

Title	: Procedures for Alleged Violations of the Title IX Sexual Harassment Regulations	
Number	:	2075.01
Approved	:	02/20/25
Last Reviewed:		02/20/25
Reference	: 85 FR 30026; 34 CFR 106; The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. 1092(f)); Violence Against Women Act of 1994; The Age Discrimination in Employment Act of 1967, as amended; Equal Pay Act of 1963, as amended; Executive Order 11246, as amended; Americans With Disabilities Act of 1990, Rehabilitation Act of 1973, Section 504, as amended; Title VI and Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Educational Amendments of 1972, as amended; Vietnam Era Veterans Readjustment Act of 1974, Section 402	

INTRODUCTION

I. RATIONALE

Eastern Arizona College (EAC or the College) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual harassment/discrimination, and retaliation for engaging in a protected activity. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment, and for allegations of retaliation. The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process, during what is often a difficult time for all those involved.

II. DEFINITIONS

1. **Actual Notice** means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of alleged harassing, discriminatory, and/or retaliatory conduct.
2. **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if a hearing is held. This individual may be a District or College employee, attorney, or member of the community.
3. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
4. **Formal Complaint** means a document filed with the Title IX Coordinator/signed by a Complainant or signed by the Title IX Coordinator alleging against a Respondent sexual harassment or retaliation for engaging in a protected activity and requesting that the College investigate the allegation.
5. **Day(s)** means a business day when the College is in normal operation.
6. **Educational program or activity** means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
7. **Final Determination/Finding** means a conclusion by preponderance of the evidence that the alleged conduct occurred, or did not occur, and whether it did, or did not, violate policy and/or regulation.
8. **Formal Grievance Process** means a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
9. **Grievance Process Team** means any investigators, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
10. **Hearing Decision-maker** means a person who has decision-making and sanctioning authority within the College's Formal Grievance process.
11. **Investigator** means the person or persons charged by the College with gathering facts about an alleged violation of this Regulation, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
12. **Mandated (Mandatory) Reporter** means an employee of the College who is obligated by regulation to share knowledge or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Mandatory Reporter under this regulation does not diminish the requirement under Arizona state law to report alleged



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or suspected child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporter responsibility in this Regulation.

13. **Official with Authority (OWA)** means an employee of the College explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of the College.
14. **Parties** include the Complainant(s) and Respondent(s), collectively.
15. **Promptness** means the time period in which allegations are acted upon once the College has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.
16. **Remedies** means post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s educational program.
17. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
18. **Resolution** means the result of an Informal or Formal Grievance Process.
19. **Sanction** means a consequence imposed by the College on a Respondent who is found to have violated this regulation.
20. **Sexual Harassment** means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
21. **Title IX Coordinator** is at least one official designated by the College to ensure compliance with Title IX and the College’s Title IX program. References to the Coordinator throughout this regulation may also encompass a designee of the Coordinator for specific tasks.
22. **Title IX Team** refers to the Title IX Coordinator, any deputy coordinator(s), and any member of the Grievance Process Team.

III. TITLE IX COORDINATOR

The College has designated a Title IX Coordinator who will oversee implementation of this regulation. The Title IX Coordinator has the primary responsibility for coordinating the College’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this regulation.

Complaints or notice of alleged policy/regulation violations, or inquiries about or concerns regarding this regulation, may be made internally to:

Laurie Pennington
 Title IX Coordinator
 Director, Enterprise Risk Management
 615 N. Stadium Ave., Office #251
 Thatcher, AZ 85552
 Phone: 928-428-8488
 Email: laurie.pennington@cac.edu
 Web: <https://www.cac.edu/>



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The College Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice President of Academic and Student Affairs at susan.wood@eac.edu or at 928-428-8261. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

IV. OFFICIALS WITH AUTHORITY AND MANDATED (MANDATORY) REPORTERS

OFFICIALS WITH AUTHORITY

The College has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed in Section 2. Definitions, 22. Title IX Team, these Officials with Authority listed below may also accept notice or complaints on behalf of the College.

- Title IX Coordinator
- Title IX Deputy Coordinator
- College President
- College Vice Presidents
- Deans
- Directors
- Campus Police/Security Officers
- Athletic Director

MANDATED (MANDATORY) REPORTERS

The College has also classified all employees as Mandatory Reporters of any knowledge they have that a member of the College community is experiencing harassment, discrimination, and/or retaliation. Mandatory Reporters are expected to report actual or suspected discrimination or harassment to the Title IX Coordinator or to any other Official with Authority.

Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves. Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Supportive measures may be offered as the result of such disclosures without formal action by the College.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of College policy and can be subject to disciplinary action, up to and including termination, for failure to comply.

V. CONFIDENTIAL RESOURCES AND FEDERAL RESOURCES



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If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

Off-campus (non-employees):

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

External Inquiries may be made to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline#: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>.

VI. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1. File a complaint with, or give verbal notice to, the Title IX Coordinator or Officials with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed. This information can be found on the College’s website at <https://www.eac.edu/TitleIX/>.
2. Report online, using the reporting form posted at <https://www.eac.edu/TitleIX/GrievanceForm.pdf>. Anonymous reports are accepted but can give rise to a need to investigate. The College will try to provide supportive measures to all Complainants, which is impossible with an anonymous report. Since anonymous reporting carries no obligation to initiate a formal response and since the College respects a Complainant’s requests to dismiss complaints, unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy/regulation violation by a Respondent and requesting that the College investigate the allegation(s). A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided



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for this purpose by the College) that contains the Complainant’s physical or digital signature, which can include the Complainant’s name on the email, or otherwise indicates that the Complainant is the person filing the complaint.

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

VII. SUPPORTIVE MEASURES

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College’s educational program or activity, including measures designed to protect the safety of all parties, the College’s educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator shall make supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the College will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their requests are considered with respect to the planned and implemented supportive measures.

The College will maintain the privacy of the supportive measures, provided that maintaining privacy does not impair the College’s ability to provide the supportive measures. The College will act to ensure as minimal an academic impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to student assistance resources
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Altering work arrangements for employees or student-employees
- Altering campus housing assignments
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (No Contact Orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders, when applicable
- Timely warnings under the Clery Act



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- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of No Contact Orders will be referred to appropriate student or employee conduct processes for enforcement.

VIII. EMERGENCY REMOVAL

The College can act to remove a Respondent entirely or partially from its educational program/activities or District employment on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the college Behavioral Intervention Team and/or Threat Assessment Team using its standard objective violence risk assessment procedures.

The Title IX Coordinator has sole discretion under this regulation to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this regulation will be grounds for discipline, which may include expulsion or termination from employment.

In all cases where an emergency removal is imposed:

1. The Respondent will be given written notice of the action. In the written notice there will be the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the underlying Title IX allegations, but rather an administrative process intended to determine solely whether the emergency removal is appropriate.
2. The Respondent has three (3) days after the receipt of the emergency removal to request the meeting with the Title IX Coordinator. If the Respondent does not make such a request within the three (3) day time period, objection to the emergency removal is deemed waived.
3. The Respondent may be accompanied by an Advisor of their choosing in the administrative meeting with the Title IX Coordinator.
4. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.
5. The Respondent understands there is no appeal process for emergency removal decisions.
6. A Complainant and their Advisor may be permitted to participate in this meeting, if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.
7. The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

IX. PRIVACY

Every effort is made by the College to preserve the privacy of a report under this regulation.

X. JURISDICTION



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This regulation applies to all of the College’s educational programs and activities, to conduct that takes place on the campus or on property owned or controlled by the College, at College sponsored events, or in buildings owned or controlled by recognized student organizations. The Respondent must be a member of the College community in order for its policies to apply. Nevertheless, even when the Respondent is not a member of the College’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

This regulation can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College’s educational program. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest. For example, where the effects of the off-campus conduct impede access to the College’s educational programs or activities.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its educational program or activity, or employment, and/or has continuing effects on campus or in an off-campus sponsored program or activity.

Similarly, the Title IX Coordinator may be able to provide guidance for a student or employee Complainant who experiences sexual harassment/discrimination in an environment external to the College by referring the Complainant to the College’s Academic Advising Department or Human Resources.

XI. TIME LIMITS ON REPORTING

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of regulation) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When the notice/complaint is affected by significant time delay, the College will typically apply the regulation in place at the time of the alleged misconduct and the regulation/procedures in place at the time of notice/complaint.

XII. ONLINE HARASSMENT AND MISCONDUCT

This regulation is written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College’s educational program and activities or use the College networks, technology, or equipment.

While the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, the College will engage in a variety of means to address and mitigate the effects. Any online postings or other electronic communication by students and employees, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College’s control (e.g., not on the College networks, websites, or between the College email accounts) will be subject to this regulation when such online conduct can



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be shown to cause a substantial in-program disruption to the student's educational pursuit of the College's educational programs and/or activities.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity, including where the speaker presents themselves as an employee of the College. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech will not be subjected to discipline.

XIII. TITLE IX SEXUAL HARASSMENT

The Department of Education's Office for Civil Rights (OCR), and the State of Arizona regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

For Title IX complaints, the College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment/discrimination, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo:
 - a. an employee of the College,
 - b. conditions the provision of an aid, benefit, or service of the College,
 - c. on an individual's participation in unwelcome sexual conduct.

2. Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to the College's educational program or activity. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

3. Sexual assault, defined as:
 - a. Sex Offenses, Forcible:



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- i. Any sexual act directed against another person,
- ii. without the consent of the Complainant,
- iii. including instances in which the Complainant is incapable of giving consent.
- b. Forcible Rape:
 - i. Penetration,
 - ii. no matter how slight,
 - iii. of the vagina or anus with any body part or object, or
 - iv. oral penetration by a sex organ of another person,
 - v. without the consent of the Complainant.
- c. Forcible Sodomy:
 - i. Oral or anal sexual intercourse with another person,
 - ii. forcibly,
 - iii. and/or against that person’s will (non-consensually), or
 - iv. not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Sexual Assault with an Object:
 - i. The use of an object or instrument to penetrate,
 - ii. however slightly,
 - iii. the genital or anal opening of the body of another person,
 - iv. forcibly,
 - v. and/or against that person’s will (non-consensually),
 - vi. or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e. Forcible Fondling:
 - i. The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii. for the purpose of sexual gratification,
 - iii. forcibly,
 - iv. and/or against that person’s will (non-consensually),
 - v. or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f. Sex Offenses, Non-forcible:
 - i. Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) Between persons who are related to each other,
 - 3) Within the degrees wherein marriage is prohibited by Arizona law.
 - ii. Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) With a person who is under the Arizona statutory age of consent, which is the age of 18 years old.
- 4. Dating Violence, defined as:
 - a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.



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- i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
- ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- iii. Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Arizona or
- g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the state of Arizona.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6. Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person’s safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.

For the purposes of this definition—

- 1) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- 2) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- 3) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

EASTERN ARIZONA COLLEGE reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this regulation.

Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:



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Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

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

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy and/or regulation has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

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



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It is a defense to a sexual assault regulation violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard, which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This regulation also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

XIV. RETALIATION

Protected activity under this regulation includes reporting an incident that may implicate this regulation, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Regulation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of the College’s community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law, policy or regulation, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this regulation and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The following do not constitute retaliation under this regulation:

1. The exercise of rights protected under the First Amendment.
2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this regulation and procedure. A determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

XV. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED



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If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request within the College’s duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has discretion over whether the College proceeds when the Complainant does not wish to do so. The Title IX Coordinator may sign a formal complaint to initiate a grievance process upon the decision that there is a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this regulation.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Regulation irrespective of their level of participation. Typically, when the Complainant chooses not to participate, an Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College’s obligation to protect its community.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and properly resolved through these procedures.

XVI. FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

XVII. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this regulation, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be referred to either the student code of conduct or employee conduct policies for appropriate disciplinary action.

Additionally, witnesses and parties who knowingly provide false evidence, tamper with, or destroy evidence after being directed to preserve such evidence, or deliberately mislead an investigator or hearing decision-maker will be subject to discipline under the appropriate student or employee policy/regulation.

XVIII. AMNESTY FOR COMPLAINANTS AND WITNESSES



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The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, the College maintains a policy of offering parties and witnesses amnesty from minor regulation violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident being reported.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

The College maintains a policy of amnesty for students who offer help to others in need. While regulation violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

XIV. FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
2. Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property.
3. VAWA based crimes, which include sexual assault, domestic violence, dating violence, and stalking (VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040); and
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include the president, vice-presidents, student affairs/student conduct staff, campus law enforcement/public safety, local police, coaches, athletic directors, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.



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REGULATION

1. Regulation Overview

The College will act on any formal or informal notice/complaint of violation of this Title IX Sexual Harassment Regulation 2075.01 (“the Regulation”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment as defined by Title IX (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members. Allegations of sexual harassment and discrimination that does not meet the requirements of Title IX, 34 CFR Part 106.30, may be referred to the Student Life Office (for alleged violations of the Student Code of Conduct), to the Section 504/ADA Coordinator if the complaint relates to discrimination on the basis of disability or to the Director of Human Resources/Civil Rights Equity Officer (CREO) if the complaint relates to discrimination on any other basis, or for alleged violations of Human Resources Policies).

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of this Regulation, the College will initiate a prompt initial assessment to determine the next steps. The College will initiate at least one of three responses:

- a. Offering supportive measures because the Complainant does not want to proceed formally.
- b. Offering supportive measures and initiating an informal resolution; or
- c. Offering supportive measures and initiating a Formal Grievance Process including an investigation and a hearing to determine whether or not the Regulation has been violated.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Regulation, the Title IX Coordinator (or designee) engages in an initial assessment, which is typically one (1) to five (5) business days in duration.

4. Emergency Removal

In the event an emergency removal is considered, the Title IX Coordinator will follow the procedures outlined in Section VIII of this regulation.

5. Dismissal (Mandatory and Discretionary)

Mandatory Dismissal: The Title IX Coordinator **must** dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- a. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the regulation hereinabove, even if proved; and/or



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- b. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; and/or
- c. The conduct did not occur against a person in the United States; and/or
- d. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the educational program or activity of the College.

Discretionary Dismissal: The Title IX Coordinator may choose to dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it; or
- 2. The Respondent is no longer enrolled in or employed by the College; or
- 3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

Discretionary dismissal decisions may be appealed by any party under the procedures for appeal below.

6. Counterclaims

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims made with retaliatory intent will not be permitted and may constitute a violation of this regulation.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation; in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

7. Right to an Advisor

The parties may each have an Advisor of their choice. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community. The Advisor may be present with the Complainant or Respondent for all of their meetings and interviews within the resolution process, if they so choose.



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The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. “Available” means the party cannot insist on an Advisor who simply does not have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker.

If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College’s resolution process. If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with the College’s policies, regulations, and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

a. Advisors in Hearings/Eastern Arizona College-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing but must be conducted by the parties’ Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any direct and cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct cross-examination, the College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker during the hearing.

b. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the College’s policies and procedures.

c. Advisor Violations of Eastern Arizona College Regulation

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings. Advisors may not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with



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their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this regulation will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

d. Sharing Information with the Advisor

Parties may share documentation and evidentiary information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The College also provides a consent form that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the College is able to share records with an Advisor.

If a party requests that all communication be made solely through their attorney Advisor, the College will be unable to do this as it voids the College’s ability to comply with direction from regulatory agencies.

e. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College’s privacy expectations.

f. Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend scheduled College meetings when planned. At the sole discretion of the Title IX Coordinator, scheduled meetings may be changed to accommodate an Advisor’s inability to attend. Such discretion is limited to determining if doing so does not cause an unreasonable delay. The decision to change meetings dates and times is final.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

g. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).



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The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

8. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with this regulation. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. The College encourages parties to discuss this with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include four different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism, such as mediation.
- When the parties agree to resolve the matter by entering into an Informal Resolution Agreement.
- When the Respondent accepts responsibility for violating policy and/or regulation, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing an Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College 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.

9. Formal Grievance Process

The Formal Grievance Process relies on a team of administrators (“the Team”) to carry out the process. Members of the Team are announced in an annual distribution of this Regulation to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

10. Formal Grievance Process: Notice of Investigation and Allegations



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The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of the allegations.
- The identity of the involved parties (if known).
- The precise misconduct being alleged.
- The date and location of the alleged incident(s) (if known).
- The specific policies and/or regulations implicated.
- A description of the applicable procedures.
- A statement of the potential sanctions/responsive actions that could result.
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination.
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period.
- A statement about the College’s Regulation on retaliation.
- Information about the privacy of the process.
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor.
- A statement informing the parties that the College’s Regulation prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.
- Detail on how the party may request disability accommodations during the interview process.
- A suggested date and time for an initial meeting (proper time will be given to allow for the selection of an advisor)
- The name(s) and contact information of the individual(s) from the Grievance Process Team that will conduct the investigation.
- Information on raising concerns with regard to a conflict of interest or bias by the Investigator(s) or the Title IX Coordinator.
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official College records, or emailed to the parties’ College-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

11. Resolution Timeline

The College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day



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time period, including appeal, if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

Any time the general timeframes for resolution outlined in College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

12. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator shall appoint a team of two (2) investigators to investigate the allegations. Appointment of investigators typically occurs within two (2) business days of determining that an investigation should proceed.

13. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The parties may, at any time during the resolution process contact the Title IX Coordinator to raise a concern regarding bias or conflict of interest. The Title IX Coordinator will ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, the parties may contact the Vice President of Academic and Student Affairs.

The Formal Grievance Process involves an objective evaluation of all relevant inculpatory and exculpatory evidence obtained. Credibility determinations may not be based solely on an individual’s status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a regulation violation by the applicable preponderance of the evidence standard.

14. Delays in the Investigation Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The College will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying



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incident(s) have been filed or that criminal charges have been dismissed or reduced.

15. The Investigation Process

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available relevant evidence; and identifying sources of expert information, as necessary.

All parties will have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

16. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the College are expected to cooperate with and participate in the College’s investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of regulation and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in addition to being interviewed.

17. Recording of Interviews

No audio or video recording of any kind is permitted during investigation meetings, except for recordings initiated by the College.

18. Evidentiary Considerations in the Investigation

The investigation does not consider:

- A. Incidents not directly related to the possible violation unless they evidence a pattern.
- B. the character of the parties; or
- C. questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

19. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the



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parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is made available to the Parties and the Decision-maker for review and comment, unless all parties and the Decision-maker agree to an expedited timeline. This agreement must be in writing.

The Title IX Coordinator will select a Decision-maker that is to be hired from a list of approved attorneys for any hearing held under the Title IX Regulation.

20. Hearing Decision-maker Composition

The College will designate a single ~~panel~~ of Decision-maker. The Decision-maker will also Chair the hearing. The Decision-maker will not have had any previous involvement with the investigation. The Decision-maker is an out-sourced position that will have had no previous involvement in the matter at hand.

21. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider:

- A. Incidents not directly related to the possible violation unless they evidence a pattern.
- B. the character of the parties; or
- C. questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties, if they so choose, may submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence-- whether it is more likely than not that the Respondent violated the Policy/Regulation as alleged.

22. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:



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- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker about the matter unless they have been provided already.
- An invitation to each party to submit to the Decision-maker an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Direction that the parties may not bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Regulation) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Regulation is not in good standing to graduate.

23. Virtual Hearings

All hearings will occur virtually. The Title IX Coordinator will arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Typically, each party will be located in a separate room from the Decision-maker but will be able to see and hear each other.

24. Pre-Hearing Preparation

The Decision-maker, or designee, after any necessary consultation with the parties, Investigator(s), and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing. During the ten (10) business day period prior to the hearing, the parties have the opportunity to review and comment on the final investigation report and available evidence.



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The Decision-maker, or designee, will also provide the parties with a copy of the pre-hearing preparation checklist/document. A copy of the pre-hearing preparation checklist/document may be found on the College’s Title IX webpage: <https://www.eac.edu/TitleIX/>

25. Hearing Procedures

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged regulation violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Title IX Regulation.

Participants at the hearing will include the Decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged regulation violation.

27. Refusal to Submit to Cross-Examination and Inferences

The Decision-maker may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy/regulation violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant.

If a party’s Advisor of choice refuses to comply with the College’s established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.



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28. Recording Hearings

Hearings (but not deliberations) will be recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording.

29. Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy/regulation violation(s) in question. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, but they are not binding.

The Decision-maker will review the statements and any pertinent conduct history provided by the investigator(s) and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted electronically to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the extension.

30. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome (NOO). The Title IX Coordinator will then share the NOO, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker’s deliberation statement.

The Notice of Outcome letter will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; and a statement of, and rationale for, the resulting decision. The Notice of Outcome will also include information on the relevant procedures and bases for any available appeal options. The Notice of Outcome will be shared with the parties simultaneously.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties’ College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively



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delivered.

31. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s).
- The Respondent’s disciplinary history.
- Previous allegations or allegations involving similar conduct.
- 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 discrimination, harassment, and/or retaliation on the Complainant and the community.
- And/or any other information deemed relevant by the Decision-maker.

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

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

a. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any College policy, regulation, procedure, or directive will result in more severe sanctions/responsive actions. Terms of the warning may include no-contact orders, and/or other measures deemed appropriate.
- *Required Counseling*: A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy or regulation, providing for more severe disciplinary sanctions in the event that the student or student organization is found in violation of any institutional policy, regulation, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Eviction from Campus Housing*: A mandate that the student is required to move out of the residence halls within a specified period of time (the “Effective Date”). Terms of the eviction will be articulated and will include a no trespass notification stating that upon the Effective Date, the student is prohibited from returning to the residence halls and its surrounding areas.
- *Deferred Eviction from Campus Housing*: In certain circumstances, a deferral of an eviction may be imposed, and will include a written reprimand for policy and/or regulation violation(s), providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, regulation, procedure, or



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directive within a specified period of time. A deferred eviction may also include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at College.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student’s official transcript.
- *Withholding Diploma*: The College may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including registration at EAC) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

32. Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Title IX Regulation, the College may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student. A student who withdraws or leaves while the



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process is pending may not return to the College. Such exclusion applies to all campuses of the College. A hold will be placed on their ability to be readmitted. They may also be barred from College property and/or events.

However, the College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

During the resolution process, the College may put a hold on a responding student’s transcript or place a notation on a responding student’s transcript that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire with the College, and the records retained by the Title IX Coordinator will reflect that status.

However, the College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

33. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome Letter. Once the five (5) days has passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Appeal Chair, specifically the Vice President of Academic and Student Affairs or Vice President of Administration, as appropriate, for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

a. Grounds for Appeal

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter.
2. New evidence that was not reasonably available at the time determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. An allegation that the Title IX Coordinator, Investigators, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The Appeal Chair will deny any request for appeal that does not meet the grounds in this Regulation and will notify the party and their Advisors in writing of the denial and the rationale. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of the request for appeal being received by the Appeal Chair.



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If any of the grounds in the Request for Appeal meet the grounds in this Regulation, then the Appeal Chair will:

1. Notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker.
2. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker an emailed appeal request with the approved grounds.
3. Provide the other party(ies) and their Advisors, the Title IX Coordinator, and when appropriate, the Investigators and/or the original Decision-maker five (5) business days to submit a response to the portion of the appeal that was approved and involves them.
4. Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than fifteen (15) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence.
5. Prepare a Notice of Appeal Outcome letter and send it to all parties simultaneously, which includes the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

All decisions by the Appeal Chair are final and may not be appealed by either party.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The College may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

34. Long-term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services



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- Referral to the Employee Assistance Program
- Referral to student assistance resources
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Regulation modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy/regulation violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College’s ability to provide these services.

35. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from **the** College and may be noted on a student’s official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

36. Recordkeeping

The College will maintain for a period of [at least] seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation.
2. Any disciplinary sanctions imposed on the Respondent.
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College’s educational program or activity.
4. Any appeal and the result therefrom.
5. Any Informal Resolution and the result therefrom.
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an



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Informal Resolution process. The College will make these training materials publicly available on its website; and

7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent.
 - b. Any measures designed to restore or preserve equal access to the College’s educational program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The College will also maintain any and all records in accordance with state and federal laws.

37. Disabilities Accommodations in the Resolution Process

The College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the College’s resolution process. Anyone needing such accommodation should contact the Title IX Coordinator for assistance.

38. Mandatory Training

This Regulation requires that annual training for the Title IX Coordinator(s), investigators, decision-makers, and any person who facilitates an informal resolution process will include:

- A. the definition of sexual harassment under this Regulation,
- B. the scope of the College educational program or activity,
- C. how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
- D. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers will receive annual training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant.

Investigators will receive annual training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

39. Revision of this Regulation and Procedures

This regulation and procedures supersede any previous regulation(s) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. The College



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reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy, regulation or procedural alterations not reflected in this regulation.

If government 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 government regulations or holdings.

This document does not create legally enforceable protections beyond the protection afforded by state and federal laws, which frame such policies and codes, generally.

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