



## **Oregon State University Investigation and Resolution Process For Title IX Complaints (Title IX Process)**

### **A. Overview.**

Oregon State University ("university") is committed to creating an equitable and inclusive university free of violence and all forms of prohibited discrimination and discriminatory harassment (including discrimination on the basis of sex and sexual harassment). All individuals who are participating or attempting to participate in university programs and activities have the right to do so fully, free from sexual misconduct and discrimination, as set forth in University Policy 05-001 Sexual Misconduct and Discrimination ("Policy") and Section 4.5, Title IX Sexual Misconduct, of the Code of Student Conduct ("Code").

This Investigation and Resolution Process for Title IX Complaints applies in all instances in which a faculty member, staff, student, or other member of the university community is alleged to have engaged in behavior that would violate the Policy and/or the Title IX Sexual Misconduct provision of the Code, and which would also constitute sexual harassment (sexual harassment, sexual assault, dating violence, domestic violence, or stalking) as defined by federal law.

This Investigation and Resolution Process for Title IX Complaints ("Title IX Process") sets forth the procedures that will be used to investigate and resolve complaints:

1. by faculty, staff, students, and other members of the university community who, at the time of the complaint, are participating or attempting to participate in a university educational program or activity,
2. that allege violations occurring against a person in the United States,
3. that allege conduct that would constitute sexual harassment as defined by federal law ("Title IX Sexual Misconduct"),

4. that allege violations that occurred in a university education program or activity over which the university exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred, and
5. Where the university has actual knowledge through a written, signed formal complaint to the Title IX Coordinator or other university official with authority to institute corrective measure on behalf of the university ("Title IX Complaint").<sup>1</sup>

This Title IX Process is available only to individuals who have a current affiliation with the university or are attempting to participate in a university education program or activity. However, the university reserves the right to look into concerns reported by and about individuals who do not have a current university affiliation, through whatever applicable process the university determines most appropriate.

## **B. Investigation Office.**

The Office of Equal Opportunity & Access ("EOA") is the university office charged with responding to all reported Title IX Complaints. EOA may consult with other university administrators as part of this Title IX Process.

## **C. Reporting.**

A complainant must complete and sign a formal Title IX Complaint for EOA to proceed with an informal resolution or formal investigation under this Title IX Process. In some instances, EOA may initiate an investigation of a Title IX Complaint where an impacted party has not submitted a Complaint (see Section I, Requests for EOA Not to Investigate an Allegation). While EOA will respond to all Title IX Complaints, the submission of a Complaint does not always result in either an informal resolution or a formal investigation, as described in Section F, Initial Assessment.

The university encourages individuals to bring forward complaints and information as soon as possible after an alleged violation occurs in order to maximize the university's ability to respond promptly and effectively. While there is no timeframe for submitting a Title IX Complaint, prompt reporting will better enable EOA to respond to the complaint, determine the relevant issues, and provide an appropriate response and/or action.

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<sup>1</sup> Complaints that allege a violation of university policy but do not allege behavior that would constitute a Title IX Complaint will be addressed under other university investigation and resolution processes.

Delay in making a complaint may impede EOA's ability to conduct an investigation or take appropriate responsive actions.

Depending on the relationship of the respondent to the university, the university may no longer have the authority to take any action with regard to the respondent due to the passage of time. In such circumstances, the university will still seek to meet its Title IX obligations by evaluating the reported conduct, providing reasonably available Supportive Measures,<sup>2</sup> assisting the complainant in identifying external reporting options, and taking reasonably available steps to end any Title IX Sexual Misconduct, prevent its recurrence, and address its effects.

**Amnesty:** The university encourages all campus community members to report behavior associated with sexual misconduct and discrimination. To support such reporting, the university will not pursue student conduct proceedings against a student complainant, a student respondent, or student witness for their personal use of alcohol, marijuana, or other drugs at or near the time of the incident provided their use did not place the health or safety of any other person at risk. The university may, however, initiate an educational discussion with any student regarding their personal use of alcohol, marijuana, or other drugs.

**Anonymous Complaints:** With the exception of a "Responsible Employee<sup>3</sup>," an individual can choose to make a complaint anonymously. However, EOA's ability to investigate complaints or take responsive action may be limited based on the amount of information available to EOA. For example, the possible response may be limited if information contained in the complaint is insufficient to verify violation(s) of the Policy and/or Code or to identify the parties involved. The Title IX Coordinator or their designee has the discretion to determine how EOA will respond to an anonymous complaint. Even if EOA is unable to take responsive action and/or must dismiss a Title IX Complaint because of federal requirements, providing any information, even anonymously, may help the university maintain accurate records regarding the number of incidents involving students, employees, and third parties; determine if there is a pattern of conduct with regard to a particular location or respondent; and alert the campus community to potential dangers when appropriate.

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<sup>2</sup> See Section G, Supportive Measures.

<sup>3</sup> A Responsible Employee, as defined in University Policy 05-005, includes university employees who have the duty to report incidents of sexual misconduct and discrimination. Most university employees, including faculty, are responsible employees unless otherwise specified in the policy.

**Third Party Complaints:** If an alleged violation is reported by a Responsible Employee, witness, bystander, or other person, EOA will treat the person impacted by the reported violation as the complainant for purposes of this Title IX Process.

**D. Privacy.**

All complaints made to EOA are treated in the most private manner possible. Information regarding the complaint will be shared only on a “need to know” basis with other university offices and employees. When information is shared with university offices and employees, the amount and type of information will also be limited to only that required for the office or employee to carry out their tasks.

Medical and counseling records are considered privileged and confidential documents. Individuals reporting violations of the Policy and/or Code may, but are not required to, disclose those types of documents to EOA as part of this process, and EOA will not access, consider, disclose, or otherwise use such records unless the party who is the subject of those records voluntarily provides a written consent to do so. To the extent medical and/or counseling records shared by a party with EOA, with a written consent for their use, are determined relevant to and are relied upon by EOA in connection with an investigation, they will become subject to inspection and review by the other party in the Investigation Process.

**E. Timeframe for Resolution.**

The process for resolution begins when EOA is notified of a complaint. EOA will attempt to resolve all complaints as promptly as possible, consistent with the need to conduct objective and thorough fact-gathering. The Title IX Process designates reasonably prompt timeframes for the major stages of the investigation and resolution process, but the university may extend any timeframe in this Title IX Process for good cause. An extension may be required to ensure the integrity and thoroughness of the investigation; in response to the parties or witnesses being unavailable; or for other legitimate reasons, such as intervening breaks in the academic calendar, university finals periods, the complexity of the investigation, the volume of information, number of witnesses, length of the written record, and/or the severity and extent of the alleged misconduct. Investigations will proceed according to the timeframes in this Title IX Process to the extent possible during the summer and at other times when university classes are not in session. The university will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation.

Timeframes for all phases of the investigation process, including disciplinary proceedings, and any related appeal process, apply equally to both complainants and respondents. While requests for delays in the investigative process by the parties may be considered, the university cannot unduly or unreasonably delay the prompt resolution of a complaint under this Title IX Process. Reasonable requests for delays by the parties will serve to extend the time for resolution of the reported incident. The university has the authority to determine whether an extension is required or warranted by the circumstances. The university will provide the parties with written notice of delays or time frame extensions and the reasons for the delay or time frame extension.

**F. Initial Assessment.**

Upon receipt of a reported concern, EOA will take immediate and appropriate steps to review and intake the matter promptly and equitably. The first step in this process is the Initial Assessment. As part of the Initial Assessment, EOA will gather information about the reported conduct, respond to any immediate health or safety concerns raised by the reported concern, and evaluate if the reported conduct is within the scope of EOA's jurisdiction.

1. **EOA will conduct its initial assessment** once immediate health or safety concerns have been addressed and EOA has determined that the reported concern is within EOA's jurisdiction. EOA will take the following steps:
  - a. Assess the nature and circumstances of the reported concern, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness(es), and/or any other individual with knowledge of the reported incident;
  - b. Address ongoing physical safety and emotional well-being concerns of the complainant and/or the campus community;
  - c. Notify the complainant of their right to contact (or decline to contact) law enforcement and/or seek a civil protection order, and that EOA will coordinate with law enforcement, as appropriate, to minimize delay in its action on the matter;
  - d. Notify the complainant of the right to seek medical and/or counseling treatment to address physical or mental health issues;

- e. Notify the complainant of the importance of preservation of evidence, including a forensic sexual assault examination and any relevant documentary evidence;
- f. Provide the complainant with a written copy of EOA's Campus & Community Resources and Rights document, which contains information about their rights to report, civil and legal options, campus-based services and disciplinary processes, privacy policy information, and state and community resources and services, including on and off campus advocacy, support, healthcare and confidential resources;
- g. Notify the complainant of the range of available supportive measures;
- h. Determine whether the reported concern alleges conduct that, if true, would constitute a Title IX Complaint, a non-Title IX violation of the Policy and/or Code, or whether, based on what is alleged in the reported concern, is outside of EOA's jurisdiction;
- i. Provide the complainant with a copy of the applicable university policy(ies) and process(es), and an explanation of the procedural options, including the informal resolution process and the formal investigation process;
- j. Notify the complainant of the right to be accompanied at any step of the process by an advisor of their choice;
- k. Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., privacy or retaliation concerns);
- l. Explain the university's policy prohibiting retaliation and how to report acts of retaliation; and
- m. Invite the complainant to complete and sign a formal Title IX Complaint.

EOA will seek to complete the Initial Assessment within ten (10) business days after EOA receives a reported concern, if the complainant chooses to engage with EOA. However, there may be circumstances where the Initial Assessment takes longer based on the availability or participation of the complainant, the availability of other necessary information, a complainant's request to maintain privacy, or other factors outside of EOA's control.

2. **In matters where the complainant chooses not to sign a Title IX Complaint:**

- a. EOA will inform the complainant that the ability to take action against the respondent may be limited. EOA may independently determine that an investigation should proceed, separate from the intent or wishes of the complainant, based on a formal complaint signed by the Title IX Coordinator (see Section I, Requests for EOA Not to Investigate an Allegation).
- b. If EOA determines an investigation will not proceed separate from the intent or wishes of the complainant, EOA will:
  - i. Refer the matter to a non-Title IX process, if applicable; or
  - ii. Refer the matter to another appropriate office or department for resolution; or
  - iii. Close EOA's file on the matter.

3. **In matters where the complainant submits a signed Title IX Complaint:**

- a. If EOA determines the complainant has submitted a Title IX Complaint that does not meet the criteria of a Title IX Complaint (see pages 1-2) and is therefore not within the scope of this Title IX Process, EOA will:
  - i. Provide both the complainant and respondent simultaneous written notice of its determination in a timely manner and notify both parties of the dismissal and reasons for the dismissal, advising the parties of the right to appeal the dismissal (see Section L.3.a. Appeal of a Title IX Complaint Dismissal);
  - ii. Direct both the complainant and respondent to other appropriate process(es) or office(s) for assistance, where appropriate; and
  - iii. Maintain a record of the Complaint and the reason(s) the Complaint was deemed not within the scope of this Title IX Process.

- b. If EOA determines the complainant has submitted a formal Title IX Complaint that meets the criteria of a Title IX Complaint, EOA will:
  - i. Proceed with an informal resolution process. Informal resolution requires the voluntary written consent of both the complainant and respondent (see Section J, Informal Resolution Process), or
  - ii. Proceed with an investigation. This will occur when a complainant has requested an investigation or when informal resolution is requested but determined by EOA to not be appropriate or available (see Section K, Investigation Process).

### **G. Supportive Measures.**

When a Title IX Complaint is made to EOA, the university is committed to taking immediate steps to stop any inappropriate behavior and to remedy the effects of that behavior. In support of that commitment, supportive measures are sometimes necessary and appropriate to address safety concerns of the complainant, the respondent, or the broader university community; to preserve access to educational, research, and employment opportunities; to maintain the integrity of the investigative and/or resolution process; or to deter retaliation.

Supportive Measures are non-disciplinary, non-punitive individualized services that are designed and intended to restore or preserve equal access to the university's educational programs or activities, including measures designed to protect the safety of all parties and the campus community, and/or the university's educational environment, and/or to deter sexual harassment. The availability of Supportive Measures will be determined by the specific circumstances of each complaint and will be tailored to avoid unreasonably burdening any party's access to their educational or employment opportunities. The university will consider a number of factors in determining which measures to take, including the needs of the party seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; whether the party requesting supportive measures has been credibly negatively impacted; any continuing effects on the party; whether the complainant and the respondent share the same residence hall, academic course(s), on-campus work location(s); and whether either party has received court protection from the other (e.g. protective orders). The university will work in good faith to implement the requirements of judicially-issued protective orders and similar orders, to the extent that doing so is within its authority.

EOA is responsible for ensuring the implementation of Supportive Measures and coordinating the university's response with the appropriate offices on campus. EOA, in consultation with the Director of Student Conduct and Community Standards ("Director, SCCS") and/or the Associate Vice Provost/Senior Director ("AVP/SD") of Employee and Labor Relations ("ELR"), as appropriate, has the discretion to impose and/or modify any Supportive Measures based on all available information and is available to meet with a complainant or respondent to address any concerns about the provision of Supportive Measures. Alleged violation of any Supportive Measures will be promptly addressed, with EOA investigating the alleged violations and referring its findings to the relevant office: SCCS (for any violations by students) or to ELR (for any violations by employees).

Supportive Measures are available to the complainant regardless of whether the complainant pursues an investigation. Supportive Measures are also available to respondents to alleviate any negative impact of participating in the process. The university will provide the parties with reasonable Supportive Measures throughout the Title IX Process and thereafter as determined to be necessary and reasonable. EOA will coordinate the implementation of Supportive Measures with other university offices as needed.

1. **Supportive Measures for students may include, but are not limited to the following actions:**

- a. Provide information on available campus and community-based advocacy support;
- b. Provide information on available psychological counseling and health services, including guidance in obtaining a sexual assault forensic examination;
- c. Facilitate changes to academic classes, such as adjustments to academic deadlines, course schedules, withdrawal from a class without penalty, and completing a course on-line, if appropriate and available;
- d. Facilitate changes to on-campus living situations, if appropriate;
- e. Facilitate changes to on-campus work arrangements, if appropriate;
- f. Coordinate temporary transportation/parking assistance or escort, if appropriate;

- g. Issue a mutual no-contact directive to the parties or others involved in the matter, if appropriate and as determined on a case-by-case basis, prohibiting the parties or other involved individuals from having contact or communications with each other;
  - h. Refer a party to resources to assist in obtaining a protective order;
  - i. Refer a party to resources to assist with any financial aid, visa, or immigration concerns;
  - j. At the discretion of EOA, any other reasonable Supportive Measure that does not interfere with either party's access to education or unreasonably burden the other party.
2. **Supportive Measures for employees may include, but are not limited to the following actions:**
- a. Providing information about campus and community-based advocacy support and counseling and health services;
  - b. Referring a party to resources to assist in obtaining a judicially-issued protective order;
  - c. In consultation with ELR, as appropriate, working with the parties to limit unnecessary interactions;
  - d. Other reasonable Supportive Measures that do not interfere with either party's access to the workplace and/or educational program or activity or unreasonably burden the other party.

#### **H. Concerns Regarding Student and Employee Respondents.**

To promote the safety and well-being of members of the campus community and/or take action with a student/student organization, employee, or other member of the OSU community who poses an immediate threat to the physical health or safety of any member of the university community arising from the allegations of Title IX Sexual Misconduct, the Title IX Coordinator or their designee may request that the university initiate an action to remove an individual from or relocate an individual within the university community.

**1. Student respondent:**

The university may initiate an administrative suspension against a student respondent. Prior to initiating an administrative suspension, the Director, SCCS, or their designee, in consultation with the Title IX Coordinator or their designee, will complete an individualized safety and risk analysis. If, after that analysis, it is determined that the student respondent poses an immediate threat to the physical health or safety of any person or other individual arising from the allegations of Title IX Sexual Misconduct, the Director SCCS, or designee, will initiate the administrative suspension process. The administrative suspension process includes providing notice to the student respondent and a timely opportunity to challenge the administrative suspension decision. The process for administrative suspension is fully outlined in Section 9, Administrative Suspension, of the Code.

**2. Employee respondent:**

If the Title IX Coordinator or their designee has or receives concerns regarding an employee respondent, they will work with the AVP/SD of ELR to determine what changes might be possible pending a Title IX Complaint investigation. The AVP/SD of ELR, or their designee, in consultation with the Title IX Coordinator or their designee, will complete an individualized safety and risk analysis.

**I. Requests for EOA Not to Investigate an Allegation.**

A complainant may request that their name or other personally identifiable information not be shared with a respondent, that no investigation be pursued, or that no disciplinary action be taken. In these instances, prior to asking if the complainant would like to submit a formal Title IX Complaint, and before taking any investigative steps that would involve notifying the respondent, EOA will discuss any concerns with the complainant and seek to address and remedy barriers to reporting based upon concerns about retaliation or questions about procedural options and potential outcomes.

In order to protect the safety of the campus community, EOA may need to proceed with an investigation (which would include sharing complainant's name with respondent) or other appropriate action even if a complainant specifically requests that the matter not be pursued or that their name not be shared. EOA may initiate an investigation of potential violations of Policy and/or the Code that constitute a Title IX

offense based on a Title IX Complaint signed by the Title IX Coordinator, even when a complainant has requested that EOA not investigate or when a Title IX Complaint has been withdrawn by the complainant.

1. EOA will take into account the following factors when determining whether to honor a complainant's request for EOA not to investigate an allegation or whether to proceed with an EOA initiated investigation.
  - a. The totality of the known circumstances;
  - b. The nature and scope of the alleged conduct, including whether the reported conduct involves violence, the threat of violence, or use of a weapon;
  - c. The risk that the respondent will commit additional acts of Title IX Sexual Misconduct, as informed by previous or multiple reported concerns involving the respondent, a history of violence by the respondent, or threatened further Title IX Sexual Misconduct against the complainant by the respondent or others;
  - d. Allegations that Title IX Sexual Misconduct was committed by multiple perpetrators;
  - e. The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
  - f. Whether the reported concern alleges a pattern of Title IX Sexual Misconduct at a given location or by a particular respondent;
  - g. The respective ages and roles of the complainant and respondent, including whether alleged conduct involves a complaint of Title IX Sexual Misconduct perpetrated against a minor;
  - h. The complainant's interest in the university not pursuing an investigation or disciplinary action and the impact of such actions on the complainant;
  - i. The availability of other means to obtain relevant evidence of the alleged Title IX Sexual Misconduct without the participation of the complainant (e.g., security cameras or personnel, physical evidence, witnesses, etc.);

- j. Fairness considerations for both the complainant and respondent;
- k. The university's commitment to a safe and non-discriminatory environment; and
- l. Any other available and relevant information.

EOA will consider what steps may be possible or appropriate when a respondent is unknown or the complainant requests anonymity, and what other measures or supports might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator or their designee will make a determination regarding the appropriate manner of resolution under the University Sexual Misconduct and Discrimination Policy and this Title IX Process. EOA will seek resolution consistent with the complainant's interest, if it is reasonably possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the parties and the campus community.

Where EOA determines that a complainant's request(s) to not investigate an allegation can be honored, the university may nevertheless take other appropriate steps to stop the reported conduct, prevent its recurrence, and address its effects on the complainant and the campus community. Those steps may include offering appropriate Supportive Measures to the complainant, providing targeted training and prevention programs, and/or providing or implementing other supports. The Title IX Coordinator or their designee may also re-open a reported concern under the Title IX Process if any new or additional information becomes available, and/or if the complainant later decides that they would like to pursue an investigation.

When EOA determines that it must proceed with an investigation despite the complainant's request that the university take no action, EOA will notify the complainant that it intends to initiate an investigation. The complainant is not required to participate in the investigation or in any of the actions taken by the university.

The university's ability to investigate and respond fully to a reported concern may be limited if the complainant requests anonymity or declines to participate in an investigation. The university may, however, pursue other steps to limit the effects of the reported conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent EOA will conduct an investigation and whether Supportive Measures will be provided in connection with a Title IX

Complaint will be made in a manner consistent with the University Sexual Misconduct and Discrimination Policy and will be documented.

## **J. Informal Resolution Process.**

The informal resolution process is a voluntary and solutions-based approach to resolution. Complainants who report Title IX Sexual Misconduct under the Policy and/or Code may request the informal resolution process prior to, instead of, or during an investigation, although a decision to honor a request made during an investigation will be at the discretion of the Equity Associate in consultation with the Title IX Coordinator.

1. **Overview.** To begin the informal resolution process, the complainant should inform an EOA staff member that they want to engage in the informal resolution process. The EOA staff member will inform the complainant of the range of possible outcomes and provide information about the informal resolution process, including the fact that either party may at any time prior to reaching a resolution elect to withdraw from the process and that if an informal resolution is reached, the university will consider that to be the final outcome between the parties, with no available appeal.

The informal resolution process may include an inquiry into the facts, but does not include a full investigation into the allegations.

Informal resolution is not appropriate and will not be offered in Title IX Complaints that allege an employee engaged in Title IX Sexual Misconduct directed at a student.

In some cases, based on the complaint made to EOA or on information gathered in the informal resolution process (e.g. if information suggests a pattern of substantively similar behavior by the respondent or behavior affecting multiple individuals), EOA may determine the matter is most appropriate for an investigation, even if neither party requests an investigation. If EOA determines an investigation is required, the Title IX Coordinator will sign a Title IX Complaint and EOA will notify the parties in writing through a Notice of Allegations (see Section K, Investigation Process).

2. **Initiating the Informal Resolution Process.** Before proceeding with the informal resolution process, the complainant must submit a signed Title IX Complaint and request an informal resolution.

- a. EOA will provide written notice to both parties of the Title IX Complaint, the Title IX Sexual Misconduct alleged in the Complaint, and about the informal resolution process, including the fact that either party may at any time prior to reaching a resolution elect to withdraw from the process and that if an informal resolution is reached, the university will consider that to be the final outcome between the parties, with no available appeal.
  - b. Prior to initiating an informal resolution, EOA will ask for the parties' voluntary, written consent to engage in the informal resolution process.
  - c. At any time prior to reaching a mutual agreement, any party has the right to withdraw from the informal resolution process and to request a formal investigation. If either party withdraws from the informal resolution process or the process is otherwise terminated for any reason, any statements, disclosures, records, or other evidence gathered and/or created during the informal resolution process could later be used in a formal investigation.
3. **The Informal Resolution.** Any form of informal resolution and any combination of non-disciplinary and non-punitive interventions and supports may be utilized, consistent with university policy, the Code, and/or any applicable collective bargaining agreement. Forms of informal resolution include discussions with the parties, a resolution facilitated by an EOA staff member implementing an arrangement that provides mutual separation between the parties, targeted or broad-based educational programming or training, facilitated conversation or interaction with the respondent, and/or other action determined by the EOA staff member, in consultation with the parties, to effectively address the reported Title IX Complaint.

As part of the informal resolution process, EOA will not compel a complainant or respondent to engage in facilitated conversation with each other, to confront each other directly, or to participate in any particular form of informal resolution. Where a facilitated conversation is requested, no meeting between the complainant and the respondent should occur without involvement by appropriate university staff.

If a mutually agreed resolution is reached, a written record of the resolution will be documented by the EOA staff member and maintained in accordance with applicable EOA recordkeeping

policies. The university will consider the informal resolution to be the final outcome between the parties and the matter is then considered closed by EOA. No appeals of an informal resolution outcome are possible.

If an agreement is not reached and EOA determines that further action is necessary, or if a party fails to comply with the terms of the informal resolution, the matter may be referred for an investigation or other appropriate action.

4. **Withdrawal from the Informal Resolution Process.** Either the complainant or respondent may at any time elect to withdraw from the informal resolution process. Additionally, if the EOA staff member determines that a mutually agreeable resolution is not possible, or if the EOA staff member learns of information that requires an investigation, the EOA staff member may terminate the informal resolution process. In that event, the EOA staff member will promptly notify the parties, in writing, that the informal resolution process has terminated, and inform the parties of the right to request an investigation. If an investigation is requested, EOA will consider the request based on EOA's review of the Title IX Complaint and the information gathered in the informal resolution process, taking into consideration whether the complainant has asserted information that, if true, would constitute a violation of the Policy and/or the Code.
5. **Timeframe.** EOA will attempt to resolve the complainant's concern(s) promptly. The assigned EOA staff member will meet with the complainant, the respondent, and any other persons the EOA staff member may determine to be necessary. The informal resolution process will typically be completed within thirty (30) business days of the initial complaint.

#### **K. Investigation Process.**

1. **Overview.** Prior to initiating a formal investigation, either the complainant or the Title IX Coordinator, or their designee, must submit a written and signed Complaint alleging Title IX Sexual Misconduct by a respondent and requesting that EOA investigate the allegations. Where EOA has determined that the reported concern is within EOA jurisdiction and alleges a violation of Title IX Sexual Misconduct, EOA will conduct a prompt and equitable investigation to gather relevant information necessary to make a determination as to whether or not a violation of the Policy and/or Code occurred. The investigation will be impartial and will be conducted by trained investigators who have no actual bias or

conflict of interest for or against the complainant or respondent. A respondent will be presumed not responsible for the alleged Title IX Sexual Misconduct until a determination regarding responsibility is made at the conclusion of the Title IX Process.

During the investigation and live hearing processes, both the complainant and respondent have equitable opportunity to participate, including the opportunity to receive written notice of the investigation, including allegations; to participate in the investigation; to present information and evidence; to inspect and review all evidence directly related to the allegations, both inculpatory and exculpatory; to be accompanied by an advisor of their choice at any stage of the EOA investigation process; to receive timely notice of meetings at which their presence will be requested or required; to participate fully in a live administrative hearing; to receive simultaneous written notice of the outcome and rationale; and to receive information about available appeals.

The university, not the parties, is responsible for gathering relevant evidence. The complainant and respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as promptly as possible. In the event that a party declines to voluntarily provide relevant information, the university's ability to conduct a prompt, thorough, and equitable investigation may be impacted.

2. **Investigator.** EOA will designate an investigator to conduct a prompt, thorough, fair, and impartial investigation. The investigator is typically an Equity Associate, but may also be an experienced external professional investigator.<sup>4</sup>
3. **Evidentiary Standard.** The applicable evidentiary standard for all violations of the Policy and/or Code is a preponderance of the evidence. This standard is met when the evidence shows that it is "more likely than not" that the alleged misconduct occurred.

A respondent is presumed not to have violated the Policy and/or Code until a determination regarding responsibility is made at the conclusion of the Title IX Process.

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<sup>4</sup> The term Equity Associate, as used throughout this Investigation and Resolution Process, includes external professional investigators working for EOA.

4. **Consolidation of Investigation.** EOA has the discretion to consolidate multiple complaints into a single investigation if evidence relevant to one incident is relevant to the others and the allegations arise out of the same facts or circumstances. Consolidation might involve multiple complainants and a single respondent, multiple respondents, or conduct that is logically connected. Where the conduct is related or part of the same incident or series of incidents, EOA may investigate alleged violations of other university standards, policies, rules, and/or Code provisions.
5. **Notice of Allegations.** EOA will issue a notice of allegations to the respondent via their university e-mail account or via U.S. mail. EOA will issue a notice of acknowledgment of allegations to the complainant, also via their university e-mail account or via U.S. mail.
  - a. The notice of allegations will provide a summary of the allegations, including: the names of the parties, if known; the date, time, and location of the alleged violation, if known; a brief summary of the nature of the reported conduct; the specific sections of the Policy and/or Code that are alleged to have been violated; the rights of each party; on-campus and off-campus resources available to each party; the prohibition against retaliation; the importance of preserving any potentially relevant evidence; the prohibition against initiating a false report and/or providing false information in connection with the investigation of a Title IX Complaint, if any; the name of the Equity Associate assigned to the investigation; how to challenge the participation of the Equity Associate on the basis of a conflict of interest or bias; the right to have an advisor of their choice, who may be, but is not required to be, an attorney; that they may inspect and review evidence; a copy of the Policy and/or Code, as applicable; and this Title IX Process. If the investigation reveals the existence of additional or different potential violations of the Policy and/or the Code, or of other university policies, rules, and/or Code provisions, EOA will issue a supplemental or new notice of allegations.
  - b. The Notice will indicate that the respondent will be presumed to be not responsible for the alleged Title IX Sexual Misconduct until a determination regarding responsibility is made at the conclusion of the Title IX Process.
  - c. The notice of allegations will request that the respondent contact EOA within three (3) business days to schedule a

meeting with the Equity Associate. Typically the Equity Associate will schedule the initial meeting with the respondent no later than 10 business days after the notice of allegations has been sent to the respondent, in order to allow sufficient time for the respondent to prepare a response. The investigation will continue even if the respondent does not attend the initial meeting with the Equity Associate or if the respondent chooses not to actively participate in the investigation. Respondents can choose to participate at any point in the investigation, but may not be permitted to offer evidence to EOA once the Final Investigation Report has been issued.

6. **Evidence Gathering.** After the notice of allegations is sent, the Equity Associate will conduct a thorough and impartial investigation, gathering relevant information about the alleged misconduct. During the investigation, the complainant and the respondent will have equitable opportunities to provide the Equity Associate with the names and contact information of relevant fact or expert witnesses, documentation, and any other relevant inculpatory or exculpatory evidence related to the alleged misconduct.

Both the complainant and the respondent will be invited by the Equity Associate to meet separately with the Equity Associate.

- a. Initial Meeting with Complainant

Before or during the Equity Associate's initial meeting with the complainant, which typically takes place before the notice of allegations is issued, the Equity Associate will ensure that the complainant has information regarding rights and options, as set forth in Section F, Initial Assessment, some of which may already have been provided during the intake meeting. In addition, the Equity Associate will address the following:

- Explain the investigation process and timelines and answer any related questions;
- Explain the complainant's rights and options under this Title IX Process, including the right to be accompanied at any step of the process by an advisor of their choice;
- Afford the complainant a full opportunity to provide information regarding the allegations, including providing

the Equity Associate with relevant documentary evidence, the identity of potential relevant fact or expert witnesses, and to suggest questions to be asked of the respondent or any witnesses;

- Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding, including explanation of the informal resolution process versus an investigation process;
- Explain the university's policy prohibiting retaliation;
- Confirm with the complainant the process for requesting any Supportive Measures; and
- Schedule other meetings, if necessary.

b. Initial Meeting with Respondent

The Equity Associate's initial meeting with a respondent, which takes place after the notice of allegations has been issued, is typically for the purpose of informing the respondent about the allegations and investigation process, including the right to submit a written response to the allegations, and about available support and resource options. Before or during the initial meeting with the respondent, the Equity Associate will address the following:

- Advise the respondent of available on-campus and off-campus advocacy and support resources, including confidential resources;
- Provide the respondent with a copy of the Policy, the Code, as applicable, and this Title IX Process;
- Explain the investigation process and timelines and answer any related questions;
- Explain the respondent's rights and options under the Title IX Process, including the right to be accompanied at any step of the process by an advisor of their choice;
- Provide the respondent full opportunity during the initial meeting, or in a subsequent meeting(s) as necessary, to respond to the allegations and to provide information regarding the allegations, including providing the Equity Associate with relevant documentary evidence, the

identity of potential relevant fact or expert witnesses, and to suggest questions to be asked of the complainant or any witness;

- Explain the university's policy prohibiting retaliation;
- Inform the respondent that although they are not required to do so, they have the option to provide a written response to the allegations, and have ten (10) business days from the date of the initial meeting with the Equity Associate to provide that written response;
- Confirm with the respondent the process for requesting any Supportive Measures; and
- Schedule other meetings, if necessary.

c. Witnesses

In addition to meeting with the complainant and respondent, the Equity Associate will meet with relevant witness, who may have information relevant to the incident, who may have observed the acts in question, who may be able to provide contextual information, or who may have other information related to the incident or related matters, either directly or based on reports from either of the parties. Where witnesses are interviewed as part of the investigation, all information gathered in the interviews that is directly related to the Title IX Complaint will be included in the investigation record; all relevant evidence will be fairly summarized in the Investigation Report generated by the Equity Associate to document the investigation.

Witnesses, including employees, are expected to cooperate with and participate in the investigation. Witnesses are expected to make themselves available to answer questions by phone, Zoom, or similar technology if they cannot be interviewed in person. Individuals who are not employees are encouraged and expected to participate and retaliation against an individual who refuses to participate is prohibited. Employees may be required to cooperate with and participate in the investigation and will not be retaliated against for their participation.

d. Evidence

The Equity Associate will also gather and consider other relevant information or evidence, including documents, photographs, communications between the parties, medical and/or counseling records (if voluntarily provided to EOA for its consideration by the individual who is the subject of the records with a voluntary, written consent), and other electronic records as appropriate.

e. Investigation/Evidence Gathering Process

The following apply to the investigation/evidence gathering process conducted by the assigned Equity Associate:

- i. Statements made to the Equity Associate during the investigation will be documented in writing and offered for review for accuracy by the individual who provided the information. Individuals who review the accuracy of their statements may suggest clarifications, additions, or alternative language that they believe more accurately reflects what was said during the investigation interview; this information will supplement, not replace, the individual's earlier statement. Individuals who elect to review their statements must provide a response to the Equity Associate within five (5) business days of receiving the written record.
- ii. The Equity Associate may consider information publicly available from online sources that is brought to the attention of EOA. The university does not actively monitor online sources, however, and as with all potentially relevant information, the complaint, respondent, or witness should bring publicly available/online information to the attention of the Equity Associate if they believe it is relevant. The Equity Associate may also consider communications involving or relating to one or both parties that either party brings to the attention of the Equity Associate or that is provided by the parties in response to a request by the Equity Associate. The Equity Associate may also seek review of information available on university devices or servers, to the extent permissible and consistent with the university's information technology policies.

- iii. The Equity Associate may visit relevant physical sites or locations, as appropriate, and record observations through written, photographic, or other means. In some cases, the Equity Associate may consult medical, forensic, technological, or other experts when expertise on a topic is relevant in order to achieve a fuller understanding of the issues under investigation. The university generally will not consider polygraph results.
- iv. In general, a person's medical and counseling records are confidential and not accessible to EOA unless the person voluntarily chooses to share those records with the Equity Associate, and provides a voluntary, written consent. If medical or counseling records are shared by a party and are determined to be relevant to and relied on in the investigation, relevant information from the records will be included in the Investigation Report generated by the Equity Associate to document the investigation.
- v. The Equity Associate will consider all information identified or provided by the parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the Equity Associate will not consider statements of personal opinion or statements as to any party's general reputation. All information gathered by the Equity Associate that is directly related to the Title IX Complaint allegations will be included in the investigation record; all relevant evidence will be fairly summarized in the Investigation Report generated by the Equity Associate to document the investigation.
- vi. Prior or subsequent conduct may be considered in determining pattern, knowledge, intent, or motive. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct. The Equity Associate will determine the relevance of this information, which may involve additional investigative steps, and both parties will be informed

if evidence of prior or subsequent conduct is deemed relevant.

- vii. The sexual history of the complainant or respondent, in a Title IX Complaint alleging Title IX Sexual Misconduct, will never be used by the Equity Associate to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of the Policy and/or the Code has occurred and will only be considered by the Equity Associate when a determination is made that the evidence is directly relevant to the investigation.
  - viii. If either party leaves or graduates from the university during the investigation, EOA may proceed with the investigation or take further action as necessary to eliminate, prevent, or address any impacts of the reported Title IX Sexual Misconduct. This Title IX Process will continue to the extent necessary to ensure that the university has taken appropriate action in response to the Title IX Complaint. In some instances, the provision of Supportive Measures may be sufficient to resolve the reported concerns. EOA may, at its sole discretion, continue to offer a complainant who was affiliated with the university at the time the complaint was made, but who has since left or graduated, the opportunity to participate in the process.
7. **Investigation Record and Final Investigation Report.** At the completion of the evidence-gathering, the Equity Associate will prepare an investigation record containing all information gathered in the investigation that is directly related to the allegations in the Title IX Complaint and the Policy and/or Code violations with which the respondent has been charged, and will provide the complainant and the respondent equal and timely access to the investigation record. The investigation record will contain all directly related information gathered in the course of the investigation, including statements by the parties and witnesses, relevant evidence submitted by the parties and witnesses, and any other evidence determined by the Equity Associate to be related to the alleged Title IX Sexual Misconduct, including inculpatory and exculpatory evidence whether obtained from a party or other source, and whether or not the Equity

Associate considers the information relevant to the allegations. The Equity Associate will prepare a draft investigation report summarizing all relevant information gathered in the fact-gathering phase of the investigation.

- a. EOA will offer the complainant, the respondent, and their advisors, if any, equal opportunity to review and inspect the draft investigation report and investigation record in-person in the EOA office or through a secure online platform. No copies, photographs, saving, or sharing of the investigation record or draft investigation report will be permitted.
- b. The parties will have the opportunity to respond to the draft investigation report and investigation record, with the response due in ten (10) business days from the date the draft investigation report and investigation record are made available for review. Either party may request an extension of the ten (10) business day timeframe to provide their response. The request must be made to the Equity Associate in writing prior to the expiration of the deadline for submission of the response, with an explanation of the good cause for the request. The Equity Associate will notify both parties simultaneously of their decision regarding any requested extension.
- c. The party's response may: (1) provide written comments or feedback to information within the draft investigation report or investigation record, (2) submit additional information or follow up questions to be asked of the other party or any witness, (3) identify additional witnesses, and/or (4) request the Equity Associate collect other relevant information, with the request indicating generally the nature of the other relevant information the party believes is available. The Equity Associate will determine the appropriateness of additional investigative steps and the relevance of additional information. If either party submits questions for the other party or witnesses, the questions submitted may be asked as provided, asked as modified by the Equity Associate, or not asked at all, based on the Equity Associate's determination of whether or not the questions are relevant or may provide clarity to the investigation. A written record of the questions asked by the Equity Associate and the answers to those questions will be included in the investigation record. If either party provides a written response or makes a request for additional

investigation, the written response and any additional substantive information gathered by the Equity Associate will be incorporated as appropriate in the final investigation report.

- d. Unless there are significant additional investigative steps requested by the parties, the Equity Associate will prepare a final investigation report, normally within ten (10) business days after receipt and consideration of additional comments, questions, and/or information from the parties. The final investigation report will include the relevant information contained in the investigation record, the parties' responses to the investigation record and draft investigation report, and an overview of areas of contested or uncontested information.
- e. The Equity Associate will forward the final investigation report and the investigation record to the appropriate university representative designated by the Title IX Coordinator to serve as the decision-maker. Generally, the Director, SCCS, or their designee, will serve as the decision-maker for those matters involving a student respondent, and the AVP/SD of ELR, or their designee, will serve as the decision-maker for those matters involving an employee respondent.

## **L. Administrative Hearing and Appeal.**

### **1. Live Administrative Hearing**

The administrative hearing is a live hearing intended to provide the parties with an equitable opportunity to respond to information contained in the final investigation report, and to question the relevancy and reliability of that information, by posing relevant questions to the other party or witnesses, through their advisor, orally and in real-time.

- a. Overview: The administrative hearing is the process the university uses to determine whether or not the Policy and/or Code have been violated. The administrative hearing will be conducted by the decision-maker who will determine responsibility. When determining responsibility, the decision-maker will presume the respondent is not responsible unless and until the available relevant evidence establishes, by a preponderance of the evidence, that they are responsible. The decision-maker will be free from actual

conflict of interest or bias for or against complainants or respondents generally or individually.

The decision-maker will conduct the administrative hearing in the following manner:

- b. **Hearing Date:** The decision-maker will set the date for the live administrative hearing. The period of time between the live administrative hearing date and the Notice of Hearing will be at least ten (10) business days.
- c. **Notice of Hearing:** The decision-maker will issue a Notice of Administrative Hearing to the parties, generally within five (5) business days of receipt of the Final Investigation Report and Investigative Record. The Notice of Hearing will include: the name of the decision-maker; information regarding the date, time, and location of the administrative hearing and how a party may request a meeting location separate from the other party; the party's opportunity to have an advisor of their choice at the hearing and the role of the advisor, including the requirement that the party's advisor must ask any questions the party seeks answered at the hearing by the other party or witnesses; a statement that if a party or a witness does not attend the administrative hearing, that party's or witness's information must not be relied on by the decision-maker; and the process for requesting disability accommodations and language assistance.

The decision-maker will provide each party and their advisor, via the Notice of Hearing, electronic access to the final investigation report and investigation record. The final investigation report and investigation record will be made available to the parties through the completion of the administrative hearing process unless the process is placed on hold by the decision-maker.

- d. **Participation:** The administrative hearing is a closed proceeding, not open to the public. The individuals who may participate in the administrative hearing are the decision-maker and their advisor, complainant and their advisor, respondent and their advisor, the Equity Associate, any relevant fact or expert witness called to the hearing, and any university staff involved in facilitating the administrative hearing.

- e. **Advisors:** A complainant or respondent may be accompanied to the hearing by any one (1) advisor of their choice.

If a party does not attend the administrative hearing with an advisor, the decision-maker will assign the party an advisor of the university's choice, without fee or charge to the party, for the purpose of conducting oral questioning of the other party and any witnesses. The university is not obligated to assign an advisor of equal professional standing as the advisor of the other party. However, the university will seek to assign an advisor who is versed in this Title IX Process.

- f. **Non-Participation:** The decision-maker may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- g. **Separate Locations:** Either party may request to participate in the administrative hearing in a separate location using applicable technology that allows the decision-maker and the parties to simultaneously see and hear the party or witness answering questions. Requests for separate locations should be submitted to the decision-maker five (5) business days prior to the administrative hearing.
- h. **Determinations of Relevancy:** The decision-maker will determine the relevancy of all information offered, reviewed, or considered in the administrative hearing. Determinations of relevancy will be based on whether the information is directly related to the allegations and whether it will assist in resolving disputed issues between the parties. Questions regarding the complainant's past sexual behavior will be deemed not relevant unless questions or information about the complainant's past sexual behavior are posed to establish that someone other than the respondent engaged in the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- i. **Hearing Procedures:** Generally, the administrative hearing will proceed as follows:

- i. The decision-maker will ask the Equity Associate to provide a summary of the Final Investigation Report, including undisputed and disputed issues identified during the investigation. The decision-maker will pose questions of the Equity Associate. The parties' advisors will be given the opportunity to separately pose relevant questions and follow-up questions of the Equity Associate. The decision-maker will inform the Equity Associate that prior to answering a question from the parties' advisors, they are to wait for the decision-maker to first determine whether or not the question is relevant and is to be answered. The decision-maker will explain any determination to exclude a question as not relevant.
  - ii. The decision-maker will separately pose questions of the parties and witnesses. The parties, through their advisor, will have the opportunity to pose relevant questions and follow-up questions of the other party and witnesses. With each individual, the decision-maker will ask their questions of that individual first and then allow each party's advisor to ask their questions. The decision-maker will inform the parties and witnesses that prior to answering a question from the parties' advisors, they are to wait for the decision-maker to first determine whether or not the question is relevant and is to be answered. The decision-maker will explain any determination to exclude a question as not relevant.
- j. Recording or Transcript: An audio or audiovisual recording, or transcript, of the administrative hearing will be created by the university. The university reserves the right to determine the method of recording or transcription. While the recording or transcript is the sole property of the university, the university will make it available to the parties for inspection and review after the notice of decision is issued. The recording or transcript will remain available to the parties until either the appeal time frame has expired or an appeal decision is issued. Failure by the university to record or transcribe all or part of the administrative hearing due to an error and/or malfunctioning device will not be grounds for appeal.

- k. **Timelines:** The timelines the administrative hearing process sets for the parties are firm. However, if a party wishes to modify a timeline, the party should submit a written request to the decision-maker for the requested modification. The written request must show good cause for modifying the timeline and must be submitted before the deadline. While the decision-maker has sole authority to grant or deny a request to modify a timeline, the decision-maker may consult with the Title IX Coordinator, or their designee, if necessary. The decision-maker, or designee, will send simultaneous notices of any timeline modifications to the parties. The parties may request periodic updates from the decision-maker, or designee, as to the status of the administrative hearing process.
- l. **Conclusion of Hearing:** Once the live hearing has been concluded, the administrative hearing process will be considered concluded.

## 2. **Notice of Decision**

After the conclusion of the administrative hearing process, the decision-maker will make a decision as to whether there has been a violation of Policy and/or the Code based on the final investigation report, the written statements and responses of the parties, if any, to the investigation record and/or final investigation report, and any other relevant information provided during the administrative hearing.

Generally, the decision-maker will issue a written notice of decision within twenty (20) business days after the conclusion of the administrative hearing. The decision-maker may extend the deadline if needed. The written notice of decision will be issued simultaneously to both parties.

Timelines may be increased for employee matters that may result in discipline in order to comply with University policies, applicable collective bargaining agreements, and/or additional established processes.

- a. The written notice of decision will include: a list of the allegations; a summary of the procedural steps taken from receipt of the Title IX Complainant through the determination of responsibility; the determination of responsibility for each alleged violation of the Title IX Sexual Misconduct Policy and/or the Code; the findings of fact and

the rationale that shaped the determination; any disciplinary sanctions assigned to the respondent and the rationale for each disciplinary sanction; any remedies designed to restore or preserve complainant's equal access to the university's education programs or activities provided to the complainant, and the rationale for each remedy, if any; and information regarding the procedures and bases for either party to appeal the decision-maker's determinations of responsibility.

- b. The determination of responsibility becomes final either on the date an appeal would no longer be considered, or, if an appeal is filed, on the date the parties are provided with the appeal written Notice of Determination.

### 3. Appeals

- a. Appeal of a Title IX Complaint Dismissal: Either the complainant or the respondent may appeal the Title IX Coordinator's dismissal of a Title IX Complaint or any allegations therein. The appeal must be submitted within five (5) business days after the Notice of Dismissal is issued. Appeals of a Title IX dismissal are to be filed with the Title IX Coordinator at [Equal.Opportunity@oregonstate.edu](mailto:Equal.Opportunity@oregonstate.edu).
- b. Appeal of the notice of decision: Either the complainant or the respondent may appeal the decision-maker's notice of decision. The appeal must be submitted within five (5) business days after the notice of decision is issued. Appeals are to be filed electronically with the Director, SCCS, at [sccs@oregonstate.edu](mailto:sccs@oregonstate.edu) for matters involving student respondents, or with the Title IX Coordinator at [Equal.Opportunity@oregonstate.edu](mailto:Equal.Opportunity@oregonstate.edu) for matters involving employee respondents. Appeals that are not submitted within five (5) business days, that do not list specific grounds for the appeal, or that do not fall under one of the listed grounds will not be considered.
- c. Grounds for appeal: The request for an appeal must include specific justification on at least one of the following grounds:
  - i. Procedural irregularity that affected the outcome of the matter;
  - ii. 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;

- iii. The Title IX Coordinator, Equity Associate, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent that affected the outcome of the matter.
- d. Review by an appellate decision-maker: If an appeal is filed by either party, the appeal will be forwarded to the appropriate appellate decision-maker. The appellate decision-maker will be an impartial decision-maker trained in issues related to Title IX and not the same person as the decision-maker who reached the original determination. Generally, the Director of Compliance, or their designee, will serve as the appellate decision-maker for appeals of a Title IX Complaint Dismissal, the Vice Provost for Student Affairs, or their designee, will serve as the appellate decision-maker for those matters involving a student respondent, and the Chief Human Resources Officer or the Senior Vice Provost for Faculty Affairs, or either of their designees, will serve as the decision-makers for those matters involving an employee respondent.
- e. Notification of appeal: The appellate decision-maker will notify the other party of the appeal. The non-appealing party will be provided an opportunity to review the appeal and submit any relevant information they want considered by the appellate decision-maker. If a non-appealing party chooses to submit a response to an appeal, they must do so within five (5) business days from the date they receive notice of the appeal.
- f. Notice of Decision: The appellate decision-maker will issue a written decision describing the result of the appeal and the rationale for the result.
  - i. The appellate decision-maker has the authority to sustain, alter, or reverse the dismissal, findings and/or sanctions in part or entirely. The appellate decision-maker may also remand the matter to the appropriate review level, either the administrative hearing decision-maker or the Equity Associate, for further consideration.

- ii. In the case that the appellate decision-maker reverses the dismissal of the Title IX Complaint, the complaint will proceed under this Title IX Process.
- g. The appellate decision-maker will issue the written decision simultaneously to the parties, describing the result of the appeal and the rationale for the result within a reasonable timeframe of receiving the appeal. The determination(s) of the appellate decision-maker serves as the final determination of the university on the matter; no additional appeals are available. Following the conclusion of any appeal process, the matter will be closed unless it is remanded for additional process by the appellate decision-maker.

## **M. Disciplinary Sanctions and Action**

### **1. Disciplinary Sanctions – Student Respondents**

In keeping with the university's commitment to foster and maintain an environment that is safe, inclusive, and free from Title IX Sexual Misconduct, the Director, SCCS, or their designee, will assign sanctions that are proportionate to the facts and circumstances of each Title IX Complaint, the impact of the conduct on the complainant, the impact on the campus or surrounding community. The imposition of sanctions is designed to eliminate Title IX Sexual Misconduct, prevent its recurrence, and remedy its effects, while supporting the university's educational mission, and state and federal obligations. Sanctions may include educational, restorative, and rehabilitative components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, and/or so detrimental to the educational process that it requires severe sanctions, including suspension or expulsion.

As set forth in more detail in Section 6 of the Code, potential sanctions for student respondents may include, but are not limited to: warnings, educational activities, behavioral expectations, restitution, restrictions/exclusions, no contact directives, suspension, and expulsion. Sanctions may be imposed individually or in combination. See Section 6 of Code of Student Conduct for the entire list of possible university sanctions.

The Director, SCCS, or designee, has final decision-making authority with regard to sanctions, subject to available appeals. Any sanctions will be determined in accordance with the Code or other applicable university policy. Where the respondent is

assigned sanctions, SCCS will monitor compliance with the sanctions imposed. Where no violation is found, the investigation will be closed unless the complainant files an appeal.

**2. Disciplinary Action – Employee Respondents**

When the decision-maker determines that available information establishes that the respondent engaged in conduct that violated the Policy, disciplinary action may be imposed. The decision-maker will confer with the respondent's supervisory chain in determining what disciplinary action is appropriate, consistent with university policy and any applicable collective bargaining agreement.

Disciplinary action is designed to eliminate prohibited Title IX Sexual Misconduct, prevent its recurrence, and remedy its effects, while supporting the university's educational mission, and state and federal obligations. Disciplinary action may include, but is not limited to: written reprimand, suspension with or without pay, or dismissal. More information about possible disciplinary sanctions is available from ELR, other university policies, and in applicable collective bargaining agreements.

**N. Additional Provisions.**

**1. Advisors.**

The parties may each elect to be accompanied by one advisor to any meeting or interview conducted under the Title IX Process. Both parties must have an advisor during the administrative hearing process, as referenced in Section M, Disciplinary Sanctions and Action, above.

An advisor can be a friend, family member, union representative, attorney, advocate, or any individual of the party's choosing. The role of the advisor is to support the party and/or give advice regarding the process. An advisor may observe, take notes, request breaks to consult with the party, and ask for clarification about the process.

Except during the administrative hearing, an advisor may not directly participate in the process, answer questions for the party, interject comments that disrupt the meeting, or interrupt the process to such an extent that the purpose of the meeting is impaired. If an advisor violates these restrictions, as determined by the Equity Associate or decision-maker, or designee, they will

be given one warning. If the disruptive conduct continues, they will be requested and expected to leave the meeting or interview. The party can then elect to be accompanied by a new advisor.

For employee parties, an attorney may serve as the advisor and attend meetings up through and including the appeal process, if any, but not extending to the disciplinary action process, if any.

2. **Participation.**

Parties, whether employees or students, are strongly encouraged to directly participate in all stages of the Title IX Process. If a respondent chooses to not participate in the Title IX Process, the matter may proceed without them and a decision may be made in the absence of any input from the respondent.

3. **Accessibility.**

It is the policy of the university to comply with Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 ("ADA"), as amended by the ADA Amendments Act of 2008, and other applicable federal and state law that prohibits discrimination on the basis of a disability.

The university is committed to making the Title IX Process as accessible as is reasonable and practicable for all students, employees and other involved parties. Students, employees, or other involved parties who are off-campus or otherwise unable to participate in-person may request arrangements to participate in other ways (including by providing written statements, through telephonic or online means, etc.). EOA will offer reasonable accommodations to employees and students whose ability to participate in the process is limited or constrained because of a qualifying disability. Employees or students who require a disability accommodation, language support, or who may have other factors that could impact their ability to participate should contact EOA as early as possible in the process to make a request for assistance, which will then be reviewed by EOA. EOA's ability to accommodate requests may be limited without enough advance notice.

4. **Safeguarding Privacy.**

Complainants and respondents are not restricted from discussing or sharing information with others who may support or assist them

during the process, nor are they prohibited from seeking resolution in court or an applicable state or federal agency.

All parties are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid retaliation or the appearance of retaliation.

While discretion is encouraged, this Title IX Process should not be understood to limit the legal rights of the parties during or after resolution. The university may not, by federal law, prohibit either party from disclosing the final outcome (after any appeal is concluded). All other conditions for disclosure are governed by the Faculty Records policy or the Family Educational Rights and Privacy Act ("FERPA"), as applicable, and any other applicable laws.

All records of completed informal resolutions and investigations are considered faculty/employee records of the involved employees and education records of the involved students, and retained by the relevant office in compliance with the university's policies. These records are available for review only by the parties as provided by and during this process. Access to records of informal resolutions or investigations is substantially limited after the completion of the matter. Redacted records may be available to a party, as determined by the university, in compliance with the Faculty Records policy and FERPA, as applicable, and other applicable law.

**5. Coordination with Law Enforcement.**

If there is a concurrent criminal investigation, the university will seek to work in a collaborative manner in order to respect the integrity of both the external criminal investigation and the university investigation. This may include (where consistent with other federal or state privacy laws): contacting the law enforcement agency that is conducting an investigation to inform that agency that a university investigation is also in progress; attempting to ascertain the status of the criminal investigation; and seeking to determine the extent to which any evidence collected by law enforcement may be available to the university in its investigation.

**6. Training for University Staff.**

All university staff tasked with implementing the Title IX Process, including investigators, decision-makers, and appellate decision-

makers, will participate in annual continuing education on related topics as required by applicable law. All Equity Associates who serve as investigators, and all decision-makers receive relevant training on how to conduct fair and impartial investigations and adjudications that provide parties with notice and a meaningful opportunity to be heard, and that foster the safety of the parties and all participants while promoting accountability.

7. **Conflicts of Interest.**

The university is committed to ensuring that this Title IX Process is free from bias or conflicts of interest that would affect the outcome or resolution. Any concerns regarding conflict of interest or bias in this process should be submitted promptly to the Title IX Coordinator.

8. **Recordkeeping.**

All offices involved in this Title IX Process will retain, in accordance with the university's records retention schedule, records of all reported concerns, Title IX Complaints, investigations, and resolutions involving alleged violations of the Policy.

Effective: August 14, 2020.

Housekeeping edits: September 17, 2021.