainant, including information about the Respondent's presence on campus (or in a shared class or residence hall), that may help a Complainant make informed decisions or work with the University to eliminate harassment and prevent its recurrence. The notice of outcome will also provide each party with their appeal options.

The University may also notify appropriate University officials, such as the Executive Director of Public Safety, faculty members, residence life staff, coaches, as necessary, to implement the outcome and/or sanctions.

Appeal

Either party may appeal the outcome and/or sanction. The appeal will be conducted in an impartial manner. The Associate Vice President for Student Affairs will conduct appeals. A review of the matter will be prompt and narrowly tailored to stated appeal grounds. The limited grounds for appeal are as follows:

1. New information that could affect the finding of the investigator Hearing Panel or Review Panel, and was not available through the exercise of due diligence when the Party was permitted to present the information;
2. A deviation from University policy or procedure that materially affected the outcome;
3. Sanctions too harsh or too lenient.

The appeal shall consist of a plain, concise, and complete written statement outlining the grounds for the appeal. Dissatisfaction with the outcome of the investigation is not grounds for appeal. The appeal must be submitted to the Title IX Coordinator within five (5) days of the date of the outcome letter. Upon receipt of the appeal, the Title IX Coordinator will forward the request to the Associate Vice President for Student Affairs.

The Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted within five (5) days from the receipt of the appeal. In the event both parties initially appeal the findings, each party will be provided notice and a copy of the other party's appeal.

Upon receipt of the appeal and any response, the Title IX Coordinator will coordinate and be copied on all matters related to the appeal.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter. The Associate Vice President of Student Affairs shall consider the merits of an appeal only on the basis of the three grounds for appeal. The Associate Vice President of Student Affairs will review the written investigation report and all supporting documents and may consult with both parties.

Appeals are not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation regarding the grounds for the appeal. This is not an opportunity for the Associate Vice President of Student Affairs to substitute his/her judgment for that of the original reviewing body merely because s/he disagrees with the finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is a clear error based

on the stated appeal grounds. The Associate Vice President of Student Affairs can:

1. Affirm the original findings, or
2. Alter the findings, and/or
3. Alter the sanctions, depending on the basis of the requested appeal.

If the appeal is based on procedures not having been followed in a material manner, the Associate Vice President of Student Affairs can ask that a new investigation and/or imposition of sanctions occur. In the case of new and relevant information, the Associate Vice President of Student Affairs can recommend that the case be returned to the Review Panel to assess the weight and effect of the new information and render a determination after considering the new facts.

The Associate Vice President of Student Affairs will communicate the result of the appeal to the Complainant and Respondent within ten (10) days from the date of the submission of all appeal documents by both parties. Decisions on Appeals are final.

B. Additional Considerations

Group Infractions

When members of a student group, organization, team, or individuals act in concert in violation of the Sexual Misconduct and Interpersonal Violence Policy, their conduct may be reviewed as a group or as individuals, and an investigation may proceed against the group as joint Respondents or against one or more involved individuals as appropriate given available information and circumstances.

A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of the Sexual Misconduct and Interpersonal Violence Policy by the organization or its members take place at organization sponsored events, have received the consent or encouragement of the organization or the organization's leaders or officers, or was known or reasonably should have been known to the membership or its officers.

In any such action, determinations as to responsibility will be made and sanctions may be assigned collectively and individually. However, if an individual who is a Respondent in a Group Infractions matter may be subject to an individual sanction that may include deferred suspension, suspension or expulsion, then that individual Respondent shall have the right to review the Preliminary Report and request a Hearing pursuant to the procedure described above.

Records

The Title IX Coordinator will retain records of all reports, allegations, and complaints, regardless of whether the matter is resolved by Title IX assessment, Informal Resolution, or Formal Resolution. In general, records will be maintained for the duration of the Respondent's enrollment at the University and may be retained for no less than seven years following the Respondent's departure from the University.

Students

Findings of responsibility in matters resolved through Formal Resolution are part of a student's conduct record. Such records shall be used in reviewing any further conduct or in developing sanctions and shall remain a part of a student's conduct record.

Complaints resolved by a Title IX assessment or Informal Resolution are not part of a student's

conduct file or academic record. The conduct files of students who have been suspended, permanently dismissed, or who withdrew pending disciplinary action from the University are maintained in the Office of Wellness and Community Responsibility for seven years after their departure from the University.

Further questions should be directed to the Associate Director of the Office of Wellness and Community Responsibility. Records of disciplinary action involving organizations are maintained in the Office of Wellness and Community Responsibility indefinitely.

Students who declare an interest in studying abroad through the Academic Programs Abroad are subject to a conduct record check. Information that will be shared with the Office of Academic Programs Abroad includes, but is not limited to, determination of sexual misconduct violations. It is within the sole discretion of the University, through the Office of Academic Programs Abroad, to determine whether a student who has violated University policy is eligible to study abroad. Consideration and qualification for study abroad are not disciplinary determinations but may be affected by a student's disciplinary record.

V. Appendix and Definition of Terms:

Adverse Inference: If a non-Party witness fails to appear at the Hearing, an inference may be drawn that cross-examination of the missing witness would have garnered testimony favorable to the Party that would have cross-examined the missing witness.

Advisor: Throughout the investigation and resolution of a complaint, the Complainant and Respondent have the right to be assisted by an advisor of their choice. The advisor may be any person, including an attorney engaged at the party's expense, who is not otherwise a party or witness in the investigation. The advisor may accompany the Complainant or Respondent to any meeting or related proceeding with an investigator or a University employee. Except for during a hearing, the advisor may not speak on behalf of the Complainant or Respondent or otherwise actively participate in, or in any manner disrupt, the meeting or proceeding; rather, at such times, the advisor may only confer quietly with the Complainant or Respondent to provide advice or support. An advisor is permitted to cross examine witnesses on behalf of a Party during a Hearing. Any person who serves as an advisor should plan to make themselves available for meetings throughout the process in accordance with the University's objective of completing the resolution process in sixty (60) days or less.

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.

Complainant: An individual who invokes the University's investigation and resolution process to determine if the sexual misconduct policy has been violated and identifies him or herself as a victim of the alleged misconduct. In some circumstances, the University may assume the role of Complainant.

Party or Parties: A term referring to the Complainant and Respondent, either individually or collectively.

Prohibited Conduct: Prohibited Conduct is defined in the University’s Sexual Misconduct and Interpersonal Violence Policy (link) and includes Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Sexual or Gender Based Harassment and Retaliation.

Respondent: Any individual(s) or organization(s) alleged to have violated the Sexual Misconduct and Interpersonal Violence Policy and against whom a complaint has been brought to the attention of the University.

Student: 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.

Title IX: 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 of students, which includes acts of sexual misconduct described in this policy, is a form of sex discrimination prohibited by Title IX.

Victim: Any individual who has been harmed by an act or acts of sexual misconduct.

Witness: Any individual, including Complainant and Respondent, who has seen, heard, or otherwise knows or has information about a violation.

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