

**UNIVERSITY OF MICHIGAN
EMPLOYEE PROCEDURES**

Effective October 1, 2021

Employee Procedures
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Effective October 1, 2020

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OVERVIEW

This document describes the procedures the University applies when it receives a report of possible PROHIBITED CONDUCT¹ by an EMPLOYEE (referred to as “Employee Procedures” or “Procedures”).² The Procedures are part of the [Policy on Sexual and Gender-Based Misconduct](#) (“Policy”). The University applies these Procedures to address allegations of PROHIBITED CONDUCT as defined in the Policy and to impose corrective action, as appropriate, for violation of the Policy.

The Policy and the Employee Procedures may address the same topic, with the Policy providing more general guidance and with the Procedures providing more specific rules. These Procedures therefore must be read in conjunction with the [Policy](#).

For information regarding available [resources](#) or [how to make a report](#), please refer to [Section V](#) and [Section VII](#), respectively, of the [Policy](#).

These Procedures apply to the Ann Arbor campus, the University of Michigan-Dearborn, the University of Michigan-Flint, and Michigan Medicine (collectively the “University”).

Capitalized terms used and not otherwise defined in these Procedures are defined in the [Policy](#).

I. RELEVANT POLICIES AND PROCEDURES

At all times, it is within the University’s discretion to determine which policies and procedures apply and under which policy or policies action may be taken. Some PROHIBITED CONDUCT may result in separate and additional proceedings under one or more University policies. A list of the potential policies and procedures that may apply can be found in related [Standard Practice Guide 601.89](#) (“SPG 601.89”).

II. INITIAL ASSESSMENT AND INTAKE

A. Initial Assessment

When the ECRT receives a report of possible PROHIBITED CONDUCT, ECRT will:

- Assess the nature and circumstances of the report, including whether the names and/or any other personally identifiable information for the COMPLAINANT, the RESPONDENT, any WITNESSES, and/or any other

¹ The University of Michigan Policy on Sexual and Gender-Based Misconduct (“Policy”) prohibits the following types of conduct as defined in Section XI (also referred to collectively as “PROHIBITED CONDUCT”): Sexual and Gender-Based Misconduct (i.e., Sexual Assault, Sexual Exploitation, Sexual Harassment, Gender-Based Harassment, Sex and/or Gender-Based Stalking, Intimate Partner Violence, Sex and Gender-Based Discrimination, Retaliation and Violation of SUPPORTIVE MEASURES); and Title IX Misconduct (i.e., *Quid Pro Quo*, Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, Intimate Partner Violence and Stalking, as defined by and within the scope of Title IX).

² The Employee Procedures may be used to resolve reports of PROHIBITED CONDUCT against a THIRD PARTY. As set forth in the Policy, ECRT will determine the appropriate manner of resolution, if any, by the nature of the relationship of the THIRD PARTY to the University.

individual with knowledge of the reported incident are provided, to facilitate appropriate follow up;

- Assess the nature of the allegations to identify possible [resolution options](#) that may be available, and/or to identify other offices that may be appropriate to address matters not related to PROHIBITED CONDUCT;
- Ascertain the ages of the COMPLAINANT and the RESPONDENT, if known, and, if either party is a minor (under 18 years old), take all necessary actions based upon the facts and circumstances of the case, including contacting the appropriate child protective service agency, if required by law; and
- Notify the DIVISION OF PUBLIC SAFETY AND SECURITY of the report if the conduct, as alleged, would constitute a crime.

B. Intake with the Parties

1. Complainant

After receiving a report of possible PROHIBITED CONDUCT committed by an EMPLOYEE or THIRD PARTY, ECRT will promptly contact the COMPLAINANT, if one is identified or identifiable, to (1) discuss the availability of [SUPPORTIVE MEASURES](#) (e.g., confidential support, employment accommodations, mutual contact restrictions, etc.); (2) ask about the COMPLAINANT'S wishes with respect to SUPPORTIVE MEASURES; (3) explain that SUPPORTIVE MEASURES are available with or without the filing of a FORMAL COMPLAINT; and (4) explain how to file a [FORMAL COMPLAINT](#).

ECRT will also provide the COMPLAINANT with a written explanation of available resources, options, and other important Policy information, including the following:

- Support and assistance available through University [resources](#), including the COMPLAINANT'S option to seek [SUPPORTIVE MEASURES](#) regardless of whether they choose to participate in a University and/or law enforcement investigation;
- The COMPLAINANT'S option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- The process for filing a FORMAL COMPLAINT, if appropriate;
- The University's procedural options, including [investigations](#), [Adaptable Resolution](#), and [Mediation](#), if available;

- The COMPLAINANT’S right to an ADVISOR of the COMPLAINANT’S choosing (see, e.g., [Section VI \(A\)\(6\)](#) below);
- The University’s prohibition of [Retaliation](#) against the COMPLAINANT, the RESPONDENT, the WITNESSES, and the reporting parties; how to report acts of Retaliation; and that the University will take prompt action when Retaliation is reported;
- The opportunity to discuss with the TITLE IX COORDINATOR or designee the COMPLAINANT’S resources, rights, and options;
- A copy of or a link to the University’s [Policy on Sexual and Gender-Based Misconduct](#) and these Procedures; and
- That parties and WITNESSES are prohibited from knowingly making false statements or knowingly submitting false information during this process.

2. Respondent

When a FORMAL COMPLAINT is made, ECRT will ensure that the RESPONDENT is informed of the following in writing:

- Notice of the allegations potentially constituting [PROHIBITED CONDUCT](#), including the identities of the parties (if known), the date and location of the alleged incident (if known), and potential Policy violations;
- Notice that a determination regarding responsibility is made at the conclusion of the proceeding and the RESPONDENT is presumed not responsible for the alleged PROHIBITED CONDUCT prior to the determination;
- Support and assistance available through University [resources](#) including the RESPONDENT’S option to seek [SUPPORTIVE MEASURES](#) (e.g., confidential support, employment accommodations, mutual contact restrictions, etc.);
- The RESPONDENT’S right to an ADVISOR of the RESPONDENT’S choosing (see, e.g., [Section VI \(A\)\(6\)](#) below);
- The University’s prohibition of [Retaliation](#) against the COMPLAINANT, the RESPONDENT, the WITNESSES, and the reporting parties; how to report acts of Retaliation; and that the University will take prompt action when Retaliation is reported;

- The opportunity to discuss with the TITLE IX COORDINATOR or designee the RESPONDENT’S resources, rights, and options;
- A copy of or link to the [University’s Policy on Sexual and Gender-Based Misconduct](#); and
- That parties and WITNESSES are prohibited from knowingly making false statements or knowingly submitting false information during this process.

III. SUPPORTIVE MEASURES

A definition, explanation, and examples of SUPPORTIVE MEASURES are described in [Section IX of the Policy](#).

Individuals who wish to request SUPPORTIVE MEASURES confidentially, without making a report to ECRT, may do so through the [Faculty and Staff Counseling Consultation Office](#), [Michigan Medicine Office of Counseling and Workplace Resilience](#), and other CONFIDENTIAL RESOURCES offering SUPPORTIVE MEASURES, as identified in [Section IX of the Policy](#). These CONFIDENTIAL RESOURCES can often arrange SUPPORTIVE MEASURES directly; however, they may need to interact with other University offices to implement the SUPPORTIVE MEASURES. The CONFIDENTIAL RESOURCE will not communicate with other University offices about arranging a SUPPORTIVE MEASURES unless the individual requesting the SUPPORTIVE MEASURES waives confidentiality for that purpose, with the understanding that the University office contacted may report the matter to ECRT.

Individuals may also request SUPPORTIVE MEASURES through ECRT. During the initial intake meetings with the COMPLAINANT, the RESPONDENT, and WITNESSES, ECRT will discuss SUPPORTIVE MEASURES. If an individual requests SUPPORTIVE MEASURES, ECRT will communicate with the individual and other offices as appropriate, or appropriately refer the individual, in order to assess what SUPPORTIVE MEASURES are available. The TITLE IX COORDINATOR, in consultation with relevant administrative offices, is responsible for determining whether the requested SUPPORTIVE MEASURES will be made and for coordinating the effective implementation of the SUPPORTIVE MEASURES.

There may be some SUPPORTIVE MEASURES, such as mutual restrictions on contact or communication between the parties that the TITLE IX COORDINATOR approves and implements directly without involvement from other offices. In such instances, the TITLE IX COORDINATOR or their designee will notify the individual receiving the SUPPORTIVE MEASURES, any other individuals affected by the SUPPORTIVE MEASURES, and, as appropriate, may need to notify other University offices or EMPLOYEES of such restrictions.

Implementation of SUPPORTIVE MEASURES does not suggest that the University has made any decision about the merits of the report or FORMAL COMPLAINT.

The University will keep confidential any SUPPORTIVE MEASURES provided under this Policy to the extent possible, and will promptly address any reported Violation of SUPPORTIVE MEASURES under the Sexual and Gender-Based Misconduct Process below. An individual who believes a person has engaged in Violation of SUPPORTIVE MEASURES (e.g., failure to abide by a mutual restriction on contact) should report their concern to ECRT.

IV. PROCEDURAL OPTIONS FOLLOWING AN INITIAL ASSESSMENT

Upon completion of an initial assessment, ECRT will undertake one of the below actions, with the understanding that as a case progresses, the action warranted may change, as described in these Procedures. In all cases, the final decision on whether, how, and to what extent the University will proceed and whether other measures will be taken in connection with any report of possible PROHIBITED CONDUCT rests with ECRT.

[A flowchart depicting an overview can be found here.](#)

A. Matters Involving a Formal Complaint

When PROHIBITED CONDUCT is alleged, ECRT will initiate one of the following processes:

- **Sexual and Gender-Based Misconduct Process:** This process is used when a FORMAL COMPLAINT is filed that alleges Sexual or Gender-Based Misconduct and does not allege Title IX Misconduct. The Sexual and Gender-Based Misconduct Process generally concludes with a written document containing a summary of the relevant evidence gathered during the investigation and a finding as to whether the Policy was violated. The investigation report is provided to the appropriate University official(s) to determine what, if any, further action is warranted, including corrective action if appropriate. The University will strive to complete such matters within 180 days of the date it is determined that an investigation will be opened.
- **Title IX Misconduct Process:** This process is used when a FORMAL COMPLAINT is filed that alleges Title IX Misconduct, or both Title IX Misconduct and other PROHIBITED CONDUCT. The Title IX Misconduct process generally results in a written document containing a summary of the relevant evidence, a Hearing that results in a finding as to whether the Policy was violated and, if appropriate, corrective action as determined by the appropriate University official, and an Appeal. The University will strive to complete such matters within 180 days of the date it is determined that an investigation will be opened.
- **Adaptable Resolution and Mediation:** Adaptable Resolution and mediation are both non-investigative processes that may be used when both parties voluntarily agree to such a process; the TITLE IX

COORDINATOR approves use of such a process; and the allegations do not involve behavior that, if it were found to have occurred, would result in significant employment discipline. These processes are usually not used when the concerns involve recurring behavior or Sexual Assault and will not be used where the COMPLAINANT is a STUDENT or PATIENT and the RESPONDENT is an EMPLOYEE.

Mediation is a structured interaction between the COMPLAINANT and the RESPONDENT with the help of a neutral MEDIATOR to achieve a resolution satisfactory to both parties. Mediation does not presume a harm-causing party and a harmed party, and it is not designed to allow the RESPONDENT to acknowledge harm and take responsibility for repairing harm (to the extent possible).

Adaptable Resolution is a voluntary, remedies-based, non-disciplinary structured process between or among affected parties that focuses on creating an agreement to address harm and create accountability. Adaptable Resolution is generally designed to allow a RESPONDENT to acknowledge harm and take responsibility for repairing harm (to the extent possible) experienced by the COMPLAINANT and/or the UNIVERSITY COMMUNITY. [For circumstances where parties do not wish to interact with one another there are various forms of Adaptable Resolution that may be used, depending upon the circumstances and the parties' wishes.](#) Adaptable Resolution will be available for appropriate cases on a limited and pilot basis for matters reported between October 1, 2021 and June 30, 2022, during which further use will be assessed.

If Adaptable Resolution or mediation is unsuccessful, the matter may proceed to another appropriate response as outlined in this section. Statements made by parties during the Adaptable Resolution or mediation process may not be used in any other University process, including the [Sexual or Gender-Based Misconduct](#) or [Title IX Misconduct process](#). In general, the person conducting the Adaptable Resolution or mediation will strive to complete that process within 90 calendar days from the date the matter is referred for resolution.

- **Other measures:** Other measures are generally used when a report or FORMAL COMPLAINT of possible PROHIBITED CONDUCT is received, but the identity of the RESPONDENT is unknown or the report or FORMAL COMPLAINT does not allege PROHIBITED CONDUCT that would constitute a possible Policy violation, yet the behavior, if it occurred as alleged, is an inappropriate employment-related behavior. Other measures may include training or education for specific groups or members of the UNIVERSITY COMMUNITY.
- **Referral:** Referral means that the report or FORMAL COMPLAINT of

possible PROHIBITED CONDUCT is directed to another appropriate University office or process. Generally, a referral is used when the Policy or Procedures do not apply, such as when the report does not describe possible PROHIBITED CONDUCT but raises concerns of inappropriate behavior falling outside of the Policy or where the matter is addressed under the processes outlined in a collective bargaining agreement. A referral may also occur when the report raises issues addressed by multiple University policies or offices. In some cases, ECRT will work jointly with another office(s) to address the possible PROHIBITED CONDUCT.

- **Pre-Investigation Review:** In some cases, ECRT may conduct a pre-investigation review intended to gather more information as to which of the above actions, or other reasonable responses, may be appropriate. A pre-investigation review is used in a variety of instances, such as when a report of possible PROHIBITED CONDUCT is received, but it is unclear who the affected party and/or RESPONDENT is, or whether relevant evidence is available to the INVESTIGATOR. If the review identifies the RESPONDENT and indicates that relevant evidence of possible PROHIBITED CONDUCT is likely available, a FORMAL COMPLAINT is generally filed and the matter proceeds through one of the processes outlined above. If that does not occur, a different action may be taken or the matter may be closed pending receipt of additional information. The duration of a pre-investigation review may vary significantly, but ECRT will strive to complete a pre-investigation review within 90 calendar days.

The parties will be notified in writing of any extension of the timeframes set forth above and the reason for such extension.

Reasonable accommodations are available to individuals with disabilities upon request and as needed during any process outlined in these Procedures.

The time frames set forth in these Procedures may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for a temporary delay to gather evidence; accommodate the availability of parties or WITNESSES the need for language assistance or accommodation of disabilities; account for University breaks or vacations; account for case complexities (including the number of WITNESSES and volume of information provided by the parties), or for other legitimate reasons. The parties will be notified in writing to the extent the University exceeds any of the time frames set forth above, and the reasons for such extension.

B. Matters Involving Third Parties or Non-Participating Complainants

There are some matters in which a report or FORMAL COMPLAINT involves an unaffiliated RESPONDENT (i.e. a THIRD PARTY) or the COMPLAINANT does not

wish to file a FORMAL COMPLAINT after a report is made. These matters will be addressed as outlined below.

- **Reports or Formal Complaints Against Unaffiliated Third Parties:** Generally, if a report of PROHIBITED CONDUCT is made against a RESPONDENT who has no affiliation with the University, the University's ability to take direct action is limited. The University will still take steps to inform the COMPLAINANT of support and assistance available through University resources, and resources available from entities outside the University (including law enforcement).
- **Complainant Request for No University Response or to Not Participate in a University Response:** In some instances, the COMPLAINANT may not wish to file a FORMAL COMPLAINT or participate in any process (the COMPLAINANT is encouraged, but not required, to participate). The University will consider the COMPLAINANT'S wishes, but generally will move forward when the RESPONDENT is an EMPLOYEE. The University retains the discretion to determine whether sufficient evidence exists, without the COMPLAINANT'S participation, to proceed. In those instances when they are appropriate, non-investigative options, such as a referral, pre-investigation review, or other measure, may be considered.

The University may pursue a report of possible PROHIBITED CONDUCT without a participating COMPLAINANT if the University has sufficient information, or the means of obtaining such information to proceed, and doing so provides the RESPONDENT a fair opportunity to respond. In these cases, the TITLE IX COORDINATOR files the FORMAL COMPLAINT to initiate either the Sexual or Gender-Based Misconduct process or the Title IX Misconduct process.

The TITLE IX COORDINATOR considers the following factors when evaluating whether to sign a FORMAL COMPLAINT to initiate the Title IX Misconduct process: (1) the availability of information or evidence suggesting that a Policy violation may have occurred and the University's ability to proceed effectively to completion of a process; (2) the availability of information or evidence suggesting a pattern of alleged sexual harassment by a RESPONDENT in a position of authority; and (3) whether the University has a Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent, and address the effects of the PROHIBITED CONDUCT. In all cases, including those in which the TITLE IX COORDINATOR decides to file a FORMAL COMPLAINT to initiate the Title IX Misconduct process, the TITLE IX COORDINATOR remains neutral and is not a COMPLAINANT or otherwise a party to the matter.

In cases where the University investigates without a participating COMPLAINANT, ECRT will notify the COMPLAINANT that the University intends to initiate a process, and that the COMPLAINANT is encouraged, but not required, to participate.

Generally, a decision not to participate as a COMPLAINANT means that the COMPLAINANT waives the rights afforded to a participating COMPLAINANT. However, under limited circumstances, the University may provide some or all of the rights of a COMPLAINANT as defined in the Policy and these Procedures, as deemed appropriate by ECRT, or as otherwise required by law.

If a COMPLAINANT declines to participate in an investigation, the University's ability to fully investigate and respond to a report of PROHIBITED CONDUCT is limited. The University may, however, pursue other steps to limit the effects of the PROHIBITED CONDUCT and prevent its recurrence.

V. ADMINISTRATIVE LEAVE AND EMERGENCY REMOVAL

A. Administrative Leaves or Suspensions

The University may place non-STUDENT-EMPLOYEE³ RESPONDENTS on paid administrative leave or suspension during the pendency of an investigation and resolution process as outlined below. Units are required to consult with ECRT and Human Resources before, or if not practicable, within a reasonable time after placing any EMPLOYEE RESPONDENT on paid administrative leave.

The University may also place a non-STUDENT-EMPLOYEE RESPONDENT on unpaid administrative leave or suspension during the pendency of an investigation and resolution process, subject to any collective bargaining agreement, Regents' Bylaws, or SPGs applicable to the RESPONDENT. Units are required to consult with ECRT and Human Resources before, or if not practicable, within a reasonable time after placing any EMPLOYEE RESPONDENT on unpaid administrative leave or suspension.

In those instances in which the University determines that an administrative leave or suspension directly related to allegations of Title IX Misconduct will be unpaid and the RESPONDENT did not have available to them a means to challenge the administrative leave or suspension without pay before it was imposed through a process defined in a collective bargaining agreement, Regents' Bylaw, or SPG, the RESPONDENT may present a written challenge regarding the need for or the adequacy of the unpaid administrative leave or suspension to ECRT. Once a written challenge of unpaid administrative leave or suspension is received, ECRT will involve the relevant University office(s), such as Human Resources and department leadership, and schedule a meeting with the RESPONDENT. The relevant University office(s) and ECRT will hear the RESPONDENT'S concerns, conduct any necessary follow-up, and render a determination, usually within 72 hours of the meeting. The unpaid administrative leave or suspension will remain

³ The appropriateness of administrative leaves for STUDENT-EMPLOYEES will be determined on a case-by-case basis, considering the University's obligations under applicable law and the Policy to provide SUPPORTIVE MEASURES that are not punitive, disciplinary or unreasonably burdensome, and its obligation to respond to reported Title IX Misconduct in a manner that is not clearly unreasonable in light of the known circumstances.

in effect pending the determination. If the determination is that the RESPONDENT should not be on unpaid administrative leave or suspension, the RESPONDENT will be returned to paid status and receive any back pay owed for the period of time during which they were on unpaid status. Whether the RESPONDENT will thereafter be placed on paid administrative leave or suspension during the pendency of the investigation and resolution process, or will be returned to regular or modified work status, will be determined by the University, subject to any applicable collective bargaining agreement, Regents' Bylaws, or SPGs.

B. Emergency Removals

Where there is an apparent immediate threat to the physical health or safety of any member of the UNIVERSITY COMMUNITY or other individual arising from the alleged PROHIBITED CONDUCT, the University can remove a THIRD PARTY RESPONDENT from the University's PROGRAM OR ACTIVITY and issue any necessary related no-trespass and no-contact orders. The University will make the decision to remove a THIRD PARTY RESPONDENT from the University's PROGRAM OR ACTIVITY based on an individualized assessment and risk analysis.

If the University makes such a decision in response to a FORMAL COMPLAINT of Title IX Misconduct, the RESPONDENT will be provided with written notice, including the appropriate process/es to challenge the decision (e.g., immediately following the removal).

VI. INVESTIGATIONS AND FORMAL RESOLUTIONS

A [flowchart depicting the Sexual and Gender-Based Misconduct process can be found here](#) and a [flowchart depicting the Title IX Misconduct Process can be found here](#). The University will strive to complete either the Sexual and Gender-Based Misconduct Process (investigation, finding, sanctions as applicable, and Appeals, if any) or the Title IX Misconduct process (investigation, Hearing, finding, sanctions as applicable, and Appeals, if any) within 180 days.

A. Core Principles

- 1. Impartiality.** As applicable, the TITLE IX COORDINATOR (including Deputy Title IX Coordinators), INVESTIGATOR, HEARING OFFICER, MEDIATOR, ADAPTABLE RESOLUTION COORDINATOR, any entity/individual determining sanctions, and the EXTERNAL REVIEWER each must be impartial and free of any actual conflict of interest or bias.

A COMPLAINANT or a RESPONDENT who has concerns that the TITLE IX COORDINATOR cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or WITNESSES, etc.) may report those concerns to:

Ann Arbor Campus:

Executive Director
Equity, Civil Rights & Title IX Office
2072 Administrative Services
1009 Greene Street
Ann Arbor, MI 48109
(734) 763-0235
ecrtbiasconcerns@umich.edu

Dearborn Campus:

Chief of Staff and Senior Advisor to the Chancellor
1070 Administration Building
4901 Evergreen Road
Dearborn, Michigan 48128-1491
(313) 593-5500
ChiefofStaff-Dearborn@umich.edu

Flint Campus:

Office of the Chancellor Projects Manager
303 E Kearsley Street
221 University Pavilion
Flint, MI 48502-1950
Phone: (810) 762-3322
Fax: (810) 762-5725
ecrtFlintbiasconcerns@umich.edu

The applicable individual identified above will assess the circumstances and determine whether a different INVESTIGATOR should be assigned to the matter or an alternate for the TITLE IX COORDINATOR.

A COMPLAINANT or a RESPONDENT who has concerns that the INVESTIGATOR, HEARING OFFICER, MEDIATOR, any entity/individual determining sanctions, and the EXTERNAL REVIEWER cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or WITNESSES, etc.) may report those concerns to the [TITLE IX COORDINATOR](#).

2. **Presumption of Good Faith Reporting.** The University presumes that reports of PROHIBITED CONDUCT are made in good faith.
3. **Presumption of Non-Violation and Standard of Proof – Preponderance of the Evidence.** The RESPONDENT is presumed not to have violated the Policy unless it is determined through applicable procedures that a preponderance of the evidence supports a finding of a Policy violation. Preponderance of the evidence means the evidence demonstrates it is “more likely than not” that conduct occurred in violation of the Policy.
4. **False Statements.** A person who makes a materially false statement in bad faith in the course of a proceeding may be subject to disciplinary action. A determination regarding responsibility, standing on its own, is insufficient to conclude that any party made a materially false statement in bad faith.
5. **Expectations of Complainant, Respondent, and Witnesses.** The COMPLAINANT, the RESPONDENT, the WITNESSES, and others sharing information with the INVESTIGATOR are expected to provide all relevant information at the time of their interview, or as soon as otherwise possible, and to be truthful and complete in their responses throughout the process.

Even if a COMPLAINANT or a RESPONDENT declines to participate, the University may deem it necessary to continue to investigate the allegation(s). Non-participation by a party or WITNESS may impact the outcome of the investigative resolution. Coercing any party or WITNESS not to participate in the investigative resolution constitutes [Retaliation](#) and violates University policy.

A party or WITNESS who participates in the process is expected to participate in a live interview if requested. Similarly, a person who elects to participate is expected to participate in all aspects of the process (e.g., a WITNESS who participates in an interview is expected to make themselves available for a Hearing if requested to do so).

6. **Advisors.** Throughout the process, a COMPLAINANT or a RESPONDENT may have an ADVISOR of their choice. An ADVISOR is an individual chosen by a party to provide support and guidance to them during the process. This ADVISOR is separate from an EQUITY SPECIALIST, who may be working with the parties throughout the process. This ADVISOR may or may not be the same person as the ADVISOR who asks the other party and WITNESSES relevant questions during a Hearing.

A party may request to consult with their ADVISOR at any point. However,

the ADVISOR may not represent or otherwise speak for the party they are supporting, except when a Hearing occurs as part of the Title IX Misconduct process, when the ADVISOR may ask the other party and WITNESSES relevant questions. If a party does not have an ADVISOR available at the Hearing, the University will provide an ADVISOR to ask questions on behalf of that party, as described in the Title IX Misconduct process in [Section VIII \(A\)\(6\)](#) of these Procedures.

INVESTIGATORS, HEARING OFFICERS, and the TITLE IX COORDINATOR have the right at all times to determine what constitutes acceptable behavior on the part of an ADVISOR and to take appropriate steps, including temporarily suspending the Hearing and/or removing the ADVISOR, to ensure compliance with the Policy and these procedures.

7. **Prior Sexual Conduct of the Complainant.** Questions and evidence about the COMPLAINANT’S prior sexual behavior are not relevant, unless 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 the RESPONDENT, and are offered to prove consent, or if due process under applicable law otherwise requires it. For example, if the question being determined is whether consent was given through mutually understandable words or actions, information about the manner in which consent has previously been communicated between the parties may be relevant in determining whether consent was sought and given during the incident in question. The decision-maker (e.g., the HEARING OFFICER or the INVESTIGATOR, as applicable) will determine the relevance of such information. Prior sexual contact between a COMPLAINANT and a RESPONDENT is not relevant to prove character or reputation and will never be used for this purpose.

- 8. Prior or Subsequent Conduct of the Respondent.** Prior or subsequent conduct of the RESPONDENT will never be used to prove character or reputation, but may be considered for other purposes, such as determining pattern, knowledge, or intent. For example, evidence of a pattern of PROHIBITED CONDUCT by the RESPONDENT, either before or after the incident in question, may be deemed relevant to the determination of whether the RESPONDENT violated the Policy or engaged in inappropriate behavior. A finding in a previous investigation that the RESPONDENT violated the Policy by engaging in similar conduct may be relevant evidence of a pattern of behavior. Likewise, evidence in a previous investigation that the RESPONDENT engaged in similar behavior, but the behavior was not at that time determined to be at a sufficient level to constitute a Policy violation, may be relevant to assess severity, persistence and/or pervasiveness, as applicable, or relevant evidence of a pattern, in a subsequent investigation.

The relevance of pattern evidence will generally be determined based on an assessment of whether the previous or subsequent conduct was similar to the conduct under investigation or indicates a pattern of PROHIBITED CONDUCT. The decision-maker (e.g., the HEARING OFFICER or the INVESTIGATOR, as applicable) will determine the relevance of such information.

- 9. Witnesses.** WITNESSES must have observed the acts in question or have information relevant to the FORMAL COMPLAINT. WITNESSES will not be permitted to participate in the investigation or Hearing solely to speak about an individual's character, because character evidence is generally not relevant.

WITNESSES will have the opportunity to discuss the investigation process and participate in an interview. Where a WITNESS has provided relevant information, the INVESTIGATOR will produce to the COMPLAINANT and the RESPONDENT for their review and comment, a written summary of the WITNESS'S interview, which will identify the WITNESS by name and their relationship to the parties and the University.

B. Ongoing Assessment

Throughout its handling of a report of PROHIBITED CONDUCT, ECRT will continue to assess the most appropriate procedures for addressing the allegations.

1. **Consolidation or Separation of Proceedings.** The TITLE IX COORDINATOR has the discretion to consolidate or separate claims of PROHIBITED CONDUCT, whether it be claims of Title IX Misconduct, Sexual and Gender-Based Misconduct (including Retaliation), or both. The TITLE IX COORDINATOR may consolidate multiple FORMAL COMPLAINTS of PROHIBITED CONDUCT into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve a single or multiple COMPLAINANTS, a single or multiple RESPONDENTS, and conduct that is temporally or logically connected. If investigations involving multiple COMPLAINANTS and/or multiple RESPONDENTS are consolidated, each party will have access to all of the information being considered; including information as provided by all involved COMPLAINANTS, all involved RESPONDENTS, and all involved WITNESSES. The TITLE IX COORDINATOR also has the discretion to sever multiple FORMAL COMPLAINTS of PROHIBITED CONDUCT into separate investigations, Hearings, or Appeals, including when part of the process is consolidated (e.g. having a consolidated investigation followed by separate Hearings).

2. **Concurrent Legal Proceedings.** At the request of law enforcement, and subject to the provisions in these Procedures pertaining to notifying the RESPONDENT of a FORMAL COMPLAINT, the University may agree to temporarily defer proceeding with part or all of its processes until after some or all of the law enforcement investigation is complete.

3. **Required Dismissal of Title IX Misconduct.** The TITLE IX COORDINATOR must dismiss allegations of Title IX Misconduct if, at any time before or during the resolution process, the TITLE IX COORDINATOR determines that:
 - The conduct alleged in the FORMAL COMPLAINT, if proved, would not constitute Title IX Misconduct;
 - The conduct alleged in the FORMAL COMPLAINT did not occur in a University PROGRAM OR ACTIVITY; or
 - The conduct alleged in the FORMAL COMPLAINT did not occur against a person in the United States.

The parties will be notified in writing that the allegations of Title IX Misconduct must be dismissed and the reason for dismissal.

The TITLE IX COORDINATOR will determine whether the alleged conduct would still, as alleged, constitute Sexual or Gender-Based Misconduct and/or should be addressed under another University policy and, if so, the

University will proceed to address the FORMAL COMPLAINT under the Sexual and Gender-Based Misconduct process and/or refer the matter to the appropriate University office.

If allegations of Title IX Misconduct are dismissed for one of the above reasons, the parties may appeal that dismissal using the process described in [paragraph 5](#), below.

4. Other Dismissal and Closure. In addition to the dismissal of allegations of Title IX Misconduct, the TITLE IX COORDINATOR may, in their discretion, dismiss a FORMAL COMPLAINT of PROHIBITED CONDUCT, and/or otherwise close an investigation if at any time:

- The COMPLAINANT notifies the TITLE IX COORDINATOR in writing that the COMPLAINANT would like to withdraw their FORMAL COMPLAINT, or any allegations therein;
- The RESPONDENT is no longer employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the FORMAL COMPLAINT or allegations therein (this may include a COMPLAINANT’S stated or otherwise apparent intent not to participate in a Hearing or other aspect of the process).

If allegations of Title IX Misconduct are dismissed pursuant to this section, the parties may appeal that dismissal using the process described in [paragraph 5](#), below. Dismissal of Sexual or Gender-Based Misconduct pursuant to this section is not subject to appeal.

5. Appeal of Dismissal of Title IX Misconduct. Please note, this Appeal process applies solely to a Title IX dismissal prior to an investigation/Hearing. To file an Appeal after an investigation/Hearing, please see [Section IX](#). If allegations of Title IX Misconduct are dismissed for a reason set forth in [paragraph 3](#) or [4](#), above, either party may appeal that dismissal on the following bases only:

- Procedural irregularity that materially affected the dismissal determination;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could materially affect the determination; and/or
- The TITLE IX COORDINATOR or designee making the dismissal

decision had a conflict of interest or bias for or against COMPLAINANTS or RESPONDENTS generally or the individual COMPLAINANT or RESPONDENT that materially affected the dismissal decision.

The Appeal of the dismissal must be filed no later than five (5) calendar days after the date on which the University transmitted the written determination to the parties. The Appeal shall consist of a plain, concise, and complete written statement of no more than five (5) pages, outlining the basis for the Appeal and all relevant information to substantiate the Appeal .

The University will notify all parties in writing when an Appeal is filed and implement Appeal procedures equally for both parties. The other party(ies) may then have a period of five (5) calendar days from the date of notice to submit a statement in support of the written determination and/or in opposition to the Appeal. This statement will be limited to five (5) pages. Any such statement will be shared with the party who filed the Appeal.

The Appeal review will be conducted by the EXECUTIVE DIRECTOR OF ECRT or designee. The EXECUTIVE DIRECTOR will review the matter based on the issues identified in the Appeal(s) materials. The EXECUTIVE DIRECTOR may consult with or request additional information from the TITLE IX COORDINATOR, Office of General Counsel, and other University administrators as necessary. The parties may object to the service of the EXECUTIVE DIRECTOR by providing a written statement within their Appeal or response to the Appeal as to why the party believes that the EXECUTIVE DIRECTOR has a conflict of interest or bias. The Associate Vice President for Human Resources or designee will make decisions regarding such objections and the appointment of an alternate decision-maker, as necessary.

The EXECUTIVE DIRECTOR or alternate decision-maker will strive to complete the Appeal review within five (5) calendar days of receipt of all documents. The EXECUTIVE DIRECTOR will issue a written decision describing the result of the Appeal and the rationale for the result, and ECRT will provide the written decision simultaneously to both parties.

6. **Acceptance of Responsibility.** The RESPONDENT may, at any time in the process, elect to resolve the matter by accepting responsibility for the PROHIBITED CONDUCT. If the RESPONDENT accepts responsibility, and the COMPLAINANT agrees in writing, the process will be advanced to the final steps. Specifically, the INVESTIGATOR will issue a brief investigation report and/or the HEARING OFFICER (as applicable) will issue a brief outcome notice summarizing the allegations and stating that the RESPONDENT has accepted responsibility, and refer the matter to the appropriate University official to determine corrective action.

VII. SEXUAL AND GENDER-BASED MISCONDUCT PROCESS

The Sexual and Gender-Based Misconduct process is used when the RESPONDENT is alleged to have engaged in PROHIBITED CONDUCT that meets the definition of Sexual or Gender-Based Misconduct, and does not meet the definition of the Title IX Misconduct. If the alleged behavior could also constitute Title IX Misconduct, the Sexual or Gender-Based Misconduct allegations will be addressed along with the Title IX Misconduct allegations, using the Title IX Misconduct Process unless the allegations of Title IX Misconduct are otherwise dismissed.

The Sexual and Gender-Based Misconduct process affords both the COMPLAINANT and the RESPONDENT an opportunity to submit information and other evidence and to identify WITNESSES. During the process, the INVESTIGATOR typically will: (1) meet separately with the COMPLAINANT, the RESPONDENT, and the relevant WITNESSES; (2) offer the parties an equal opportunity to submit and/or identify related and relevant information or evidence; (3) and gather other relevant information or evidence reasonably available to the INVESTIGATOR. Following the interview, the parties and WITNESSES will each be provided with a draft summary of their own statement or key relevant information therefrom so that they have the opportunity to comment within three (3) calendar days to ensure its accuracy and completeness. After the INVESTIGATOR has conducted interviews and gathered other available evidence and before any determination is reached, the parties will receive a preliminary investigation report and evidence for their review and comment. Parties will have ten (10) calendar days to provide comments on the preliminary report.

During the process, the COMPLAINANT and the RESPONDENT have the opportunity to provide or identify other supporting materials relevant to the matter.

- A. **Role of Investigator.** When an investigation is initiated, ECRT will designate an INVESTIGATOR, who will be responsible for gathering evidence directly related to the allegations at issue in the investigation. An EQUITY SPECIALIST will also be designated.
- B. **Notice of the Investigation and Notice of the Interview.** The RESPONDENT will be informed in writing of the initiation of the investigation prior to their interview. The written notice will include, among other things, the identities of the parties (if known), the date and location of the alleged incident(s) (if known), potential

Policy violations, that the parties are presumed not to have violated the Policy and other such information set forth in [Section II\(B\)\(2\)](#) above. Such notice will be provided with sufficient time for the RESPONDENT to prepare for the interview.

If, during the investigation, additional information is disclosed that may constitute further allegations of PROHIBITED CONDUCT under the Policy, the RESPONDENT will be accordingly informed in writing and will have an opportunity to respond to those allegations consistent with these Procedures.

In advance of each investigation interview, the INVESTIGATOR will send the individual being interviewed (COMPLAINANT, RESPONDENT, or WITNESS) a Notice of Interview that will identify the date, time, location, list of participants, and purpose of the interview. Such Notice will be provided with sufficient time for the individual to prepare for the interview.

- C. Evidence.** The INVESTIGATOR, not the parties, is responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given the opportunity, and is encouraged, to identify WITNESSES; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or WITNESS(ES). Although the University is responsible for gathering evidence sufficient to reach a determination regarding responsibility, all parties/WITNESSES are expected to share any relevant information and/or any information that is requested by the INVESTIGATOR, and to do so as early in the process as possible or upon request. Failure to do so by a participating party or WITNESS may lead the decision-maker (e.g., the INVESTIGATOR or, where the investigation report is used in a Title IX Misconduct process, the HEARING OFFICER) to draw a negative inference from a refusal to provide information that the decision-maker knows or reasonably believes exists. A decision by a party or WITNESS not to participate in an investigation at all will not lead the HEARING OFFICER to draw a negative from that decision.

The INVESTIGATOR will review all information identified or provided by the parties as well as any other evidence they obtain. The INVESTIGATOR has the discretion not to interview a WITNESS if they do not possess relevant evidence or if the evidence provided would be cumulative. Evidence obtained as part of the investigation that is directly related to the allegations in the FORMAL COMPLAINT will be shared with the parties for their review and comment, as described below.

The INVESTIGATOR may consult with experts who have no connection to the reported incident when expertise on a specific topic or submitted evidence is needed to gain a fuller understanding of the relevance or value of the evidence or the issue at hand. In instances where an expert is consulted, ECRT will determine whether the expert has any conflicts of interest or bias. The expert's identity will be shared with the COMPLAINANT and the RESPONDENT so that they may also have

the opportunity to identify any risk of such connection, conflicts of interest or bias for assessment by ECRT. ECRT will not use a medical expert who has an actual or apparent conflict of interest. ECRT will not use a non-medical expert whom ECRT determines has an actual conflict of interest or bias.

- D. Use of Law Enforcement Evidence.** Where ECRT is made aware that there is a concurrent or related criminal investigation, the INVESTIGATOR will make reasonable efforts to contact the DIVISION OF PUBLIC SAFETY AND SECURITY or other applicable law enforcement agency(ies) to ascertain the status of the criminal investigation and determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

In some instances, aspects of a criminal investigation may be available and relevant to the University's processes; however, standards of proof for criminal investigation/prosecution are often different from the preponderance of the evidence standard used to determine violations of this Policy. Therefore, the University is not obligated to base its decisions under this Policy solely on law enforcement determinations and/or the outcomes of any criminal proceedings.

- E. Time Frame for Completion of Investigation.** The University will strive to complete the investigation phase of the Sexual and Gender-Based Misconduct Process, meaning the period from commencement of an investigation through to completion of a final investigation report, within 105 calendar days. An investigation commences with the determination that an investigation will be opened, typically either the date of the COMPLAINANT'S interview, receipt of a FORMAL COMPLAINT and request that an investigation be opened, or such time as ECRT determines that an investigation will be opened.

Additional time beyond 105 calendar days may be necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for a temporary delay to gather evidence; accommodate the availability of parties and/or WITNESSES, the need for language assistance or accommodation of disabilities; account for University breaks or vacations; account for case complexities including the number of WITNESSES and volume of information provided by the parties; or for other legitimate reasons.

- F. Preliminary Investigation Report.** After the COMPLAINANT and the RESPONDENT have had the opportunity to comment on their own statement (three (3) calendar days) and to identify WITNESSES and other potential information, and the INVESTIGATOR has completed interviews and the gathering of evidence, the INVESTIGATOR will prepare a preliminary report.

The INVESTIGATOR will provide the parties, and their ADVISORS (if any), with the preliminary report, which will include, as applicable, the COMPLAINANT'S statement, the RESPONDENT'S statement, each WITNESS'S statement and a

summary of any other information the INVESTIGATOR in their discretion deems relevant. At the same time, the INVESTIGATOR will also provide each party, and their ADVISORS if any, all evidence directly related to the allegations at issue that was obtained as part of the investigation. The evidence will be provided in an electronic format.

The COMPLAINANT and the RESPONDENT will generally have one opportunity to concurrently review the preliminary report and evidence and provide feedback. The COMPLAINANT and the RESPONDENT must submit any comments, feedback, additional documents, evidence, suggested questions for individuals interviewed, requests for additional investigation, names of additional WITNESSES, or any other information they deem relevant to the INVESTIGATOR, up to ten (10) pages of written comments, additional documents or other evidence, within ten (10) calendar days after it is sent to them for review. As parties are encouraged to provide all relevant evidence as early as possible in the process, any party providing new evidence in their response to the preliminary report should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report.

After receiving any comments submitted by either party, or after the ten (10) calendar day comment period has lapsed without comment, the INVESTIGATOR will make a finding as to whether the Policy has been violated. In those instances in which a party identifies additional relevant evidence after reviewing the preliminary investigation report, the INVESTIGATOR, in their sole discretion, will pursue any additional appropriate investigative steps. If new relevant evidence is received, that evidence will be shared with the parties for their review and comment, after which the INVESTIGATOR will make a finding as to whether the Policy has been violated.

G. Findings after the Parties Have Reviewed and Commented on the Preliminary Investigation Report. The INVESTIGATOR will perform an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and will issue a final investigation report that includes a finding as to whether the Policy has been violated.

The INVESTIGATOR'S final investigation report will consist of the preliminary report, as supplemented by any relevant feedback submitted; any subsequent relevant information gathered; the INVESTIGATOR'S findings; and a summary of the INVESTIGATOR'S rationale in support of the findings. The finding may be appealed by either party in accordance with [Section IX](#) below.

The INVESTIGATOR may reach any of the following findings:

- *Finding of No Policy Violation(s) or Inappropriate Behavior:* The INVESTIGATOR finds there is insufficient evidence, by a preponderance of

the evidence, to support a finding of a Policy violation, and there is no finding that other inappropriate behavior occurred.

- *Finding of Inappropriate Behavior, but No Policy Violation(s)*: The INVESTIGATOR may determine that the evidence does not, by a preponderance of the evidence, support a finding of a Policy violation, but does support the conclusion that behavior occurred that is inappropriate employment-related, or PROGRAM OR ACTIVITY related, behavior.
- *Finding of Policy Violation(s)*: The INVESTIGATOR determines that there is sufficient evidence, by a preponderance of the evidence, to support a finding of a Policy violation.

H. Appeals. Either party may file a written Appeal of the INVESTIGATOR'S determination in accordance with [Section IX](#) of these Procedures.

If the finding, following any [Appeals](#), is a finding of a violation or other inappropriate behavior, the University will take corrective action, as described in [Section X](#).

VIII. TITLE IX MISCONDUCT PROCESS

The Title IX Misconduct process is used when a FORMAL COMPLAINT alleges that the RESPONDENT engaged in Title IX Misconduct. If the FORMAL COMPLAINT also alleges that the RESPONDENT engaged in Sexual or Gender-Based Misconduct, the Title IX Misconduct process will be used, unless the allegations of Title IX Misconduct are dismissed, in which case, the matter may continue to be addressed under the Sexual and Gender-Based Misconduct process, as determined by ECRT in its discretion.

The Title IX Misconduct process affords the same procedural opportunities at the investigation stage as the Sexual and Gender-Based Misconduct process; however, the INVESTIGATOR does not make a finding as to whether the Policy was violated. After the investigation, a live Hearing occurs in which the parties' ADVISORS have the opportunity to ask questions of the other party and the WITNESSES. The finding and any resulting corrective action may be appealed, as outlined in [Section IX](#). The University will strive to complete the entirety of the Title IX Misconduct Process, meaning the period from commencement of an investigation through investigation, Hearing, sanctions as applicable, and Appeals under this procedure as applicable, within 180 calendar days.

A. Investigation.

The investigation is conducted using the process outlined in paragraphs A through F of the Sexual and Gender-Based Misconduct process, immediately above, except that the INVESTIGATOR does not make a finding and the investigation report is not sent to relevant University officials. Rather, (1) the final investigation report will consist of the preliminary investigation report, as supplemented by any

relevant feedback submitted and any subsequent information gathered and (2) ECRT will provide the final investigation report to the parties, their ADVISORS, and the HEARING OFFICER simultaneously, along with information regarding the Hearing process as described below. The University will strive to complete the investigation phase in a Title IX Misconduct Process, meaning the period from commencement of an investigation through to completion of a final investigation report and referral to a Hearing, within 90 calendar days.

If there was additional evidence provided, or identified and obtained, in response to the preliminary report, the parties will have ten (10) calendar days to submit to the HEARING OFFICER, via ECRT, any additional comments or other response to the final investigation report containing that new evidence.

B. Hearing and Resolution Provisions Applicable to Title IX Misconduct

- 1. Hearing.** Following issuance of the final investigation report, a live Hearing will be provided in all matters in which Title IX Misconduct is at issue. If at any point the Title IX Misconduct allegations are dismissed, the matter will continue to be addressed as appropriate under the Sexual and Gender-Based Misconduct process outlined above in this document.
- 2. Hearing Officer.** Hearings will be facilitated by a HEARING OFFICER.
 - a. Role.** The HEARING OFFICER is responsible for maintaining an orderly, fair, and respectful Hearing and has broad authority, including to respond to disruptive or harassing behaviors, adjourn the Hearing, or exclude the offending person(s). The HEARING OFFICER will make the decision as to whether or not the RESPONDENT violated the Policy using a preponderance of the evidence standard.
 - b. Impartial and Free From Conflict of Interest.** All persons serving as HEARING OFFICER must be impartial and free from actual bias or conflict of interest. The HEARING OFFICER will be informed of the identities of the parties so they can identify any conflict of interest or bias. The parties will be notified of the identity of the selected HEARING OFFICER in advance of the Hearing; and parties may, within three (3) calendar days of such notice, object to the HEARING OFFICER by providing a written statement to the TITLE IX COORDINATOR (which may be transmitted electronically) as to why the party believes that the HEARING OFFICER has a conflict of interest or bias. The TITLE IX COORDINATOR will make decisions regarding such objections and the appointment of an alternate HEARING OFFICER, as appropriate. If a potential conflict of interest is discovered outside of the three (3) days, the TITLE IX COORDINATOR has discretion to appoint an alternate HEARING OFFICER.

3. **Information Provided to the Hearing Officer.** When ECRT issues the final investigation report, ECRT will concurrently forward a copy of the investigation report and evidence file to the HEARING OFFICER, the COMPLAINANT, the RESPONDENT, and their ADVISORS. ECRT will coordinate the scheduling of the parties' pre-hearing meetings as discussed below in [Section VIII \(B\)\(5\)](#) and a Hearing date, time, and location, and notify the parties of the same.
4. **Scheduling of Hearing and Pre-Hearing Meeting.** The ECRT will notify the parties in writing of the date, time, and electronic (virtual) audio/video format of the Hearing and pre-hearing meeting; the name of the HEARING OFFICER; and how to challenge the appointment of the HEARING OFFICER for bias or actual conflict of interest. The HEARING OFFICER will strive to complete a Hearing within 15 calendar days from the distribution of the investigation report.
5. **Format of the Hearing and Pre-Hearing Meetings.** The live Hearing will generally be conducted virtually, with technology enabling all participants (HEARING OFFICER, parties, ADVISORS, and WITNESSES) to see and hear one another in real time. Alternatively, the TITLE IX COORDINATOR in their discretion may decide for the Hearing to occur with the parties located in separate rooms of the same location with technology enabling the HEARING OFFICER and the parties to simultaneously see and hear the party or the WITNESS answering questions.
6. **Pre-Hearing Meeting.** Each party will meet separately with the HEARING OFFICER to: (1) plan for the Hearing and to identify their ADVISOR (who may also attend the pre-hearing meeting); (2) review the FORMAL COMPLAINT and issues of interest to the HEARING OFFICER and the party; (3) describe the procedures to be followed at the Hearing; (4) identify the names of the WITNESSES who will be asked to appear; (5) discuss any technology that will be used at the Hearing and how to operate such technology; and (6) answer any other questions or share information prior to the Hearing. The HEARING OFFICER also will discuss the time allotted for the Hearing and any time limitations. If either party does not attend the pre-hearing meeting, the TITLE IX COORDINATOR will determine whether and how that absence affects the ability of the University to move forward with the Hearing, as well as the Hearing schedule.
7. **Participation in Hearing.** The Hearing is an internal employment proceeding and attendance is limited to the parties, ADVISORS, WITNESSES, and University representatives.
 - a. **Parties.** Both the COMPLAINANT and the RESPONDENT have a right to be present at the Hearing. If despite being notified of the date, time,

and location of the Hearing, either party is not in attendance, the TITLE IX COORDINATOR will decide if the Hearing may proceed, whether a determination on the merits may be made, and whether applicable remedies and/or sanctions may be imposed.

- b. Advisors.** Each party may have an ADVISOR of their choice present at a Hearing. The ADVISOR may not participate in the Hearing except for the limited purpose of conducting cross-examination on behalf of that party. If a party does not have an ADVISOR of their choice present at a Hearing, the University will without fee or charge to the party provide an ADVISOR of the University's choice, for the limited purpose of conducting cross-examination on behalf of that party. No later than ten (10) calendar days before the Hearing, parties must inform ECRT of the identity of any ADVISOR of choice who will accompany them to the Hearing, so that ECRT will know whether or not it needs to arrange for the presence of a University-provided ADVISOR. If a party does not identify an ADVISOR ten (10) calendar days before the Hearing, the University will provide an ADVISOR to the party.

At a time and manner deemed appropriate by the HEARING OFFICER, the ADVISOR for each party will be permitted to ask the other party and any WITNESSES all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, ADVISORS may not participate actively in the Hearing and may not speak or otherwise communicate on the part of the advisee, unless the ADVISOR is raising a concern regarding the HEARING OFFICER'S decision as to the relevance of a cross-examination question. The ADVISOR may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the Hearing. Scheduling accommodations generally will not be made for ADVISORS if they unduly delay the process. The University reserves the right to take appropriate action regarding any ADVISOR who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the HEARING OFFICER, which may include exclusion of the ADVISOR from the Hearing and the alternate appointment of a University-provided ADVISOR.

- c. Witnesses.** The ECRT will contact each WITNESS interviewed during the investigation to establish their intent to participate in the Hearing if called by the HEARING OFFICER. The HEARING OFFICER will request the presence of any WITNESSES they deem necessary to their determination.

If a party wishes to have an individual appear at the Hearing as a WITNESS, they must provide notice of the identity of the proposed WITNESS and a brief description of the subject matter of the WITNESS'S testimony to the HEARING OFFICER at the pre-hearing meeting. The

HEARING OFFICER will provide the information regarding WITNESSES requested to attend the Hearing to both parties in advance of the Hearing.

8. **Conduct of Hearings.** Subject to the discretion of the HEARING OFFICER, Hearings will begin with introductory remarks by the HEARING OFFICER, followed by opening statements from any party who wishes to provide one, followed by the HEARING OFFICER asking relevant initial questions of the parties. During this portion of the Hearing, ADVISORS may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the HEARING OFFICER or anyone else present at the Hearing.

After the HEARING OFFICER has asked their initial questions of the parties, the HEARING OFFICER will permit each party's ADVISOR to ask the other party all relevant questions and follow-up questions, including those challenging credibility. The HEARING OFFICER may ask follow-up questions as necessary. Subject to the discretion of the HEARING OFFICER, questioning of WITNESSES will generally follow a similar process, whereby the HEARING OFFICER will pose relevant questions to WITNESSES, then the parties' ADVISORS will be permitted to ask relevant questions of WITNESSES. Such cross-examination of the parties and WITNESSES by ADVISORS will be conducted directly, orally, and in real time by the party's ADVISOR of choice and never by a party personally. At the discretion of the HEARING OFFICER, parties (but not their ADVISORS) may be given an opportunity to make a closing statement at the conclusion of the Hearing.

Generally, only information that is provided to, or otherwise obtained by, the INVESTIGATOR during the course of the investigation may be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the HEARING OFFICER must have been provided to the INVESTIGATOR during the investigation phase of the process and otherwise will not be allowed during the Hearing, unless the party asking that additional information be considered has clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the HEARING OFFICER may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

9. **Relevance of Cross-Examination Questions.** Only relevant cross-examination and other questions may be asked of a party or WITNESS. Before a COMPLAINANT, a RESPONDENT, or a WITNESS answers a cross-examination or other question, the HEARING OFFICER will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. ADVISORS may raise concerns to the HEARING OFFICER about any decision regarding relevance at the time that decision is made.

Questions and evidence about the COMPLAINANT’S prior sexual behavior are not relevant, except for the limited bases explained in [Section VI\(A\)\(8\)](#).

Information protected under a legally recognized privilege (e.g., privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), is not relevant unless the person holding the privilege has waived the privilege.

10. **New Evidence Offered at Hearing.** In the absence of good cause (as determined by the HEARING OFFICER), information, including the identification of WITNESSES that is discoverable through the exercise of due diligence, that was not provided to the INVESTIGATOR during the investigation phase, will not be considered during the Hearing. If the HEARING OFFICER agrees to the admission of new evidence offered at the Hearing, the HEARING OFFICER may hear the evidence or delay the Hearing and instruct that the investigation be reopened to gather any new evidence.

Any party or WITNESS who submits to cross-examination at the Hearing must have first been interviewed (or otherwise offered a statement) by the INVESTIGATOR. A party who has not previously participated in the investigation process may be limited (as determined by the HEARING OFFICER) in the evidence or statements the party may present.

11. **Record of Hearings.** The University will create an audio or audiovisual recording, or transcript, of any live Hearing and make it available to parties for inspection and review. The parties may not independently record the proceedings, including proceedings that happen virtually. No camera, TV, or other equipment that has a recording function, including any cell phones, will be permitted in the hearing, except as arranged by the University.

12. **Determinations Regarding Responsibility.** Within 30 days after the Hearing, the HEARING OFFICER will prepare and issue a written determination as to whether the Policy was violated.
- a. **Standard of Review.** The HEARING OFFICER will apply the preponderance of the evidence standard when making such determinations.
- b. **Written Determination.** The written determination will include:
- Identification of the section(s) of the Policy alleged to have been violated;
 - A description of the procedural steps taken from the receipt of the FORMAL COMPLAINT through the determination, which may include, but are not limited to notifications to the parties, interviews with parties and WITNESSES, site visits, methods used to gather other evidence, and Hearings held;
 - Findings of fact supporting the determination;
 - Conclusions regarding the application of definitions of PROHIBITED CONDUCT to the facts of the case;
 - A statement of, and rationale for, the finding as to each allegation, including a determination as to whether the Policy was violated, any Corrective Action assigned to the RESPONDENT, and whether remedies will be provided to the COMPLAINANT (with Corrective Action assigned and remedies provided in accordance with [Section X](#) below); and
 - Identification of the University's procedures and permissible bases for the COMPLAINANT and RESPONDENT to appeal (as outlined in [Section IX](#) below).

The HEARING OFFICER will provide ECRT with the Hearing Outcome. If there is a finding that the RESPONDENT is not responsible for a violation of the Policy, the ECRT will share the Hearing Outcome with the parties. If there is a finding that the RESPONDENT is responsible for a violation of the Policy, ECRT will share the determination regarding responsibility with the RESPONDENT'S supervisor or other appropriate University administrator(s) for a determination of corrective action and/or remedies. If corrective action or remedies are appropriate, they will be assigned in accordance with [Section X](#) below and the HEARING OFFICER will update the Hearing Outcome to include the corrective action.

The determination as to whether the Policy was violated becomes final either on the date the University provides the parties with the written determination of the Appeal, if an Appeal is filed, or if an Appeal is not filed, the date on which an Appeal would no longer be considered timely in the matter.

IX. APPEALS FOR BOTH PROCESSES

Either party to a Title IX Misconduct matter or a Sexual and Gender-Based Misconduct matter may file a written Appeal of the finding as to whether PROHIBITED CONDUCT occurred on the following bases only:

- Procedural irregularity that materially affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could materially affect the outcome of the matter; and/or
- The TITLE IX COORDINATOR, INVESTIGATOR(s), or decision-maker(s) had a conflict of interest or bias for or against the COMPLAINANTS or the RESPONDENTS generally or the individual COMPLAINANT or RESPONDENT that materially affected the outcome of the matter.

Appeals must be filed no later than 14 calendar days after the date on which the University transmitted the written determination to the parties. The Appeal shall consist of a plain, concise, and complete written statement of no more than ten (10) pages, outlining the basis for Appeal and all relevant information to substantiate the Appeal. If a party's Appeal includes an assertion that new relevant evidence unavailable earlier in the proceedings exists and that includes written or other documentary evidence, such evidence will not be subject to this page limit.

An EXTERNAL REVIEWER will conduct the Appeal review. The University will notify the parties of the identity of the EXTERNAL REVIEWER and the parties may, within three (3) calendar days of such notice, object to the service of the EXTERNAL REVIEWER by providing a written statement to the TITLE IX COORDINATOR (which may be transmitted electronically) as to why the party believes that the EXTERNAL REVIEWER has a conflict of interest or bias. The TITLE IX COORDINATOR will make decisions regarding such objections and the appointment of an alternate EXTERNAL REVIEWER, as appropriate. The EXTERNAL REVIEWER will not be the same person as the HEARING OFFICER, the INVESTIGATOR, the TITLE IX COORDINATOR, or a person who made a decision regarding dismissal of a FORMAL COMPLAINT.

The University will notify the other party in writing when an Appeal is filed and implement Appeal procedures equally for both parties. The other party will then have a period of 14 calendar days from receipt of the notice of Appeal to submit a statement in support of the written determination and/or in opposition to the Appeal. This statement will be limited to ten (10) pages. Any such statement will be shared with the party who filed the Appeal.

The EXTERNAL REVIEWER will review the matter based on the issues identified in the Appeal(s) materials. The EXTERNAL REVIEWER may, at any time, freely consult with or request additional information from the TITLE IX COORDINATOR and other University administrators as necessary.

The EXTERNAL REVIEWER will strive to complete the Appeal review within 14 calendar days of receipt of all documents and requested information.

The EXTERNAL REVIEWER will issue the outcome of the Appeal and the rationale for the result in writing. This may include remanding the matter to ECRT for further investigation. If the matter is not remanded, the EXTERNAL REVIEWER'S decision on any Appeal is the final step in this process. Once the Appeal is complete, ECRT will provide the written decision simultaneously to both parties.

X. CORRECTIVE ACTION AND REMEDIES

If a RESPONDENT is found to have violated the Policy, the University will assign corrective action to the RESPONDENT and may provide remedies to the COMPLAINANT, as appropriate. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the University has wide discretion in the imposition of corrective action and the implementation of remedies tailored to the facts and circumstances of the PROHIBITED CONDUCT, the impact of the conduct on the COMPLAINANT and UNIVERSITY COMMUNITY, and accountability for the RESPONDENT. Remedies will be designed to restore or preserve the COMPLAINANT'S equal access to the University's PROGRAM OR ACTIVITY.

Corrective action or other interventions may also serve to remedy the discriminatory effects of the PROHIBITED CONDUCT on the COMPLAINANT and others, including any systematic actions the University determines to be appropriate for the broader UNIVERSITY COMMUNITY. Other interventions may include, for example, targeted or broad-based educational programming or training.

The scope of possible corrective actions will be dependent upon EMPLOYEE disciplinary procedures applicable to the RESPONDENT, but may include one or more of the following:

- Required education and/or training;
- Informal and/or formal counseling;
- Progressive disciplinary action;
- Permanent one-sided no-contact directive;
- Transfer of position;
- Ineligibility for merit increase, sabbatical leave, and/or other discretionary benefits;
- Removal of administrative appointment;

- Restriction on access to STUDENTS, support services, and/or facilities;
- Modification or loss of Medical Staff clinical privileges with appropriate process;
- Demotion;
- Suspension;
- Termination of employment;
- Referral of matters in which faculty members were found responsible for a Policy violation or violations through these procedures for separate consideration for sanctioning purposes under [Regents' Bylaw 5.09](#);
- Referral of matters in which staff members were found responsible for a Policy violation or violations through these procedures for separate consideration for sanctioning purposes at a Disciplinary Review Conference;
- Restriction from future employment at the University;
- Where the RESPONDENT is also a STUDENT, any sanction available in the [Student Procedures in Section VI\(E\)](#); and/or
- Restriction from any University PROGRAM OR ACTIVITY.

Corrective action will be determined by the RESPONDENT'S supervisor or other appropriate University administrator(s). Corrective action generally will be issued within 30 calendar days of the issuance of the final investigation report, except for matters involving Title IX Misconduct, in which case the corrective action decision will be made and shared with the HEARING OFFICER, who will include them in the written determination, as discussed in [Section VIII\(B\)\(12\)](#), above.

The University will provide simultaneous notice in writing to the COMPLAINANT and the RESPONDENT regarding the corrective action(s), the rationale therefore, and whether remedies designed to restore or preserve equal access to the University's PROGRAM OR ACTIVITY will be provided by the University to the COMPLAINANT.

Any corrective action or combination of corrective actions will be documented in the RESPONDENT'S personnel file. Nothing in these Procedures prevents the supervisor or other appropriate University administrator from imposing disciplinary action against a RESPONDENT where the final investigative report or Hearing Outcome demonstrates that the RESPONDENT engaged in inappropriate conduct, regardless of whether the RESPONDENT has been found to have engaged in PROHIBITED CONDUCT under the Policy.

The RESPONDENT'S supervisor and/or other appropriate University administrator(s) will also be responsible for identifying and recommending any non-disciplinary actions necessary to prevent recurrence of the conduct and to remedy its discriminatory effects on the COMPLAINANT and

others as appropriate, including any systemic actions found to be appropriate for the broader UNIVERSITY COMMUNITY. Such interventions may include counseling reimbursement, community-focused restorative processes, education or training, monitoring or other individual support needed to remedy the harm, including academic accommodations.

The details of a remedy provided to the COMPLAINANT will not be shared with RESPONDENT unless the remedy also imposes requirements on the RESPONDENT in the nature of corrective action.

XI. ADAPTABLE RESOLUTION AND MEDIATION OF TITLE IX MISCONDUCT AND SEXUAL AND GENDER-BASED MISCONDUCT

Mediation is a structured interaction between the COMPLAINANT and the RESPONDENT with the help of a neutral MEDIATOR to achieve a resolution satisfactory to both parties.

Adaptable Resolution is a voluntary, remedies-based, non-disciplinary structured process between or among affected parties that focuses on creating an agreement to address harm and promote accountability. Adaptable Resolution is generally designed to allow a RESPONDENT to acknowledge harm and take responsibility for repairing harm (to the extent possible) experienced by the COMPLAINANT and/or the UNIVERSITY COMMUNITY. [There are various forms of Adaptable Resolution that may be used, depending upon the circumstances and the parties' wishes.](#)

Adaptable Resolution will be available on a limited and pilot basis from October 1, 2021 to June 30, 2022, after which further use will be assessed. Mediation will continue to be available beyond this time.

If Adaptable Resolution or mediation is unsuccessful, the matter may proceed to the Sexual Misconduct or Title IX Misconduct process, or another appropriate response.

Adaptable Resolution and mediation may be used under conditions described below, when deemed appropriate by ECRT. In general, the person conducting this process will strive to complete the process within 90 calendar days from the date the matter is referred to the facilitator.

At any time prior to reaching a determination as to whether the Policy was violated, the University may facilitate Adaptable Resolution or mediation where requested by a party, agreed to by both parties in writing, and approved by the TITLE IX COORDINATOR. In offering Adaptable Resolution or mediation, ECRT will provide to each party a written notice that discloses:

- The allegations; and
- The requirements of the process including the circumstances under which it precludes the parties from resuming a FORMAL COMPLAINT arising from the same allegations, if any (on this point, as noted below, the University generally permits parties to withdraw from Adaptable Resolution or mediation and initiate or re-initiate a Sexual Misconduct or Title IX Misconduct process at any time before an informal resolution is agreed to in writing by the parties).

The statements made by parties in Adaptable Resolution or mediation by and between the parties cannot be used in any other University process, including an investigation or Hearing, if Adaptable Resolution or mediation ends without resolution and a Sexual or Gender-Based Misconduct or Title IX Misconduct process begins or resumes.

All parties and the TITLE IX COORDINATOR must agree to Adaptable Resolution or mediation for this option to be used. The TITLE IX COORDINATOR will assess the request for Adaptable Resolution or mediation in light of factors such as, but not limited to, the severity of the alleged violation, the nature of the relationship of the parties, and the potential risks to members of the UNIVERSITY COMMUNITY. Adaptable Resolution and mediation are generally not used when the concerns involve recurring behavior or Sexual Assault and will not be used where the COMPLAINANT is a STUDENT OR PATIENT and the RESPONDENT is an EMPLOYEE.

The TITLE IX COORDINATOR will determine whether Adaptable Resolution or mediation is appropriate, and will notify the parties of that decision. The University will only proceed with such a process if both parties provide their voluntary, written consent to having the matter resolved in this manner and the TITLE IX COORDINATOR agrees that it is an appropriate process for attempting to resolve the matter.

If the University and the parties agree that Adaptable Resolution or mediation is appropriate, the TITLE IX COORDINATOR will designate a neutral individual (from within or outside the University) to serve as the ADAPTABLE RESOLUTION COORDINATOR or MEDIATOR to facilitate the agreed upon process with the parties in an attempt to reach a resolution.

If the facilitator has concerns that they cannot facilitate a fair process, the facilitator may report those concerns to the TITLE IX COORDINATOR. Where appropriate and at the TITLE IX COORDINATOR'S discretion, a different facilitator will be assigned. Similarly, a COMPLAINANT, a RESPONDENT, or any other participant who has concerns that the assigned facilitator cannot enable a fair process, may report those concerns to the TITLE IX COORDINATOR who will assess the circumstances and determine whether a different facilitator should be assigned.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them and which is approved by the TITLE IX COORDINATOR ("Outcome Agreement"). A party may withdraw from the process at any time prior to their execution of a written Outcome Agreement. After an Outcome Agreement is finalized, neither party may initiate another resolution process regarding the same factual allegations.

At any time before a matter is resolved through Adaptable Resolution or mediation, the TITLE IX COORDINATOR may terminate an informal resolution process and initiate or re-initiate the Sexual Misconduct or Title IX Misconduct process, or another appropriate response, as they deem appropriate in their discretion.

XII. RECORDS RETENTION

The University will retain the official ECRT investigatory file for a period of seven (7) years after the date of case closure. In cases in which a RESPONDENT was found to have violated the

Policy and corrective action was taken, the corrective action will be placed in the RESPONDENT'S personnel file and will be retained in accordance with the requirements of [Personnel Records – Collection, Retention, and Release Policy, SPG 201.46](#).

For each report of PROHIBITED CONDUCT, the University will also retain for seven (7) years records of any actions, including any SUPPORTIVE MEASURES, taken in response to a report to ECRT or FORMAL COMPLAINT. If the University does not provide a COMPLAINANT with SUPPORTIVE MEASURES, the University will document the reasons why.

XIII. ANNUAL REPORT

ECRT will issue an [Annual Report](#) to the UNIVERSITY COMMUNITY providing an overview of the number and nature of reports of PROHIBITED CONDUCT received during the preceding fiscal year. The report will provide the UNIVERSITY COMMUNITY with an overview of response efforts.