



**Oregon State University  
Investigation and Resolution Process  
for Non-Title IX Complaints<sup>1</sup> of Sexual Misconduct, Discrimination,  
Discriminatory Harassment, and Retaliation  
(Resolution Process)**

**A. Overview.**

Oregon State University (“university”) is committed to creating and maintaining a safe, respectful, equitable, and inclusive working and learning environment. All individuals who are participating or attempting to participate in its education programs or activities have the right to do so fully, free from prohibited sexual misconduct, discrimination, discriminatory harassment, and retaliation (hereafter referred to as “prohibited conduct”), as set forth in University Policy 05-001 Sexual Misconduct and Sex Discrimination,<sup>2</sup> University Policy 04-100 Discrimination and Discriminatory Harassment, University Policy 04-110 Retaliation, and the Code of Student Conduct (“Code”). These policies and the Code will individually and collectively be referred to as “Policy” within this document.

This Resolution Process applies in all instances in which an employee, student,<sup>3</sup> or other member of the university community is alleged to have engaged in prohibited conduct that would violate Policy. 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. The university will treat complainants and respondents equitably throughout the Resolution Process.

This Resolution Process sets forth the procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who were participating or attempting to participate in university education programs or

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<sup>1</sup> This resolution process is for university sexual misconduct, discrimination, discriminatory harassment, and retaliation allegations 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.

<sup>2</sup> 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.

<sup>3</sup> Throughout this document, the term “student” also includes “student organization,” as defined by the Code, when complaints allege violations by student organizations.

activities when the alleged prohibited conduct occurred (“university-affiliated”).<sup>4</sup> When a complainant is not university-affiliated, the Executive Director of EOA & Title IX Coordinator has the discretion to determine how to engage the individual in this Resolution Process.<sup>5</sup>

**B. Investigation Office.**

The Office of Equal Opportunity & Access (“EOA”) is the university office charged with responding to all reports of prohibited conduct. EOA is the university’s Title IX Office, Americans with Disabilities Act and Section 504 coordinating office, and the office charged with overseeing university compliance with civil rights and affirmative action laws, regulations, and policies. The Executive Director of EOA is the university’s Title IX and ADA Coordinator. EOA may consult with other university administrators as part of this Resolution Process.

**C. Reports and Complaints.**

**Reports:** A report is notice to or knowledge by EOA of an allegation or concern of prohibited conduct. EOA will respond to all verbal, written, and electronic reports of prohibited conduct. Anyone may make a report to EOA by contacting EOA by phone, email, walking into the office during business hours, or submitting a report through the online reporting system on EOA’s website. EOA’s contact information and online reporting form may be found on the website: [eoa.oregonstate.edu](http://eoa.oregonstate.edu).

The university encourages individuals to report information as soon as possible after the alleged incident occurs in order to maximize the university’s ability to respond promptly and effectively. While there is no time limit for making a report, prompt reporting will better enable EOA to respond to the concern, determine the relevant issues, and provide an appropriate response and/or action. Even if a significant amount of time has passed, the university encourages individuals to still report incidents that may violate Policy.

At times the university may no longer have jurisdiction over the respondent due to their graduation or otherwise leaving the university. Where the university may not have disciplinary authority, the university will still seek to evaluate the reported conduct, provide reasonably available supportive measures, assist the complainant in identifying external reporting options, and take reasonably available steps to end the reported prohibited conduct, prevent its recurrence, and address its effects.

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<sup>4</sup> Including in instances when the Executive Director of EOA & Title IX Coordinator initiates a complaint. See section C, “Reports and Complaints” for additional information.

<sup>5</sup> While EOA may invite an individual who is not university-affiliated to participate at various stages of the Resolution Process, this Resolution Process does not grant identical rights to participation or information to individuals who are not university-affiliated. Non-university-affiliated individuals should inquire with EOA about what opportunities they may have to participate in a Resolution Process.

Upon receiving a report, EOA will send information on rights, options, and resources to the complainant and invite the complainant to meet with EOA to further discuss their rights, options, and available resources. If the reporting individual is not the complainant (e.g., a Responsible Employee, witness, bystander, or other person), EOA may follow up with the reporting individual to seek more information on the allegation. Complainants are not required to meet with EOA and anyone may submit a report to EOA with no expectation that they further engage with EOA. EOA documents any reports received that involve potential prohibited conduct. Individuals are encouraged to promptly report concerns to EOA or to otherwise document any incidents.

**Anonymous Reports:** With the exception of a “Responsible Employee,”<sup>6</sup> an individual can choose to make a report anonymously. However, EOA’s ability to respond, provide remedies and/or supportive measures, or investigate may be limited based on the amount of information available to EOA. In circumstances where an anonymous report fails to identify the complainant and/or respondent or contains insufficient information to verify what specific behaviors violated Policy, EOA may be unable to proceed. Furthermore, it may not be possible to provide supportive measures to parties involved.

The Executive Director of EOA & Title IX Coordinator or their designee has the discretion to determine how EOA will respond to an anonymous complaint. Measures intended to protect the community or redress or mitigate harm may be enacted, including preventative educational conversations or training for an individual, student group, or unit.

Even if EOA is unable to take responsive action to a report, reported information 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.

**Complaints:** Complaints are oral or written requests made to EOA that objectively can be understood as a request for the university to investigate and make a determination, or resolve through an informal resolution, alleged prohibited conduct. Reporting carries no obligation to make a complaint. A complainant may wish to report behavior initially and may later decide whether or not to make a complaint. The complaint investigation and resolution process is further described below.

Complaints may be made by: a university student or employee who is alleged to have been subjected to prohibited conduct that would violate policy; or a person other than a

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<sup>6</sup> A Responsible Employee, as defined in [University Policy 05-005](#), are university employees who have the duty to report actual or suspected prohibited conduct to EOA. All university employees are responsible employees unless otherwise specified in the policy. Responsible employees are not required to self-report incidents that have happened to them personally.

university student or employee who is alleged to have been subjected to prohibited conduct that would violate policy at a time when that individual was participating or attempting to participate in the university's education program or activity; a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or the university's Executive Director of EOA & Title IX Coordinator.<sup>7</sup>

The Executive Director of EOA & Title IX Coordinator or their designee has ultimate discretion as to whether a complaint is initiated and may initiate a complaint on behalf of the institution (called an "EOA-initiated complaint"). An EOA-initiated complaint could emerge when a complainant is not university-affiliated or in certain circumstances where a complainant is university-affiliated and has requested not to participate as a complainant or to not initiate a complaint. In circumstances where a complainant in an EOA-initiated complaint is university-affiliated, they will retain all rights for participation afforded to complainants who initiate a complaint. In circumstances where a complainant in an EOA-initiated complaint is not university-affiliated, the Executive Director of EOA & Title IX Coordinator or their designee may invite participation at certain stages of the resolution process on a case-by-case basis. The Executive Director of EOA & Title IX Coordinator will ensure that an EOA-initiated complaint resolution process complies with all applicable state and federal laws and will ensure that any impacted individuals receive appropriate supportive measures and remedies, as applicable.

**Amnesty:** The university encourages all community members to report behavior associated with sexual misconduct. To support such reporting, with limited exceptions, the university will not pursue student conduct proceedings against a reporting student, a complainant, or a witness for personal use of alcohol, marijuana, or other drugs, trespassing or unauthorized entry of university-owned or operated facilities, or other violations of the Code, occurring at or near the time of the alleged incident of sexual misconduct. See the Code or University Policy 05-001 Sexual Misconduct and Sex Discrimination for additional information, including exceptions to this provision.

**D. Privacy.**

All reports made to EOA are treated in the most private manner possible. Information regarding the report 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.

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<sup>7</sup> Generally, a person is entitled to make a complaint only if they themselves are alleged to have been subjected to the prohibited conduct (or if they have a legal right to act on behalf of such person). However, with regards to non-sexual misconduct sex discrimination, any university student or employee; or any person other than a student or employee who was participating or attempting to participate in the university's education program or activity at the time of the alleged sex discrimination, has the right to make a complaint.

The university will take reasonable steps to protect the privacy of the parties and witnesses at all stages of the Resolution Process. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in this Resolution Process. The parties are prohibited from engaging in retaliation, including against witnesses, and from disseminating materials.

Medical and counseling records are considered privileged and confidential documents. Parties may, but are not required to, disclose those types of documents to EOA as part of this process. EOA will not access, consider, disclose,<sup>8</sup> or otherwise use such records unless the party who is the subject of those records voluntarily provides a written consent to do so. If medical and/or counseling records, or information obtained from a witness with access to such records, are shared by a party with EOA and are determined relevant to the allegations 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 Resolution Process designates reasonably prompt timeframes for the major stages of the investigation and resolution process, but the university may extend any timeframe in this Resolution Process on a case-by-case basis 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 and resolutions will proceed according to the timeframes in this Resolution 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 Resolution Process, including the policy determination and the appeal process, apply equally to both complainants and respondents. Either party has an equitable opportunity to request an extension or delay for good cause and have that request considered. However, the university cannot unduly or unreasonably delay the prompt resolution of a complaint under this Resolution Process. Reasonable requests for extensions or delays by the parties will serve to extend the time for resolution of the reported incident. The university has the authority to determine

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<sup>8</sup> Note that if EOA is in possession of such records, there may be circumstances where EOA is required to disclose them by law, such as in response to a court-issued subpoena.

whether an extension is required or warranted by the circumstances. The university will equitably provide the parties with written notice of delays or time frame extensions and the reasons for the delay or time frame extension.

**F. Supportive Measures.**

EOA will offer and coordinate appropriate supportive measures for a complainant and/or respondent to restore or preserve that person's access to the university's education programs or activities or provide support during the Resolution Process.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the parties. 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.

EOA will promptly make supportive measures available to the complainant upon receiving a report and to the respondent upon notifying the respondent of the existence of a complaint. The university will consider a number of factors in determining which supportive measures to make available, 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., restraining or 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 Assistant Dean and Director of Student Conduct and Community Standards ("Director, SCCS") and/or the Director of Employee and Labor Relations ("Director, ELR"), as appropriate, has the discretion to impose and/or modify any supportive measure 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. EOA will implement measures in a way that does not unreasonably burden any party.

Supportive measures are available to the complainant regardless of whether the complainant requests or participates in an informal resolution or investigation. Supportive measures are also available to respondents to alleviate any negative impact of participating in the Resolution Process. The university will provide the parties with reasonable supportive measures throughout the Resolution Process and thereafter as determined to be necessary and reasonable.

Supportive measures, as appropriate and available, may include, but are not limited to:

- Referrals to on-campus and community-based advocacy support;
- Referrals to counseling, medical, and/or healthcare services, including information in obtaining a sexual assault forensic examination;
- Engaging in safety planning and providing information about safety planning resources, including information on-campus safety escorts;
- Referrals to resources to assist in obtaining a restraining or protective order;
- Referrals to on or off-campus resources to assist with any financial aid, visa, or immigration concerns;
- Facilitating changes to academic classes, such as adjustments to academic deadlines, course modifications, withdrawal from a class without penalty, and completing a course online, if appropriate and available;
- Altering on-campus living assignments;
- Altering university work arrangements;
- Providing information or coordinating temporary transportation/parking assistance;
- Implementing contact limitations between the parties, including mutual no-contact directives between students;<sup>9</sup>
- Coordination of equitable and/or voluntary area restrictions or shared-use agreements;
- Education to the university community or community subgroup(s);
- Referrals to university public safety or off campus law enforcement;
- Other actions deemed appropriate by EOA that does not unreasonably burden any party.

If any party wishes to challenge a decision to provide, deny, modify, or terminate supportive measures applicable to them, they may request modification or reversal of a decision to implement supportive measures by submitting their request in writing to [equal.opportunity@oregonstate.edu](mailto:equal.opportunity@oregonstate.edu). An impartial employee other than the employee who implemented the supportive measures, who has the authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the established standards for supportive measures set forth in this Resolution Process. The university will also provide the parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. The

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<sup>9</sup> Mutual No-Contact Directives are only available between students. Requests for limited or no contact from an employee may be available through alternative arrangements but would not be considered a “Mutual No-Contact Directive.”

university typically renders decisions on supportive measures within 7 business days of receiving a request and provides a written determination to the impacted parties.

**G. Initial Evaluation.**

Upon receipt of a reported concern, EOA will initiate a prompt initial evaluation to determine the appropriate next steps, including identifying whether the report provides the name and/or any other information that identifies the complainant, the respondent, and relevant sources of information. EOA will contact the complainant (and/or the reporting individual, as appropriate) to gather information about the reported conduct, respond to any immediate health or safety concerns raised by the reported concern, offer supportive measures, and evaluate if the reported conduct is within the scope of EOA's jurisdiction.<sup>10</sup> EOA will conduct its initial evaluation with the following steps:

1. **Outreach and Intake.** EOA will promptly reach out to the identified complainant(s), provide information about their rights, options, and available resources (including confidential resources), and invite them to participate in an intake meeting.<sup>11</sup> Depending on the reported allegations, an intake meeting will consist of (as relevant and applicable):
  - a. Assessing the nature and circumstances of the reported concern, including if and how the complainant would like the university to assist in resolving the concern. EOA will discuss with the complainant any barriers they have to proceeding with a resolution (e.g., privacy or retaliation concerns);
  - b. Addressing any health or safety concerns of the complainant and/or the campus community;
  - c. Offering and coordinating supportive measures for the complainant, including notifying the complainant of the range of available supportive measures and clarifying for the complainant that supportive measures are available regardless of whether they file a complaint;
  - d. Providing a copy and/or reminding the party of their rights, options, and available resources listed in the rights, options, and resources documents

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<sup>10</sup> If a report alleges concerns that are clearly outside of EOA's scope and jurisdiction, EOA will refer the reporting individual and/or complainant, as appropriate, to other appropriate offices and resources.

<sup>11</sup> If a complainant does not respond to initial outreach, EOA will make reasonable efforts to further invite the complainant to engage with EOA. EOA typically reaches out to complainants a total of three times or until a complainant responds, whichever is shorter. If a complainant does not respond to any outreach or states their preference to not participate in or to delay an intake meeting, EOA will proceed in evaluating the matter based on the information available and/or extend the timeframe to hold the intake meeting.



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(including confidential resources, on and off-campus advocacy or advisor support,<sup>12</sup> healthcare, etc.);

- e. Ensuring the complainant has access, electronic or paper, to copies of the applicable Policy and the Resolution Process;
- f. Notifying the complainant of the right to be accompanied at any step of the process by an advisor of their choice;
- g. Notifying the complainant of their right to contact (or decline to contact) law enforcement and/or seek a civil protection order, and that EOA can coordinate with law enforcement, as appropriate, to coordinate for concurrent intake and investigatory actions;
- h. Notifying the complainant of their right to seek medical or counseling treatment to address physical or mental health issues;
- i. Notifying the complainant of the importance of preservation of evidence, including a sexual assault forensic examination and any relevant documentary evidence (e.g., text messages, emails, etc.);
- j. Notifying the complainant about the university's protections from retaliation;
- k. Gathering information<sup>13</sup> from the complainant regarding the reported concern to evaluate if the alleged conduct, if proven, would constitute a violation of Policy, or whether, based on what is alleged in the reported concern, is outside of EOA's jurisdiction;
- l. Notifying the complainant of the resolution options and general timeframes for resolution described in the Resolution Process, including options for requesting informal resolution, investigation, or no further action from EOA. The complainant will be provided the opportunity to discuss, ask questions, and provide input on which resolution option(s), if any, they would like to pursue, as applicable.

2. **Initiating a Complaint.** Section C, "Reports and Complaints" provides information on who is entitled to make a complaint under this Resolution Process. EOA reserves the right to offer informal resolution options to complainants even when the reported

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<sup>12</sup> In circumstances where a party attends an intake or an initial meeting without an advisor and states that they wish to have an advisor, EOA will offer to pause and reschedule the meeting within a reasonable time frame so that the party may have an advisor with them.

<sup>13</sup> The intake stage does not require the collection of all relevant information, such as with an investigation. During the intake, EOA is seeking to evaluate the concern, including EOA's jurisdiction to respond, and to identify what initial supportive measures can be offered to remedy the situation and restore access to employment opportunities or a university program and activity.

conduct would not constitute a policy violation in order to prevent potential future incidents of prohibited conduct and address reported conduct that was concerning and/or impactful to the complainant.

Complainants entitled to make a complaint will be provided the opportunity to notify EOA whether they wish to pursue the reported concern and initiate an informal resolution or investigation process. The complainant may decide whether or not to initiate a complaint during the intake meeting or following the meeting.

- a. If a complainant does not wish to advance the reported concern to a complaint, EOA will inform the complainant that the university's ability to address the reported conduct may be limited. EOA will continue to offer and provide supportive measures to the complainant, as applicable. The complainant may elect to file a complaint later, if desired.
- b. If the complainant wishes to advance the reported concerns to a complaint, EOA will further discuss with the complainant their expressed preference for manner of resolution and seek further information from the complainant about the alleged prohibited conduct. EOA will discuss with the complainant any conflicts or barriers to proceeding immediately such as availability, retaliation, or safety concerns that could emerge.

3. **Evaluation of the Complaint.** After a complainant has been offered the opportunity to provide information about the nature of the concern and their preference for manner of resolution, EOA will then finalize assessing the matter. EOA will evaluate whether the reported conduct is within EOA's jurisdiction and whether the reported conduct, if proven, would constitute a violation of the policy.

EOA will seek to honor the complainant's preferences for proceeding toward resolution (including their desire for no further action from EOA), but may have to proceed differently, depending on an analysis of the situation. At times, EOA may need to engage in a preventative educational conversation<sup>14</sup> with the respondent even if a complainant requests no further action or EOA may need to proceed with an EOA-initiated investigation even if a complainant requested an informal resolution or no further action. See section L.2, "Requests for EOA Not to Investigate and for No Further Action" for additional information. Additionally, EOA may need to proceed with an EOA-initiated investigation when the allegations suggest a joint investigation with another university office is warranted or when EOA has received multiple distinct complaints. The Executive Director of EOA & Title IX Coordinator or their designee has ultimate discretion to determine how EOA will respond to a

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<sup>14</sup> At the discretion of Executive Director of EOA & Title IX Coordinator, or their designee, EOA may engage in a preventative educational conversation with a respondent or other training for a group or unit to prevent, address, or stop concerns. These actions, when initiated by EOA, are not considered informal resolutions under this process.

complaint and will ensure compliance with applicable state and federal laws and regulations.

4. **Dismissal of a Complaint.** EOA may dismiss a complaint of prohibited conduct at any time during the Resolution Process if one or more of the following grounds are met:
  - a. EOA is unable to identify the respondent after taking reasonable steps to do so;
  - b. The respondent is not participating in a university education program or activity and is not employed by the university;
  - c. The complainant voluntarily withdraws any or all of the allegations in the complaint, the Executive Director of EOA & Title IX Coordinator declines to initiate a complaint, and EOA determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute prohibited conduct under Policy even if proven; or,
  - d. EOA determines the conduct alleged in the complaint, even if proven, would not constitute prohibited conduct under Policy. Before dismissing the complaint, EOA will make reasonable efforts to clarify the allegations with the complainant.

If EOA dismisses a complaint, EOA will promptly notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then EOA will notify the parties simultaneously in writing. Additionally, EOA will:

- a. Refer the matter to another appropriate office or department for resolution, as applicable.
- b. Notify the complainant that a dismissal may be appealed. If the dismissal occurs after the respondent has been notified of the allegations, then EOA will also notify the respondent that the dismissal may be appealed (See section J.3: "Appeals" for more information about the bases for appeal and the procedures to appeal).
- c. Continue to offer supportive measures to the complainant as appropriate.
- d. If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate.
- e. Take other prompt and effective steps, as appropriate, through the Executive Director of EOA & Title IX Coordinator to ensure that prohibited

conduct does not continue or recur within the university's education program, activity, or workplace environments.

EOA will seek to complete the Initial Evaluation within 10 business days after EOA receives a reported concern if the complainant chooses to promptly engage with EOA. However, there may be circumstances where the Initial Evaluation 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.

#### **H. Informal Resolution Process.**

The informal resolution process is a voluntary and solutions-based approach to resolution. The informal resolution process provides a pathway to reach a mutually agreeable outcome for the parties involved and does not include a full investigation, findings of facts, or a determination of whether or not a violation of prohibited conduct occurred. An informal resolution process does not preclude EOA from inquiring about facts and discussing allegations with either party. Voluntarily and mutually agreed-upon terms are binding, and parties are expected to act in accordance with the informal resolution agreement. Failure to do so may result in an investigatory process and/or disciplinary action.

Complainants who make a complaint of prohibited conduct and/or respondents who have been notified of a complaint may request the informal resolution process prior to, instead of, or during an investigation at any time prior to a final determination. Informal resolution may only be used with the approval of all parties and the Executive Director of EOA & Title IX Coordinator or their designee. EOA will be responsible for facilitating the terms of the informal resolution and obtaining voluntary, written confirmation that all parties wish to resolve the matter via the agreed-upon terms. Informal resolutions are not subject to appeal once all parties agree to and complete the resolution terms.

1. **Categories of Informal Resolution.** The university offers three categories of informal resolution. An informal resolution can include more than one category:

- a. **Educational Conversation.** EOA can resolve the matter informally by facilitating a conversation with the respondent to discuss the complainant's concerns and institutional expectations related to the reported prohibited conduct. Educational conversations are non-disciplinary and non-punitive. To support an interactive educational conversation, EOA may ask the respondent to discuss their perspective about the allegations but will not require the respondent to accept responsibility for the alleged violation. The conversation will be documented to show that it has occurred but will not be recorded or transcribed. EOA may provide the respondent with referrals or additional

educational support resources relevant to the reported conduct.

- b. **Acknowledgement of Harm.** When the respondent is willing to acknowledge the harm caused to the complainant, and/or their role in causing the harm, and the complainant, the respondent, and EOA are agreeable to the resolution terms. The agreed upon actions or restrictions that will be enforced similarly to sanctions (examples could include restrictions from contact, accessing buildings, services, or programs, moving housing assignments, financial restitution, temporary or permanent self-withdrawal from a program or the university, etc.).
- c. **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, shuttle negotiation, restorative practices, facilitated dialogue, etc.). Alternative resolution may involve individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction between the parties;<sup>15</sup> and other forms of resolution that can be tailored to fit the needs of the parties. Some Alternative Resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All parties must consent to the use of an Alternative Resolution approach, and the parties may, but are not required to, have direct or indirect contact during an Alternative Resolution process.

EOA may consider the following factors in assessing whether alternative resolution is appropriate, or which form of alternative resolution may be the most successful or appropriate for the parties:

- The parties' amenability to alternative resolution
- Likelihood of resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Demonstrated civility or reasonableness of the parties
- Respondent's willingness to acknowledge harm
- Respondent's disciplinary history
- Results of a threat assessment or ongoing risk analysis
- Whether an emergency removal or other interim action is needed or already in place

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<sup>15</sup> Most alternative resolution options do not require direct interaction between the parties. Such an option would only be pursued when both parties voluntarily express interest to do so. No party will be required to have direct or indirect contact during an alternative resolution process.

- Adequate resources to invest in alternative resolution (e.g. time, staff availability, staff skill, etc.) appropriate to the type of complaint

EOA has the authority to determine whether alternative resolution is available or successful and will consider both parties' desire for resolution when making that determination. The alternative resolution process will not stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. EOA will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

2. **Initiating the Informal Resolution Process.** To begin the informal resolution process, a party informs an EOA staff member that they want to engage in the informal resolution process.<sup>16</sup> The EOA staff member will identify the party's outcome goals and/or desired terms and provide information about the informal resolution process. Before the initiation of an informal resolution process, the university will explain in writing to the parties:

- a. The allegations;
- b. The requirements of the informal resolution process;
- c. That any party has the right to withdraw from the informal resolution process and initiate or resume an investigation process at any time before agreeing to a resolution;
- d. That if the parties agree to a resolution at the end of the informal resolution process, they cannot initiate or resume an investigation process arising from the same allegations;
- e. The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- f. What information the university will maintain and whether and how the university could disclose such information for use in the investigation process, if such process is initiated or resumed.

3. **Implementation.** The university will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in informal resolution.

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<sup>16</sup> A request by either party to pause an investigation to seek an informal resolution will be considered at the discretion of the Equity Associate.

When an informal resolution agreement has been reached, the EOA staff member designated to facilitate the informal resolution will work with the parties to promptly implement the agreed-upon terms consistent with university Policy, processes, and/or any applicable collective bargaining agreement.

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.

4. **Withdrawal From or Termination of the Informal Resolution Process.** Either the complainant or respondent may at any time, prior to fulfillment of the terms of the informal resolution agreement, elect to withdraw from the informal resolution process. Additionally, if the EOA staff member determines that a mutually agreeable resolution is not possible, if any party fails to complete or uphold a term of the informal resolution, or if the EOA staff member learns of information that requires an investigation, the EOA staff member may consider the informal resolution unsuccessful and 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 their available options. EOA would then further evaluate the complaint and proceed in accordance with the appropriate steps outlined in the Resolution Process.
5. **Timeframe.** EOA will attempt to resolve requested informal resolutions promptly. The informal resolution process will typically be completed within 30 business days of the initial complaint.

#### I. **Investigation Process.**

1. **Overview.** EOA will initiate and complete a prompt, reliable, impartial, and adequate investigation when a request for investigation is made related to a complaint of prohibited conduct and was not otherwise dismissed or resolved by an informal resolution process. The investigation will be impartial and will be conducted by trained investigators who have no actual conflict of interest or bias for or against complainants or respondents generally or specifically. The investigation process will include objective evaluation of all evidence that is relevant and not otherwise impermissible - including both inculpatory and exculpatory evidence.<sup>17</sup> Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. A respondent will be presumed not responsible for the alleged

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<sup>17</sup> Inculpatory evidence is evidence that supports that the respondent engaged in prohibited conduct. Exculpatory evidence is evidence that supports that the respondent did not engage in prohibited conduct.

prohibited conduct until a determination regarding responsibility is made at the conclusion of the Resolution Process.

During the investigation, 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 that is relevant and not otherwise impermissible; to inspect and review all relevant and not otherwise impermissible evidence to the allegations, both inculpatory and exculpatory; to be accompanied by an advisor of their choice at any stage of the Resolution Process; to receive written notice of meetings at which their presence will be invited or expected with sufficient time for the party to prepare to participate; to receive simultaneous written notice of the outcome and rationale; and to receive information about available appeals.<sup>18</sup>

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, reliable, impartial, and adequate investigation may be impacted.

2. **Investigator.** EOA will designate an investigator to conduct a prompt, adequate, reliable, and impartial investigation. The investigator is typically an Equity Associate but may also be an experienced external professional investigator.<sup>19</sup>
3. **Evidentiary Standard.** The applicable evidentiary standard for all violations of 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.
4. **Notice of Allegations.** EOA will issue a written notice of allegations to the respondent via their university e-mail account or via U.S. mail. EOA will issue a corresponding 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 (and corresponding notice of acknowledgment 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-

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<sup>18</sup> The term complainant, as used in this Investigation Process section, is in reference to university-affiliated individuals who have initiated a complaint with EOA which was not dismissed.

<sup>19</sup> The term Equity Associate, as used throughout this Investigation and Resolution Process, includes external professional investigators working for EOA.



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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 statements or information during the Resolution Process; 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 or a union representative (when applicable); that they are entitled to an equal opportunity to access and review not otherwise impermissible evidence and the investigation report; a copy of the Policy and/or Code, as applicable; and this Resolution Process. If the investigation reveals the existence of additional or different potential violations of Policy or other university policies, provisions, or rules that were not included in the written notice, EOA will provide written notice of the additional allegations.

- b. The notice of allegations will indicate that the respondent will be presumed to be not responsible for the alleged prohibited conduct until a determination regarding responsibility is made at the conclusion of the Resolution Process.
  - c. The notice of allegations will request that the respondent contact EOA within 3 business days to schedule a meeting with the Equity Associate. The Equity Associate will attempt to schedule the initial meeting with the respondent within 10 business days after the notice of allegations was sent to the respondent. The Equity Associate will ensure the respondent has had sufficient time to prepare a response before any initial interview. 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. Parties can choose to participate at any point in the investigation but are not permitted to offer evidence to EOA once the final investigation report has been issued, unless new evidence has come available that was not reasonably available prior to the issuance of the final investigation report.
5. **Evidence Gathering.** After the notice of allegations is sent, the Equity Associate will conduct a prompt, reliable, impartial, and adequate investigation, gathering available 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, questions to be asked of the other party(ies) or witnesses, 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 the 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, some of which may already have been provided during the intake meeting and/or in writing, regarding the university's policy prohibiting retaliation, the importance of preservation of evidence, and a complainant's rights and options, including the right to be accompanied by an advisor, report concurrently to law enforcement, equitably access and review evidence, and seek confidential healthcare and counseling resources. In addition, the Equity Associate will address the following:
- Explain the investigation process, including informal resolution options, timelines, and answer any related questions;
  - Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding, including an explanation of the informal resolution process versus an investigation process;
  - Provide 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;<sup>20</sup>
  - Confirm with the complainant the process for requesting any supportive measures; and
  - Schedule other meetings, if necessary.
- b. **Initial Meeting with the 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 ensure that the respondent has information regarding the university's policy prohibiting retaliation, the

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<sup>20</sup> All questions posed by a complainant to be asked to a respondent or any witnesses must be relevant, permissible, non-duplicative of information already provided, and have probative value. In the initial evidence-gathering phase, the Equity Associate will be solely responsible for determining relevance, permissibility, and probative value.

importance of preservation of evidence, and a respondent's rights and options, including the right to be accompanied by an advisor, equitably access and review evidence, and seek confidential healthcare and counseling resources. Additionally, the Equity Associate will address the following:

- Discuss 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 Resolution Process;
- Explain the investigation process, including informal resolution options, timelines, and answer any related questions;
- Provide the respondent a full opportunity to respond to and 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;<sup>21</sup>
- Inform the respondent that they may provide their response and perspective relevant to the allegations orally during the initial meeting, in writing following the initial meeting, and/or in a subsequent meeting(s) as necessary;<sup>22</sup>
- Offer supportive measures and 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 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

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<sup>21</sup> All questions posed by a respondent to be asked to a complainant or any witnesses must be relevant, permissible, non-duplicative of information already provided, and have probative value. In the initial evidence-gathering phase, the Equity Associate will be solely responsible for determining relevance, permissibility, and probative value.

<sup>22</sup> If a respondent wishes to not provide an oral response to the allegations in the initial meeting, the Equity Associate will discuss with the respondent a timeframe to do so in writing or in subsequent meetings, which would typically be within 5 business days from the initial meeting. A respondent may request an extension to provide sufficient time to prepare a response.

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may have other information related to the incident or related matters, either directly or based on reports from either of the parties.

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

- d. **Recording and Transcription.** EOA will record all investigatory interviews, via audio and/or video device, and create a transcription of the meeting. 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 in accordance with this Resolution Process. EOA will redact information from the transcript that is impermissible or subject to privacy protections under university policies or state and federal laws. Failure by the university to record or transcribe all or part of investigatory interviews or questioning due to an error and/or malfunctioning device will not be grounds for appeal. No unauthorized audio or video recording of any kind is permitted during the Resolution Process.
- e. **Evidence.** The Equity Associate will gather and consider any relevant and permissible evidence or information, including documents, photographs, communications between the parties, medical and/or counseling records (if voluntarily provided to EOA for consideration by the individual who is the subject of the records with a voluntary, written consent), and other electronic records as appropriate.
- f. **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 transcribed and included in the investigation 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 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 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, including but not limited to relevant suggested expert witnesses by one or both of the parties, 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 as evidence that a person is telling the truth.
- iv. Prior or subsequent conduct may be considered in determining pattern, knowledge, intent, or motive. The determination of the 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.
- v. **Impermissible Evidence and Exceptions.** In general, a person's medical and counseling records are confidential and not available for inclusion or consideration in the investigation record, unless the person voluntarily chooses to share those records with the Equity Associate and provides voluntary and written consent for the use of those records. If medical or counseling records are shared with consent for use by a party and are determined to be relevant to the allegations and are relied upon by EOA in the investigation, the relevant information will become subject to inspection and review by the other party in the Resolution Process.

Evidence, and questions seeking evidence, that relates to a complainant's sexual interests or prior sexual conduct is impermissible, unless 1) evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct, or 2) is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent. The fact of

prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent or preclude a determination that sexual misconduct occurred.

Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality is impermissible.

- vi. The Equity Associate will consider all permissible 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 or character. All information gathered by the Equity Associate that is relevant to the allegations of prohibited conduct 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.
- vii. If either party leaves 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 prohibited conduct. This Resolution 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 provision of supportive measures and/or the departure of a party may be sufficient to resolve the reported concerns.<sup>23</sup>
- viii. The evidence-gathering phases will typically be completed within 30 to 60 business days from the issuance of the notice of allegations.

**6. Investigation Report and Investigation Record.** At the completion of the evidence-gathering process, the Equity Associate will draft an investigation report and prepare an investigation record related to the allegations of prohibited conduct and will

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<sup>23</sup> If a Respondent voluntarily leaves the university and wishes the case to be dismissed on these grounds, they must submit a notification in writing to the Executive Director of EOA & Title IX Coordinator requesting a dismissal. The Executive Director of EOA & Title IX Coordinator has sole discretion to determine whether to grant the dismissal request and any related stipulations regarding the respondent's ability to return to the university.

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provide the complainant and the respondent equal and timely access to review these. The draft investigation report will summarize all relevant information gathered and the investigation record will contain all relevant and not otherwise impermissible information gathered in the course of the investigation, including statements by the parties and witnesses, evidence submitted by the parties and witnesses, and any other inculpatory or exculpatory evidence obtained during the investigation.

- a. EOA will provide the complainant, the respondent, their advisors, if any, and the Decision-Maker with an equal and simultaneous opportunity to review and inspect the draft investigation report and investigation record through a secure online platform.<sup>24</sup> No copies, photographs, saving, downloading, printing, or sharing of the draft investigation report or investigation record will be permitted.
- b. The parties will have 10 business days to review and inspect the draft investigation report and investigation record, and if they choose, submit to the Equity Associate a response and/or any additional questions that they wish to be asked of the other parties or witnesses. The Decision-Maker will simultaneously have 10 business days to provide the Equity Associate with a list of questions to ask the parties and witnesses. Any request from either party or the Decision-Maker to extend the 10-day response timeline must be made to the Equity Associate in writing prior to the expiration of the deadline, with an explanation demonstrating good cause for the request. The Equity Associate will notify both parties and the Decision-Maker simultaneously of their decision regarding any requested extension.
- c. The parties' responses may: (1) provide written comments or feedback to information within the draft investigation report or investigation record; (2) serve as an impact or mitigation statement; (3) submit additional information or follow-up questions to be asked of the other party or any witness; (4) identify additional witnesses or evidence; and/or (5) 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.
- d. If either party provides a written response or makes a request for additional investigation, the Equity Associate will determine the appropriateness of any additional investigative steps. The written

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<sup>24</sup> Alternative options, such as supervised in-person viewing of the report and investigation record, can be coordinated with the Equity Associate. The Equity Associate will determine if an alternative option is appropriate based on whether or not the secure online platform limits any party's ability to fully review and inspect the draft investigation report.

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

- e. Any questions submitted by either party or the Decision-Maker to be asked of the parties or witnesses after review of the draft investigation report must be permissible, relevant, non-duplicative, and have probative value. The questions may have relevance to the allegations or the credibility of any parties or witnesses, if credibility is in dispute. The Decision-Maker will review the questions posed by the parties after the review of the draft investigation report and determine relevancy, redundancy, and permissibility. Any questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Decision-Maker will explain any decision to exclude questions that are not relevant or otherwise impermissible and give a party an opportunity to clarify or revise a question if excluded. If the party sufficiently clarifies or revises the question, the question will be permitted.
- f. The Decision-Maker will direct the Equity Associate to ask the question as provided, as modified by the Decision-Maker, or not at all, based on the Decision-Maker's determination of relevancy, redundancy, and permissibility. The Equity Associate will then ask the questions of the parties or witnesses. The Equity Associate, in consultation with the Decision-Maker, will determine the appropriateness of any additional investigative steps that may be taken in light of the questions and their answers. A transcript (if posed orally) or written record (if posed in writing) of the questions asked by the Equity Associate and the answers to those questions will be shared with the parties and Decision-Maker, typically within 5 business days, and will be included in the investigation record.
- g. The parties and Decision-Maker then are permitted 5 business days to review the answers to the posed questions and propose any additional follow-up questions. The Decision-Maker will review any additional follow-up questions for relevancy and permissibility and forward them to the Equity Associate, as applicable. The Equity Associate would then pose the follow-up questions to the appropriate party or witnesses and create a transcription of questions and answers, which will be shared with the parties. This final round of questioning is the last round permitted, unless permission to extend questioning further is granted by the Decision-Maker.



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- h. Unless significant additional investigative steps are required, the Equity Associate will prepare a final investigation report, typically within 20 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, an overview of areas of contested or uncontested information, and factual findings.
- i. The Equity Associate will provide the final investigation report and the investigation record to the Decision-Maker. The Equity Associate will provide the complainant and respondent simultaneous access to the final investigation report for a period of 5 business days. The complainant and respondent will be provided the opportunity to submit a final statement to the Decision-Maker within 5 business days of the issuance of the final investigation report.<sup>25</sup> The purpose of the final statement is to allow for either party to offer:
  - i. Their perspective on the factual findings concluded by the Equity Associate;
  - ii. Recommendations and rationale to the Decision-Maker regarding whether or not the content of the final investigation report supports or does not support a finding of responsibility for each charge; or
  - iii. Considerations for the Decision-Maker to take into account related to the assignment of sanctions, if applicable, such as aggravating and mitigating circumstances.
- j. If, after review of the final investigation report or the parties' final statements, the Decision-Maker determines the record to be incomplete, the Decision-maker may direct a re-opening of the investigation, pose additional questions, or may direct the Equity Associate to meet with the parties or any witnesses to engage in further fact-gathering, if needed.

### J. Determination and Appeal

1. **Policy Determination.** The Executive Director of EOA & Title IX Coordinator assigns the Decision-Maker. The Decision-Maker will be free from actual conflict of interest or bias for or against complainants or respondents generally or specifically. The

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<sup>25</sup> Any request from either party to extend the 5-day response timeline must be made to the Decision-Maker in writing prior to the expiration of the deadline, with an explanation demonstrating good cause for the request.

Decision-Maker may be a single individual or comprise of a two- or three-person panel.

- a. For student respondents, typically the policy determination Decision-Maker is, jointly, the Assistant Dean & Director, SCCS, and the Executive Director of EOA & Title IX Coordinator, or their respective designee.
- b. For employee respondents, typically the policy determination Decision-Maker is, jointly, the Director, ELR, and the Executive Director of EOA & Title IX Coordinator, or their respective designee.
- c. As needed, the Decision-Maker may be, or may include, an alternate trained neutral Decision-Maker who is free from bias and conflicts of interest.

The Decision-Maker will engage in an administrative review of the final investigation report, the investigation record, and any final written statements submitted by the parties. The administrative review is a closed deliberative process, not open to the public or either party. Upon reviewing the evidence, the Decision-Maker will apply the preponderance of the evidence standard to make a determination on each of the alleged violations of Policy.

## **2. Sanctions.**

- a. For student respondents found responsible for one or more Policy violation, the Assistant Dean & Director, SCCS, or designee, will make a determination related to appropriate sanctions. If student discipline is warranted, it shall be administered in accordance with the Code.
- b. For employee respondents found responsible for one or more Policy violation, the Director, ELR, or designee, will make a determination related to appropriate sanctions in consultation with the employee's supervisory chain. If employee discipline is warranted, it shall be administered in a manner consistent with applicable collective bargaining agreements, university policies, and legal requirements.

## **3. Notice of Determination**

After the Decision-Maker makes the determination as to whether there has been a violation of Policy, the Decision-Maker will issue a written notice of determination within 10 business days after receipt of the final investigation report and investigation record. The Decision-Maker may extend the deadline if needed. Timelines may be increased for matters involving employee respondents that may result in discipline in order to comply with university policies, applicable collective bargaining agreements, and/or additional established processes.

The written notice of determination will be issued simultaneously to both parties.

- a. The written notice of determination will include: (1) a description of the alleged prohibited conduct; (2) information about the policies and procedures used to evaluate the allegations; (3) the Decision-Maker's evaluation of the relevant and not otherwise impermissible evidence and determination whether prohibited conduct occurred; (4) if prohibited conduct was found to have occurred, whether remedies other than the imposition of disciplinary sanctions will be provided to the complainant, and, to the extent appropriate, others identified as experiencing the effects of the prohibited conduct; and (5) procedures and permissible grounds for the complainant and respondent to appeal.
    - i. For matters involving student respondents, the notice of determination will also include any disciplinary sanctions assigned to the respondent and the rationale for each disciplinary sanction.
    - ii. For matter involving employee respondents, determination of sanctions will follow the notice of determination and appeal period, as outlined in Section K "Disciplinary Sanctions and Action" below.
  - b. The written notice will be accompanied by electronic access to the final investigation report, including the investigation record and any final statements submitted to the Decision-Maker, via a secure online platform for a period of 5 business days to provide access to all information available to support the complainant's and respondent's right to appeal.
  - c. 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 Notice of Appeal Decision.
4. **Appeals.** The university affords the complainant and respondent the equitable opportunity to appeal at two stages in the Resolution Process:
- a. **Appeal of a complaint dismissal:** Either the complainant or the respondent (if the dismissal occurs after the respondent has been notified of the allegations), may appeal the dismissal of a complaint made by EOA in accordance with Section G.4, "Dismissal of a complaint." The appeal must be submitted within 5 business days after the Notice of Dismissal is issued. Appeals of a complaint dismissal are to be filed with EOA at [Equal.Opportunity@oregonstate.edu](mailto:Equal.Opportunity@oregonstate.edu).

- b. **Appeal of the policy determination:** Either the complainant or the respondent may appeal the Decision-Maker's determination. The appeal must be submitted within 5 business days after the notice of determination is issued. Appeals are to be filed with EOA at [Equal.Opportunity@oregonstate.edu](mailto:Equal.Opportunity@oregonstate.edu). Appeals that are not submitted within 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 would change the outcome;
  - ii. New evidence that would change the outcome and that was not reasonably available when the determination of whether prohibited conduct occurred or dismissal was made; or,
  - iii. The Executive Director of EOA & 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 specifically, that would change the outcome.
  - iv. For matters involving student respondents only: either party may also appeal if the sanctions imposed are disproportionate given the context of the violation.
- d. **Appeal Received:** When an appeal that qualifies for consideration is received, the Executive Director of EOA & Title IX Coordinator or their designee will assign the appeal to an appellate decision maker. For appeals of the policy determination, the Executive Director of EOA and Title IX Coordinator or their designee will notify the other party of the appeal. The non-appealing party will be provided an opportunity to review the appeal of the policy determination and submit any relevant information they want considered by the appellate Decision-Maker. If a non-appealing party chooses to submit a response to the appeal, they must do so within 5 business days from the date they receive notice of the appeal.
- e. **Review by an Appellate Decision-Maker:** When an appeal is filed by either party, the appeal and any response to the appeal from the other party will be forwarded to the appropriate appellate Decision-Maker. The appellate Decision-Maker will be an impartial Decision-Maker trained in issues related to prohibited conduct and not the same person as the Decision-Maker who reached the original determination.

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- i. For appeals regarding the dismissal of a complaint, typically the appellate Decision-Maker will be an impartial staff member within EOA who is free from bias and conflicts of interest.
  - ii. For appeals regarding the policy determination for student respondents, typically the appellate Decision-Maker is the Vice Provost for Student Affairs or the Dean of Students, or either's designee.
  - iii. For appeals regarding the policy determination for employee respondents, typically the appellate Decision-Maker is the Vice Provost for Human Resources and Chief Human Resources Officer or the Senior Vice Provost for Academic Affairs, or either's designee.
  - iv. As needed, the appellate Decision-Maker role may be assigned to an alternate trained neutral Decision-Maker who is free from bias and conflicts of interest.
- f. **Notice of Appeal Decision:** The appellate Decision-Maker will issue the written decision simultaneously to the parties,<sup>26</sup> describing the result of the appeal and the rationale for the result, typically within 20 business days of receiving the appeal.
- i. The appellate Decision-Maker has the authority to sustain, alter, or reverse the findings and/or sanctions in part or entirely. The appellate Decision-Maker may also remand the matter to the appropriate review level (i.e., to the evaluation, investigation, or policy determination stage) for further consideration.
  - ii. In the case that the appellate Decision-Maker reverses the dismissal of the complaint, the complaint will proceed under this Resolution Process.

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.

## K. Disciplinary Sanctions and Action

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<sup>26</sup> For appeals regarding the dismissal of a complaint, the respondent will only receive the written determination if the respondent was notified of the appeal due to the dismissal occurring after the respondent was notified of the allegations.

## 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 prohibited misconduct, the Decision-Maker, will assign sanctions that are proportionate to the facts and circumstances of each 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 prohibited conduct, 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 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 the Code for the entire list of possible university sanctions for students.

The Assistant Dean & Director, SCCS, has final decision-making authority regarding 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 Policy, disciplinary action may be imposed. The Director, ELR, will confer with the respondent's supervisory chain in determining what disciplinary action is appropriate, consistent with university policy, any applicable collective bargaining agreement, and legal requirements.

Disciplinary action is designed to eliminate prohibited conduct, 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: warning, required educational sanctions, behavior expectations, coaching, letter of counsel, being placed on a Performance Improvement Plan ("PIP"), written reprimand, paid employment suspension, unpaid employment suspension, and termination. More information about possible disciplinary sanctions is available from ELR, other university policies, and in applicable collective bargaining agreements.

3. **Sanction Considerations.** Factors the Decision-Maker may consider when determining sanctions and responsive actions include, but are not limited to:
- The nature, severity of, and circumstances surrounding the violation(s), including the presence of aggravating and mitigating factors
  - The Respondent's disciplinary history
  - The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
  - The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
  - The need to remedy the effects of the discrimination, harassment, and/or retaliation on the complainant and the community
  - The impact on the parties
  - The Respondent's acceptance of responsibility and/or recognition of the importance of complying with the applicable policies
  - Any other information deemed relevant by the Decision-Maker(s)

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

#### **L. Final Steps of the Investigation and Resolution Process**

At the conclusion of the investigation and resolution process, the issuance of sanctions may be accompanied by the modification, termination, or continuance of supportive measures implemented during the process. The administrator designated for assigning sanctions will consult with the Executive Director of EOA & Title IX Coordinator, or their designee, regarding the appropriateness of modification, termination, or continuance of supportive measures.

1. The Executive Director of EOA & Title IX Coordinator will ensure:
  - a. Compliance with this Resolution Process before the imposition of any disciplinary sanctions against a respondent;
  - b. A party, witness, or others participating in the Resolution Process are not disciplined for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether prohibited conduct occurred. However, the university is permitted to address false statements by initiating a disciplinary process under its Code or other university processes as long as there is evidence independent of the determination whether prohibited conduct occurred.
  - c. Discipline is not imposed on a respondent for prohibited conduct unless there is a determination at the conclusion of the Resolution Process that the respondent engaged in prohibited conduct. However, other

information gathered during the Resolution Process, separate from prohibited conduct investigated within this process, may be forwarded to a party's supervisor, ELR, or SCCS, to address as appropriate.

2. If there is a determination that prohibited conduct occurred, the Executive Director of EOA & Title IX Coordinator will, as appropriate:
  - a. Coordinate the provision and implementation of remedies to a complainant and other people identified as having had equal access to their education program or activity limited or denied by prohibited conduct;
  - b. Coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the complainant of any such disciplinary sanctions associated with any OSU policy violations that qualify under Title IX for such notification; and
  - c. Take other appropriate prompt and effective steps to ensure that prohibited conduct does not continue or recur within the university's education program or activity.

**M. Additional Provisions.**

**1. Advisors.**

The parties may each elect to be accompanied by one advisor to any meeting or interview conducted under the Resolution Process. An advisor can be a friend, family member, union representative, attorney, advocate, or any individual of the party's choosing.<sup>27</sup> 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, 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.

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<sup>27</sup> Advisors must agree to serve in the role. Advisors should not have conflicting institutional roles, such as being an administrator with an active role in the matter or the respondent's supervisor. Parties are cautioned that choosing a witness as an advisor may create potential for bias or conflict of interest for them as a witness and may limit the efficacy of the person's statement.



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. Requests for EOA Not to Investigate and for No Further Action.**

A complainant may request that their name or other personally identifiable information not be shared with a respondent, that no investigation be pursued, that no disciplinary action be taken, or for no further action by EOA. In these instances, 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.

The university's ability to investigate or respond fully to a reported concern may be limited if the complainant requests anonymity, no further action from EOA, or declines to participate in an investigation or resolution under this process. 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 respond to allegations of prohibited conduct will be made in a manner consistent with this Resolution Process and will be documented.

In order to protect the safety of the campus community, EOA may initiate an investigation (which would include sharing complainant's name with respondent) or take other actions intended to protect the community or address or mitigate harm, even when a complainant has requested that EOA not investigate, for their name not be shared, for no further action, or when a complainant has withdrawn a complaint or portion of a complaint. EOA will take the following factors into account when determining whether to honor a complainant's request:

- 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 prohibited conduct, as informed by previous or multiple reported concerns involving the respondent, a history of violence by the respondent, or threats of further prohibited conduct against the complainant by the respondent or others;
- d. Allegations that prohibited conduct was committed by multiple respondents;

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- e. The risk posed to any individual or to the campus community by not proceeding, including the risk of ongoing prohibited conduct or violence;
- f. Whether the reported concern alleges a pattern of prohibited conduct 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 report of prohibited conduct perpetrated against a minor or was committed by an employee against someone under their authority;
- 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 evidence or other means to obtain relevant evidence of the alleged prohibited conduct without the participation of the complainant (e.g., law enforcement records, 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;
- l. Whether the university has other available means outside of this Resolution Process to end the alleged prohibited conduct without initiating an investigation; and;
- m. 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 Executive Director of EOA & Title IX Coordinator or their designee will make a determination regarding the appropriate manner of resolution under this Resolution 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. Those steps may include offering appropriate supportive measures to the complainant, engaging in a preventative educational conversation, providing targeted training and prevention programs, and/or providing or implementing other supports. The Executive Director of EOA & Title IX Coordinator or their designee may also re-open a reported concern under the Resolution 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.

### 3. **Safety Concerns Regarding Student and Employee Respondents.**

To promote the safety and well-being of members of the university community and/or address an immediate threat to the physical health or safety of any member of the university community arising from the allegations of prohibited conduct, the Executive Director of EOA & 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.

**Student respondent:** The Director, SCCS or designee may enforce administrative sanctions, up to and including administrative suspension. This action is taken to promote the safety and well-being of members of the University community; secure University property; and/or take action with a student/student organization who poses an ongoing threat of disruption to the normal operations of the University. The process for applying administrative sanctions includes providing notice to the student respondent and a timely opportunity to challenge the administrative suspension decision. See "Administrative Suspension" in the Code for a full description of these procedures.

**Employee respondent:** If the Executive Director of EOA & Title IX Coordinator or their designee has or receives concerns regarding an employee respondent, they will work with the Director, ELR, to determine what actions may be available pending an investigation into a complaint of prohibited conduct. The Director, ELR, or their designee, in consultation with the Executive Director of EOA & Title IX Coordinator or their designee, will complete an individualized safety and risk analysis.

### 4. **Participation.**

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

The Decision-Maker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. 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 respond to such questions.

**5. Consolidation.**

EOA may consolidate complaints of prohibited conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party, when the allegations of prohibited conduct arise out of the same facts or circumstances.

The university is bound to comply with the provisions set forth in the Family Educational Rights and Privacy Act (FERPA). If consolidation occurs, EOA will do so in a FERPA-compliant manner. Parties should direct any concerns about the privacy of their information in a consolidated complaint to the Equity Associate, or designee.

**6. 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 providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to this Resolution Process. Anyone needing such accommodations or support should contact the EOA, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Employees, students, or other involved parties who require a disability accommodation, language services/interpreters, 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. EOA's ability to accommodate requests may be limited without enough advance notice.

**7. Safeguarding Privacy.**

Complainants and respondents are not restricted from discussing or sharing information related to the complaint with others who may support or assist them during the process, nor are they prohibited from seeking resolution in court or with an applicable state or federal agency. However, parties and their advisors are prohibited from unauthorized reproduction of documents and/or disclosure of information made available for review in the university investigation or resolution process. Publicly disclosing university work product (i.e., documents produced, compiled, or written for the purposes of a university investigation or resolution

process) or a party's personally identifiable information without authorization or consent is a breach of this restriction and subject to disciplinary action in accordance to the Code and/or applicable ELR processes.

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 policy should not be understood to limit the legal rights of the parties during or after resolution.

The university does not prohibit either party from disclosing the final outcome after any appeal is concluded. All other conditions for disclosure are governed by applicable state and federal law.

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.

#### **8. 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.

#### **9. Training for University Staff.**

All university staff tasked with implementing this Resolution Process, including staff who conduct informal resolutions and/or implement, modify, or terminate supportive measures, investigators, Decision-Maker, appellate Decision-Maker, and the Executive Director of EOA & Title IX Coordinator will participate in annual training related to this Resolution Process, how to serve impartially, how to evaluate relevant and impermissible evidence, and related topics as required by applicable law. All 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 equitable opportunity to be heard, and that foster the safety of the parties and all participants while promoting accountability. Staff who

facilitate informal resolutions receive training on the rules and practices associated with informal resolution process.

**10. Conflicts of Interest.**

The university is committed to ensuring that this Resolution 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 Executive Director of EOA & Title IX Coordinator.

**11. Recordkeeping.**

All offices involved in this Resolution Process will retain, in accordance with the university's records retention schedule, records of all reported concerns, prohibited conduct complaints, investigations, and resolutions involving alleged violations of Policy for a minimum of seven years.

**12. Revision of these Procedures.**

These procedures succeed any previous university procedures addressing non-Title IX Sexual Misconduct, Discrimination, Discriminatory Harassment, and Retaliation. The university reserves the right to alter or adjust this process at any time and where appropriate when doing so will not substantially impact the fairness of the process for any party to the matter. This may include, but is not limited to, taking additional steps to deliver notice of key stages of the process, accommodating methods for review of investigation materials, granting extensions to the timelines or deadlines, and adjusting the modality in which information is received or heard.

The Executive Director of EOA & Title IX Coordinator regularly reviews and updates these procedures. Updates and changes to this document are made as necessary and once those changes are posted online, they are in effect. If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws or regulations or court holdings.

These procedures are effective: September 17, 2024.