



**Sexual Misconduct and Discrimination Investigation
and Resolution Process for Non-Title IX Complaints¹
against Employees
(Employee Process)**

A. Overview.

Oregon State University (“university”) is committed to creating an equitable and inclusive university free of violence, harassment, and discrimination. All individuals who are participating in university programs and activities have the right to do so fully, free from sexual misconduct, discrimination, and retaliation. The university prohibits sexual misconduct, including sexual harassment, non-consensual sexual intercourse or other sexual contact or activity, intimate partner violence, sexual exploitation, and stalking, as set forth in University Policy 05-001 Sexual Misconduct and Discrimination (“Policy²”).

This Sexual Misconduct and Discrimination Investigation and Resolution Process for Complaints against Employees (“Employee Process”) applies in instances in which an Oregon State University employee is alleged to have violated non-Title IX provisions of the Policy, regardless of the status of the complainant.³ For the purposes of this Employee Process, “employee” is as defined in Section 4.2 of the Policy and “student” is as defined in Section 4.7 of the Policy. The rights of complainants articulated in this Employee Process, particularly as to Supportive Measures and Interim Protective Measures (Section G), are different for complainants who are Oregon State University employees than for complainants who are students, consistent with the expectations of state and federal law that a school take steps to ensure equal access to

¹ This process is for university sexual misconduct and discrimination allegations against employees that do not fall within Title IX prohibited conduct. See the Title IX Investigation and Resolution Process for allegations falling within the definitions of Title IX prohibited conduct.

² References to University Policy 05-001 throughout this document are only for the non-Title IX provisions of the policy. The process for allegations suggesting possible violation of Title IX provisions of University Policy 05-001 are addressed within the Title IX Investigation and Resolution Process.

³ Complaints alleging a violation of University Policy 05-001 by parties who are Oregon State University students or student organizations will be addressed under the Sexual Misconduct and Discrimination Investigation and Resolution Process for Complaints against Students.

its educational programs and activities and protect a complainant as necessary before the final outcome of an investigation.

This Employee Process sets forth the procedures that will be used to investigate and resolve complaints that allege non-Title IX violations of the Policy by employees. Additionally, alleged violations of other university policies and rules may also be investigated when the alleged violations arise out of the same incident or pattern of behavior.

This Employee Process is available only to individuals who have a current affiliation with the university. However, the university reserves the right to look into concerns reported to it by and about individuals who do not have a current university affiliation, through whatever process the university determines most appropriate.

This process document includes information about resources and supports available to complainants and respondents, including student complainants.

B. Investigation Office.

The Office of Equal Opportunity & Access (“EOA”) is the university office charged with responding to all reported violations of University Policy 05-001 Sexual Misconduct and Discrimination reported by students, employees, third parties, or anyone prevented from participating in a university program. EOA may consult with other university administrators as part of this Employee Process.

C. Reporting.

EOA will respond to all oral, written, and electronic complaints of conduct that may violate the Policy. In some instances, EOA may initiate an investigation in the absence of a formal complaint. The university encourages individuals to bring forward complaints and information as soon as possible after the alleged violation occurs in order to maximize the university’s ability to respond promptly and effectively. There is no timeframe for making a complaint. Even if a significant amount of time has passed, the university encourages individuals to report incidents that may violate the Policy. That said, prompt reporting will better enable EOA to respond to the complaint, determine the relevant issues, and provide an appropriate response and/or action. Delay in making a complaint may impede EOA’s ability to conduct an investigation or take appropriate responsive actions. Depending on the current relationship of the respondent to the university, if any, the university may no longer have the authority to impose disciplinary action. Where the university

may not have disciplinary authority, the university will still seek to evaluate the reported conduct, provide reasonably available support resources, assist the complainant in identifying external reporting options, if any, and take reasonably available steps to end the misconduct, prevent its recurrence and address its effects. While EOA will respond to all oral, written or electronic complaints, submission of a complaint does not always result in either an investigation or a informal resolution, as described in Section F, Initial Assessment.

Amnesty: Oregon State 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 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. Oregon State 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” (which includes most university employees, including faculty), 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 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. In general, 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.

Third Party Complaints: If an alleged violation is reported by a Responsible Employee⁴, witness, bystander, or other person, EOA will treat the person impacted by the reported violation as the complainant for purposes of this Employee Process.

⁴ 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 are responsible employees unless otherwise specified in the policy.

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, for instance, to facilitate requests for support resources. 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 may, but are not required to, disclose those types of documents to EOA as part of this process. To the extent medical and counseling records shared by a complainant with EOA are determined relevant to and are relied upon by EOA in connection with an investigation, they will be made available for review by the other party as the Process requires.

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 sensitive and informed fact-gathering to ensure an equitable resolution. The Employee Process designates reasonably prompt timeframes for the major stages of the investigation and resolution process, but the university may extend any timeframe in this Employee Process for good cause. An extension may be required: to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; 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 Employee Process to the extent possible during the summer and at other times when university classes are not in session. EOA 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 Employee Process. EOA has the sole authority to determine whether an extension is required or warranted by the circumstances. The university will keep the parties advised of the progress of the process.

Although cooperation with law enforcement may require the university to temporarily suspend the fact-finding portion of a sexual misconduct and discrimination investigation, the university will generally resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed its evidence gathering process. However, there may be circumstances where the university cannot wait for the law enforcement agency notification in order to comply with its legal requirements, but the university will strive to coordinate with law enforcement when possible. The university generally will not wait for the conclusion of a criminal proceeding to begin or commence its own investigation and, if needed, will take immediate steps to provide appropriate support resources for the parties.

F. Initial Assessment.

Upon receipt of a complaint, EOA will take immediate and appropriate steps to review and resolve the matter promptly and equitably. The first step in this process is called 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 complaint and evaluate if the reported conduct is within the scope of EOA's jurisdiction.

Once immediate health or safety concerns have been addressed and EOA has determined that the reported concern is within EOA's jurisdiction, EOA will conduct its initial assessment, taking the following steps:

- assess the nature and circumstances of the complaint, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness, and/or any other individual with knowledge of the reported incident;
- address ongoing physical safety and emotional well-being concerns of the complainant and/or the campus community;
- notify the complainant of their right to contact (or decline to contact) law enforcement 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;

- notify the complainant of the right to seek medical and/or counseling treatment to address physical or mental health issues;
- notify the complainant of the importance of preservation of evidence, including a sexual assault forensic examination and any relevant documentary evidence;
- provide the complainant with a written copy of EOA's Student or Employee Campus/Community Resources and Rights document, as applicable, 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;
- notify the complainant, whether a student or employee, of the range of available Supportive and Interim Protective Measures, including the right to reasonable Supportive Measures regardless of whether they choose to participate in a university or law enforcement investigation;
- provide the complainant with a copy of the Policy and this Employee Process and an explanation of the procedural options, including the informal resolution process and the investigation process;
- notify the complainant of the right to be accompanied at any step of the process by an advisor of their choice;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., privacy or retaliation concerns); and
- explain the university's Policy prohibiting retaliation and how to report acts of retaliation.

EOA will seek to complete the Initial Assessment within ten (10) business days after EOA is notified of a complaint, if the complainant chooses to engage in the process. 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 not seek disciplinary action, or other factors outside of the university's control. EOA understands that a complainant may engage in delayed decision-making, which may impact the timing of the conclusion of the Initial Assessment.

In matters where the complainant does not wish to pursue an investigation, EOA will inform the complainant that the ability to take disciplinary 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 (see Section H. Requests for EOA Not to Investigate an Allegation).

When an alleged violation is reported by a third party, Responsible Employee, witness, bystander, or other person, EOA will treat the person impacted by the reported violation as the complainant for purposes of this Employee Process and will attempt to contact the complainant three times. If the complainant does not respond to EOA contact after the third attempt, EOA will conclude the complainant does not wish to pursue an investigation or resolution process, and generally, close the matter. In cases with certain fact patterns, the Title IX Coordinator, or their designee, may decide that EOA will conduct an investigation without the participation of the complainant (see Section H, Requests for EOA Not to Investigate an Allegation). The complainant can later make EOA aware that they want to participate and EOA will generally allow them to participate if EOA is still in the information gathering phase of the investigation.

If EOA determines the complainant has submitted a complaint that is not within the scope of the Policy or should be processed through another campus office or university procedure available to the complainant, EOA will provide the complainant written notice of this determination in a timely manner and direct the complainant to other appropriate procedure(s) or office(s) for assistance. EOA will maintain a record of the complaint and the reason(s) the complaint was deemed not within the scope of the Policy.

At the conclusion of the Initial Assessment, EOA will:

1. Proceed with an investigation. This will occur when a complaint is determined to be within the scope of the Policy, alleges facts that, if true, would constitute a Policy violation, and the complainant has requested an investigation; when EOA makes a determination to proceed with an investigation even when a complainant requests that no investigation be pursued; or when informal resolution is requested but determined by EOA to not be appropriate or available;
2. Proceed with informal resolution. This will require the consent of the complainant. The consent of the respondent is also required when the proposed resolution requires action by or imposes

restrictions on the respondent. Informal resolution can include a situation where a complainant who is a student or employee requests Supportive Measures only; or

3. Refer the matter elsewhere or close the case. If outside the scope of the Policy, EOA will refer the matter to another appropriate office or department for resolution and close EOA's file on the matter. If there is no other available process or office to which the matter can be referred, EOA will close the file and notify the complainant.

When EOA decides to initiate an investigation, impose Interim Protective Measures, or take any other action that impacts a respondent, EOA will ensure that the respondent is notified and receives written information on available resources and procedural options, as provided in this Employee Process.

G. Interim Measures.

When a complaint is made to EOA alleging a violation of the Policy, 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, interim measures, either Supportive or Protective, 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 and Interim Protective Measures are both intended to reduce and/or eliminate any negative impact, stop any wrong-doing, and prevent further harm to the complainant or the campus community. The availability of Supportive and Protective Measures will be determined by the specific circumstances of each complaint and, where possible, will be tailored to avoid depriving any party access to their educational opportunity or employment. The university will consider a number of factors in determining which measures to take, including the needs of the complainant seeking Supportive and/or Protective measures; the severity or pervasiveness of the alleged conduct; whether the complainant has been credibly negatively impacted; any continuing effects on the complainant; whether the complainant and the respondent share the same academic course(s), or on-campus work location(s); and whether either party has sought 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.

Examples of Supportive Measures include, but are not limited to:

- Providing information about campus and community-based advocacy support and counseling and health services.
- Referring a party to resources to assist in obtaining a judicially-issued protective order.
- In consultation with Employee and Labor Relations (“ELR”), as appropriate, working with the parties to limit unnecessary interactions.
- Assisting student complainants who may feel unable to continue with a course to withdraw or make alternative arrangements for completing the course.
- Other reasonable measures that do not interfere with either party’s access to the workplace and/or educational program or activity.

Examples of Interim Protective Measures include, but are not limited to:

- In consultation with ELR, as appropriate, make alternative work arrangements for either or both parties to limit unnecessary interactions.
- Other reasonable measures as are determined necessary to address safety concerns, concerns about significant disruption to university business or concerns about continuing Policy violations; to preserve access to educational, research, and employment opportunities; to maintain the integrity of the investigative and/or resolution process; and to deter retaliation.

EOA is available to discuss additional Supportive and Protective measures that may be available.

To promote the safety and well-being of members of the campus community and/or secure university property, the Title IX Coordinator or their designee may request that the university initiate an interim change in the employment arrangements of a complainant or respondent, including reassignment to work from home or in a location other than the complainant’s or respondent’s usual workplace, for the duration of an investigation under this Employee Process. To implement a change in employment arrangements, the Title IX Coordinator or their designee must make a request to the Associate Vice Provost and Senior Director (“AVP/SD”) of ELR. The AVP/SD of ELR or designee has the authority to initiate an interim change in employment arrangements,

consistent with applicable policy and/or any collective bargaining agreements.

EOA is responsible for ensuring the implementation of Interim Measures and coordinating the university's response with the appropriate offices on campus. EOA, in consultation with the AVP/SD of ELR as appropriate, has the discretion to impose and/or modify any Interim Measure based on all available information and is available to meet with a complainant or respondent to address any concerns about the provisions of Interim Measures. The university will maintain the privacy of any Supportive or Protective Measures provided under the Employee Process to the extent practicable and will promptly address any violation of an Interim Measure, with EOA investigating alleged violations and referring its findings to the Office of Student Conduct and Community Standards (for any violations by students) or to ELR (for any violations by employees).

H. 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, before taking any further 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 their name with a 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 also initiate an investigation of potential violations of the Policy even absent a formal complaint or identified complainant or respondent and even if a complaint has been withdrawn. In such circumstances, EOA will take into account the following factors:

1. The totality of the known circumstances;
2. The nature and scope of the alleged conduct, including whether the reported conduct involves the use of a weapon;
3. The risk that the respondent will commit additional acts of sexual misconduct, as informed by previous or multiple sexual misconduct complaints involving the respondent; a history of

- violence by the respondent; or, threatened further sexual misconduct against the complainant or others by the respondent;
4. Allegations that the sexual misconduct was committed by multiple perpetrators;
 5. Whether the complaint reveals a pattern of misconduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular respondent;
 6. The respective ages and roles of the complainant and respondent, including whether the conduct involves a complaint of sexual misconduct perpetrated against a minor;
 7. The complainant's interest in the university not pursuing an investigation or disciplinary action and the impact of such actions on the complainant;
 8. The availability of other means to obtain relevant evidence of the sexual misconduct without the participation of the complainant (e.g., security cameras or personnel, physical evidence, criminal process, etc.);
 9. Fairness considerations for both the complainant and respondent;
 10. The university's commitment to a safe and non-discriminatory environment; and
 11. Any other available and relevant information.

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 support resources to the complainant, providing targeted training and prevention programs, and/or providing or imposing other remedies. The Title IX Coordinator or their designee may also re-open a complaint under the Employee Process if any new or additional information becomes available, and/or if the complainant later decides that they would like to pursue an investigation.

In those instances when EOA determines that it must proceed with an investigation despite the complainant's request, 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 complaint may be limited if the complainant requests anonymity or declines to participate in an investigation. The university will, 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 or Interim Protective Measures will be taken in connection with a complaint of sexual misconduct and discrimination will be made in a manner consistent with the Policy, and will be documented.

I. Informal Resolution Process.

The informal resolution process is a voluntary and remedies-based approach to resolution that does not involve taking disciplinary action against a respondent. Complainants who report sexual misconduct or discrimination under the Policy 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. In some forms of informal resolution, the remedies implemented will focus on supporting the complainant with no participation or involvement by the respondent. In other forms of informal resolution that involve or impact the respondent, the respondent must agree to participate. Depending on the form of informal resolution, it may be possible for a complainant to maintain anonymity. Any form of informal resolution and any combination of interventions and remedies may be utilized. Where an initial assessment concludes that informal resolution may be appropriate, the university will take prompt action, through the implementation of individual remedies, to maintain the parties' access to the programs and activities of the university and to remedy the impacts of inappropriate conduct on members of the campus community. In some instances, EOA may determine, in consultation with a complainant, that the implementation of Supportive Measures is an appropriate form of informal resolution. EOA will consult with ELR, as appropriate, on proposed informal resolutions, particularly any that directly affect a respondent.

In some cases, based on the complaint made to EOA or on information gathered in the informal resolution process, for instance 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, EOA will notify the parties in writing through a Notice of Allegations (*See Section J. Investigation Process*).

Other forms of informal resolution include discussions with the parties, a resolution facilitated by the Equity Associate implementing an arrangement that provides separation between the parties, targeted or broad-based educational programming or training, facilitated conversation or interaction with the respondent and/or indirect action by the Equity Associate. As part of the informal resolution process, EOA will not compel a complainant and 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. The informal resolution process is typically not used to resolve complaints of non-consensual sexual intercourse or when a complainant has reported sexual harassment by an employee in a position of authority over the complainant. In appropriate circumstances, however, the Title IX Coordinator or their designee may determine that informal resolution is appropriate.

Where the complainant or respondent withdraws from the informal resolution process or the process is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the informal resolution may be considered in a subsequent investigation.

1. To begin the informal resolution process, the complainant should inform the Equity Associate or any other appropriate EOA staff member that they want to engage in the informal resolution process. The Equity Associate will inform the complainant of the range of possible outcomes, including Interim Measures, and provide information about the procedures leading to those outcomes.
2. The informal resolution process may include an inquiry into the facts, but does not include an investigation.
3. EOA will attempt to resolve the complainant's concern(s) quickly and effectively. The assigned Equity Associate or other EOA staff member will meet with the complainant, the respondent, if applicable, and any other persons the Equity Associate determines are necessary.

4. If a mutually agreed resolution is reached, a written record of the resolution will be documented by the Equity Associate or other EOA staff member and maintained in accordance with applicable EOA recordkeeping policies. The university will consider the informal resolution to be the final outcome and the matter is then considered closed. No appeals of a informal resolution outcome are possible.
5. Either the complainant or respondent may at any time elect to withdraw from the informal resolution process. Additionally, if the Equity Associate determines that a mutually agreeable resolution is not possible, or if the Equity Associate learns of information that requires an investigation, the Equity Associate may terminate the informal resolution process. In that event, the Equity Associate 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 that request based on EOA's review of the 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.

The informal resolution process will typically be completed within forty-five (45) calendar days of the initial complaint.

J. Investigation Process.

1. **Overview.** EOA will conduct a prompt and equitable investigation to gather relevant information necessary for the adjudicator to make a determination as to whether or not a Policy violation occurred. The determination will be made based on a preponderance of the evidence (more likely than not) that the behavior occurred as alleged. 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.

During the investigation and adjudication, both the complainant and respondent have equitable opportunities, including the opportunity to receive written notice of the investigation; to participate in the investigation; to present and review information and evidence; to be accompanied by an advisor of their choice at any stage of the process; to timely and equal access to information that will be used in making a decision about

responsibility; to timely notice of meetings at which their presence will be requested or required; to 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.** When the decision is made to initiate an investigation, 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.⁵
3. **Evidentiary Standard.** The applicable evidentiary standard for all violations of the Policy 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 until the investigation has concluded and a preponderance of the evidence establishes it is more likely than not that a Policy violation has occurred.

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. 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, or rules.

Should a complainant elect to file a substantively similar complaint with the Oregon Bureau of Labor and Industry ("BOLI"), the U.S. Equal Employment Opportunity Commission ("EEOC"), or the U.S.

⁵ The term Equity Associate as used throughout this Employee Process includes external professional investigators working for EOA.

Department of Education Office for Civil Rights (“OCR”), or file a civil lawsuit, either simultaneously or while EOA is conducting an investigation, EOA reserves the right to continue its investigation or to terminate its investigation and have the response to BOLI, EEOC or OCR, or to the civil lawsuit, constitute the university’s response to the reported complaint.

- 5. Notice of Allegations.** EOA will issue a notice of allegations to the respondent and a notice of acknowledgment of investigation to the complainant via their university e-mail accounts or via U.S. mail.

 - a. The notice will provide a summary of the allegations, including: the names of the parties; 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 university Policy that are alleged to have been violated; the party’s rights, and on-campus resources; the prohibition against retaliation; the importance of preserving any potentially relevant evidence; the name of the EOA Equity Associate; how to challenge the participation of the Equity Associate on the basis of a conflict of interest or bias; and, a copy of the Policy and this Employee Process. If the investigation reveals the existence of additional or different potential violations of the Policy, EOA will issue a supplemental or new notice of allegations, as applicable.
 - b. The notice of allegations will request that the respondent contact EOA within three (3) business days to schedule a meeting with the Equity Associate. The investigation will continue even if the respondent does not choose to actively participate.
- 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 fact (not character) witnesses, documentation, and any other relevant evidence related to the alleged misconduct. Witnesses whose only information is about an individual’s character, with no information about the allegations, will not be considered.

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

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;
- Provide a document explaining the complainant's rights and options under this Employee Process, including the right to be accompanied at any step of the process by an advisor of their choice;
- Provide the complainant a full opportunity to provide information regarding the allegations, including providing the Equity Associate with relevant documentary evidence and the identity of potential fact witnesses;
- Provide the complainant the opportunity to submit a written and signed document setting forth the substance of their complaint, including the date and location of the reported behavior, the person responsible for the reported behavior, the nature of the reported behavior, any witnesses to the reported behavior, and any supporting documentary evidence;
- 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 Interim Supportive or Protective Measures; and
- Schedule other meetings, if necessary.

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 and this Employee Process;
- Explain the investigation process and timelines, and answer any related questions;
- Provide a document explaining the respondent's rights and options under the Employee Process, including the right to be accompanied at any step of the process by an advisor of their choice;
- Provide the respondent with a written summary of the complaint against respondent, if not already provided. If the summary complaint is not available at the time of the initial meeting with the respondent, the Equity Associate will provide it as soon as it is available;
- Provide the respondent full opportunity to respond to the allegations and to provide information regarding the allegations, including providing the Equity Associate with relevant documentary evidence and the identity of potential fact witnesses;
- 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 to provide that written response;

- Confirm with the respondent the process for requesting any Interim Supportive or Protective Measures, if applicable; and
- Schedule other meetings, if necessary.

Witnesses

In addition to meeting with the complainant and respondent, the Equity Associate will meet with fact witnesses 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. Witnesses may not participate solely to provide information about an individual's character. Where witnesses are interviewed as part of the investigation, relevant information gathered in the interviews will be included in the Investigation Report, which the parties will have the opportunity to review at the conclusion of the investigation.

Witnesses are expected to cooperate with and participate in the investigation. Any witness who declines to participate in, or cooperate with, an investigation may, at the sole discretion of the Equity Associate, be permitted to offer evidence or testimony later. Witnesses are expected to make themselves available to answer questions by phone, Skype, or similar technology if they cannot be interviewed in person.

Witnesses who refuse to participate or obstruct an investigation conducted by EOA may be referred to SCCS and/or the Office of Human Resources or Office of Faculty Affairs, as appropriate.

Evidence

The Equity Associate will also gather and consider other relevant information or evidence, including documents, photographs, communications between the parties, medical records (if provided to EOA by the individual who is the subject of the records), and other electronic records as appropriate.

Investigation/Evidence Gathering Process

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

- a. 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.
- b. 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 complainant, 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.
- c. 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.
- d. 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. 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 which will be made available for review by both parties.

- e. 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 for any character trait. All information considered relevant by the Equity Associate will be included in the Investigation Report, which will be made available to both parties, both of whom will have the right to submit a rebuttal statement, as described in section J.7.b. of this Employee Process, below.
- f. Prior or subsequent conduct may be considered in determining pattern, knowledge, intent or motive. For example, evidence of a pattern of misconduct by the respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the conduct under investigation. 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, by way of the Investigation Report, if evidence of prior or subsequent conduct is deemed relevant.
- g. The sexual history of the complainant or respondent will never be used to prove character, reputation, or credibility. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of the Policy has occurred and will only be considered when a determination is made that the evidence is directly relevant to the investigation. For example, if consent is at issue, the sexual history between the parties may be relevant to determine the nature and manner of communications between the parties, which may inform the determination of whether consent was sought and reasonably appeared to have been given during the incident in question. As set forth

in the consent definition in the Policy, even in the context of a relationship, consent on one occasion does not constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The Equity Associate will determine the relevance of this information and both parties will be informed, by way of the Investigation Report, if evidence of prior sexual history is deemed relevant.

- h. 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 misconduct. This Employee Process will continue to the extent necessary to ensure that the university has taken appropriate action in response to the complaint. In some instances, the imposition of Interim Measures may be sufficient to resolve the reported concerns. EOA may 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 Report.** At the completion of the evidence-gathering phase, the Equity Associate will prepare an Investigation Report summarizing all relevant information gathered in the investigation. Specifically, the Investigation Report will include a statement of the allegations and Policy violations with which the respondent has been charged, an overview of areas of relevant contested or uncontested information, the Equity Associate's findings as to contested information, including the Equity Associate's assessment of credibility, if relevant, in reaching those findings, and findings of fact.

The following apply to the Investigation Report prepared by the Equity Associate:

- a. The Equity Associate will make available via electronic means a draft Investigation Report, with any supporting exhibits, to the complainant and respondent concurrently, cautioning both parties about any further unauthorized dissemination of the draft report. In support of the university's effort to safeguard the privacy of all parties, the

draft Investigation Report will be anonymized and will be watermarked in a manner that identifies which party is receiving the report copy. In addition to the draft Investigation Report and supporting exhibits, each party will receive a Witness Key, allowing each to know who provided what information in the draft Investigation Report.

- b. Both complainant and respondent will have the opportunity to provide a rebuttal statement in response to the draft Investigation Report. Any rebuttal statement is to be provided to the Equity Associate, and must be provided within ten (10) business days of the party's receipt of the Investigation Report.
- c. Either party may request an extension of the ten (10) business day timeline to submit a rebuttal statement in writing for good cause. If a party wishes to modify the timeline, the party should submit a written request to the Equity Associate with the requested modification. The written request must provide good cause for modifying the timeline and must be submitted before the deadline. While the Equity Associate has sole authority to grant or deny a request to modify the timeline, the Equity Associate may consult with the Title IX Coordinator, or their designee, if necessary. The Equity Associate will send concurrent notice of their decision regarding the requested modification to both parties.
- d. The party's rebuttal statement may: (1) address the charges, (2) provide written comments or feedback regarding information within the draft Investigation Report, (3) submit additional information, (4) identify additional witnesses, and/or (5) ask that the Equity Associate collect other relevant information, indicating generally what additional relevant information the party believes is available. The Equity Associate will determine whether additional information submitted by a party, additional witnesses identified by a party, or a party's request that the Equity Associate collect further information, are relevant and if additional investigation is required.
- e. Unless additional investigation is required, the Equity Associate will prepare a Final Investigation Report, incorporating any relevant additional substantive information submitted by either party via a rebuttal

statement or gathered by the Equity Associate at the request of either party, normally within ten (10) business days after the close of the timeframe for the parties to submit rebuttal statements. That timeframe may be extended by the Equity Associate for good cause, with the Equity Associate providing concurrent notice to both parties of any extension.

- f. If additional investigation is determined relevant, the Equity Associate will conduct that additional investigation, review any new information with the parties, as appropriate. Any relevant substantive information gathered in the additional investigation will be incorporated into the Final Investigation Report, which normally will be issued within ten (10) business days after the completion of the additional investigation.
- g. Either party may choose not to submit a rebuttal statement. If neither party chooses to submit a rebuttal statement, the draft Investigation Report will become the Final Investigation Report. The Final Investigation Report, with supporting exhibits and Witness Key, will be made available concurrently to the parties and to the AVP/SD of ELR, or designee, to adjudicate and determine whether the facts gathered by the Equity Associate establish a violation of the Policy. Hereafter the term "Adjudicator" will be used to refer to the AVP/SD of ELR.

- 8. Adjudication and Determination of Policy Violation.** The Adjudicator will review the information in the Final Investigation Report and supporting exhibits. To the extent the Adjudicator determines that additional information or clarification is needed in order to make a decision whether, by a preponderance of the evidence, there has been a violation of university Policy as alleged, the Adjudicator, in consultation with the Title IX Coordinator, may request that the Equity Associate gather and provide additional information. If the Adjudicator requests additional information or clarification, the Equity Associate will incorporate any relevant additional information or clarified information into a Revised Final Investigation Report, and make available the Revised Final Investigation Report concurrently to the parties and the Adjudicator.

When the Adjudicator has received and reviewed the Final Investigation Report and supporting exhibits, or the Revised Final

Investigation Report, the Adjudicator, or designee, will make a decision as to whether there has been a Policy violation based on the information provided.

9. **Notice of Decision.** The Adjudicator, or designee, will issue a written Notice of Decision to both parties simultaneously, with a copy sent to the respondent's supervisory chain and to the Title IX Coordinator. The Notice of Decision will summarize the Adjudicator's, or designee's, decision regarding the alleged violations of Policy, including the rationale that shaped their decision. The Notice of Decision generally will be issued within ten (10) business days from the date of the Final Investigation Report. That timeframe may be extended for good cause, with the Adjudicator providing concurrent notice to both parties of any extension. The Notice of Decision will include information on the appeal process, and identify the university administrator to be designated as the appellate authority (see Section J.10).

Where no violation of Policy is found, the investigation will be closed unless the complainant files an appeal.

10. **Appeal.** The complainant and respondent may appeal the Policy violation determination made by the Adjudicator, or their designee, on one or both of the grounds set forth below. The appeal process is available ONLY for the determination as to whether there has been a violation of Policy. A respondent who wishes to contest any future disciplinary action imposed by the supervisory chain in response to a determination that there was a violation of Policy, must do so through any applicable university grievance process or collective bargaining agreement.

a. Allowable grounds for appeal are:

- i. An action or omission occurred that was not in accordance with the procedures outlined in or referenced in this Employee Process, or was fundamentally unfair, which substantially impacted the outcome; or
- ii. New evidence exists that was unavailable at the time of the Final Investigation Report, or Revised Final Investigation Report. Failure of a party to participate or otherwise present available information during the investigation process does not constitute new evidence.

Appeals are to be filed electronically with the Title IX Coordinator/Executive Director of EOA at

Equal.Opportunity@oregonstate.edu. Appeals must be filed within five (5) business days of the date of the Notice of Decision. Appeals that are not submitted within five (5) business days, that do not list specific grounds, or that do not fall under one of the listed grounds will not be considered.

If an appeal is filed by either party, the Title IX Coordinator, or designee, will notify and share the appeal with the non-appealing party and provide an opportunity for that party to submit a rebuttal to the Title IX Coordinator or designee for consideration by the appellate authority. Any rebuttal by the non-appealing party must be submitted within five (5) business days of the date the non-appealing party was notified of and provided a copy of the appeal. The Title IX Coordinator will refer the appeal to the appellate authority after receipt of a rebuttal by the non-appealing party, or the time for submission of a rebuttal by the non-appealing party has passed.

b. Review by appellate authority.

The appeal and any rebuttal will be considered in a neutral and impartial manner by the designated appellate authority, or their designee.

The appeal process is not a new review of the allegations. The appellate authority will review the matter on the established record, unless new evidence exists that was previously unavailable.

Generally, the appellate authority, or designee, will issue a decision on the appeal within ten (10) business days of the date an appeal is forwarded to the appellate authority, unless an extension is required based on extenuating circumstances. That timeframe may be extended for good cause, with the appellate authority providing concurrent notice to both parties of any extension. The appellate authority, or their designee, has the authority to do any of the following:

- i. Sustain the original Policy decision;
- ii. Remand the matter to the Adjudicator or to the Equity Associate for further consideration or further investigation; or
- iii. Reverse all or part of the Adjudicator's Policy decision.

The decision of the appellate authority serves as the final decision of the university in the matter as to whether there was a violation of Policy. No additional appeals as to whether there was a violation of Policy are available. Following the conclusion of any appeal process, the investigation will be closed.

K. Disciplinary Action.

When the Adjudicator determines that available information establishes that the respondent engaged in conduct that violated Policy, disciplinary action may be imposed. The Adjudicator 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 sexual misconduct and discrimination, prevent its recurrence, and remedy its effects, while supporting the university's educational mission, and state and federal obligations. The disciplinary action process is outside the scope of this Employee Process. More information about the corrective action process and possible sanctions is available from the Adjudicator and in applicable collective bargaining agreements and other university policies.

L. Additional Provisions.

1. Advisors.

The parties and witnesses may each elect to be accompanied by one advisor to any meeting or interview conducted under the Employee Process. An advisor can be a friend, family member, union representative, attorney, advocate, or any individual of the party's choosing. However, a witness to the alleged misconduct is not eligible to be an advisor for either party. 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.

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.

An advisor may not directly participate in the process, answer questions for the party or witness, 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, 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 or witness can then elect to be accompanied by a new advisor.

2. Participation.

Parties, whether employees or students, are strongly encouraged to directly participate in all stages of the Employee Process. If a respondent chooses to not participate in the Employee 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.

EOA is committed to making the Employee Process as accessible as is reasonable and practicable for all employees and other involved parties, which may include 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 meet requests may be limited without enough advance notice.

4. Safeguarding Privacy.

All parties involved in this process are expected to keep all detailed information relevant to the proceedings private during the process, except that complainant and respondent 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.

Reproduction of documents and disclosure of information contained in documents made available for review in the process are prohibited, and any breach of this restriction is subject to disciplinary action by ELR and/or Student Conduct and Community Standards ("SCCS"), as appropriate.

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.

The expectation of privacy during the investigation and resolution 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 Employee Process, including investigators, adjudicators, and appellate authorities, will participate in annual continuing education on related topics as required by applicable law. All Equity Associates who serve as investigators for allegations of a Policy violation receive training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking. This training includes how to conduct a fair and impartial investigation that provides parties with notice and a meaningful opportunity to be heard, and that protects the safety of the parties and all participants while promoting accountability.

7. Conflicts of Interest.

The university is committed to ensuring that this Employee Process is free from actual or perceived bias or conflicts of interest that would materially impact the outcome or resolution. Any concerns regarding conflict of interest in an EOA process should be submitted promptly to the Title IX Coordinator/Executive Director of EOA.

8. Recordkeeping.

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

Effective: January 17, 2020.

Housekeeping edits: August 14, 2020.

Housekeeping edits: November 12, 2020.