



## PROCEDURES FOR REPORTS AGAINST EMPLOYEES

INVESTIGATING AND RESOLVING REPORTS UNDER THE TITLE IX  
COMPLIANCE AND RESOLUTION REGULATION AND THE UNIVERSITY  
REGULATION ON REPORTS OF PROHIBITED INTERPERSONAL VIOLENCE  
AND RELATED MISCONDUCT

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### 1 Introduction

- 1.1. East Carolina (the “University”) is committed to providing a safe and non- discriminatory environment for all members of the University community. The University prohibits Sexual Assault (Rape, Sodomy, Sexual Assault with an Object, Incest, Forcible Fondling, and Statutory Rape), Dating & Domestic Violence, Stalking, and Sexual Harassment (together, “Title IX Conduct”). These forms of Title IX Conduct are defined in the University’s Title IX Compliance and Resolution Regulation (the “Title IX Regulation”) as well as, other misconduct (to also include Sexual Exploitation) under University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct (the “Misconduct Regulation” (hereinafter collectively referred to as the “Regulations”). This Appendix identifies the procedures (the “Procedures”) the University follows when it receives a report alleging Title IX Conduct or Related Misconduct by an Employee as defined by these Regulations. The University uses these Procedures to investigate and adjudicate any such allegations against Employees found responsible for violating the Regulation.<sup>1</sup>
- 1.2. Please see Appendix A for Procedures the University follows when it receives a report alleging Title IX Conduct and/or Related Misconduct by a Student. Please see Section 4.3.4. of the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct or Section 4.3.5. of the University’s Title IX Compliance and Resolution Regulation for guidance on handling reports of Title IX Conduct by other individuals.

### 2. Reporting

- 2.1. The University encourages anyone<sup>2</sup> who experiences or learns of Title IX Conduct and requires Responsible Employees who become aware of an incident of Title IX Conduct involving an Employee or Student to ***immediately*** report the incident to the University through the following reporting options:
  - 2.1.1. By contacting the University’s Title IX Coordinator, by telephone, email, or in person during regular office hours:

LaKesha Alston Forbes, Title IX Coordinator

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<sup>1</sup> These Procedures should be read in conjunction with the Regulation(s). Capitalized terms used and not otherwise defined in these Procedures are defined in the Regulation. For purposes of these Procedures, the following definitions apply: (1) the “Title IX Coordinator” means the Title IX Coordinator, and/or any of their respective trained designees; and (2) “Human Resources” means University Human Resources, and/or the Human Resources professional in a particular school/department/unit.

<sup>2</sup> Pursuant to University policy, certain University employees, called “Responsible Employees,” are *required* to report to the Title IX Coordinator all information disclosed to them about an incident of Title IX Conduct under Title IX. See “[Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct or Related Misconduct.](#)”

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Office for Equity and Diversity  
Old Cafeteria Building Suite G-406  
Phone: (252) 328-6804  
Email: [oed@ecu.edu](mailto:oed@ecu.edu)

- 2.1.2. By completing an online form with the Office of Equity and Diversity at:  
<https://oed.ecu.edu/report/>
- 2.2. A Complainant, as defined in the Regulations, may make a report to the University to pursue Informal Resolution or Formal Investigation under these Procedures or make a report to law enforcement. A Complainant may pursue both options (reporting to law enforcement and pursuing resolution through the University process), at the same time or sequentially. As set forth in the Regulations, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:
  - 2.2.1. 911 (for emergencies);
  - 2.2.2. ECU Police Department ((252) 328-6787) (for non-emergencies);
  - 2.2.3. Greenville Police Department ((252) 329-4315) (for non-emergencies); or
  - 2.2.4. Pitt County Sheriff's Office ((252) 902-2800) (for non-emergencies).
- 2.3. The University offers access to confidential resources for individuals who are unsure about whether to report concerns under the Title IX Compliance and Resolution Regulation or University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct and are seeking counseling or other emotional support in addition to (or without) making a report to the University or law enforcement. The following guides identify confidential resources, both at the University and in the Greenville community, and further explains options for reporting Title IX Conduct and/or Related Misconduct to the University and to law enforcement:
  - 2.3.1. Students may refer to the [Resource and Reporting Guide for Student Reporting Incidents of Title IX Conduct or Related Misconduct](#) and the [Resource and Reporting Guide for Students Accused of Incidents of Title IX Conduct or Related Misconduct](#) (Appendices A-1 and A-2);
  - 2.3.2. Employees may refer to the [Resource and Reporting Guide for Employees Reporting Incidents of Title IX Conduct or Related Misconduct](#) and [Resource and Reporting Guide for Employees Accused of Incidents of Title IX Conduct or Related Misconduct](#) (Appendices B-1 and B-2);
  - 2.3.3. Third Parties may refer to a Third Party Guide.
- 2.4. Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Title IX Conduct or Related Misconduct, as defined by the Regulations. Respondents are also entitled to receive information, assistance and a

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broad range of supportive measures. The Student and Employee Resource Guides outline these resources and remedial measures and describe how to request them.

### 3. Expectations of Complainants and Respondents

- 3.1. Pursuant to these Procedures, Complainants and Respondents (either of whom is a “party” and collectively, “the parties”) can expect:
  - 3.1.1. Equitable resolution of allegations of Title IX Conduct or Related Misconduct as promptly as possible;
  - 3.1.2. Privacy in accordance with the Regulations and any legal requirements;
  - 3.1.3. Reasonably available interim supportive measures, as described in the Regulation(s) and in the applicable Resource Guide;
  - 3.1.4. Freedom from Retaliation for making a good faith report of Title IX Conduct or Related Misconduct or participating in any proceeding under the Regulations;
  - 3.1.5. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Title IX Conduct or Related Misconduct or participating in any proceeding under the Regulations;
  - 3.1.6. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Title IX Conduct or Related Misconduct under the Regulations or these Procedures;
  - 3.1.7. The opportunity to articulate concerns or issues about proceedings under the Regulations and these Procedures;
  - 3.1.8. Timely written notice of any interview, meeting or proceeding at which the party’s presence is contemplated by these Procedures;
  - 3.1.9. The right to be represented, at the party’s expense by a licensed attorney or non- attorney advocate who may participate in accordance with “Regulation Applicable to Policy on Title IX Sexual Harassment”, Section 1300.11[R] of the UNC Policy Manual;
  - 3.1.10. The right to have an advisor, provided by the University if the individual chooses, to who shall conduct any cross-examination of parties and witnesses at any hearing;
  - 3.1.11. Written notice of an investigation, including notice of potential Regulation violations and the nature of the alleged Title IX Conduct or Related Misconduct;
  - 3.1.12. The opportunity to challenge the Investigator or any member of the Hearing Panel for bias or conflict of interest;
  - 3.1.13. The opportunity to offer relevant information, present relevant evidence, and identify witnesses during an investigation;
  - 3.1.14. The opportunity to be heard, orally and/or in writing, as to the determination of a Regulation violation and the imposition of any sanction(s);
  - 3.1.15. Timely and equal access to any information that will be used during Informal Resolution or Formal Investigation proceedings and related meetings;
  - 3.1.16. Reasonable time to prepare any response contemplated by these Procedures;

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- 3.1.17. Written notice of any extension of timeframes for good cause;
- 3.1.18. Written notice, as permitted and/or required by applicable law, of the outcome of any Hearing, including the determination of a Regulation violation, imposition of any sanction(s), and the rationale for each. The Complainant will only receive information regarding the imposition of any sanction(s) as it relates to the Complainant and as allowed by law; and
- 3.1.19. To receive written notice of any appeal rights.

### 4. Initial Assessment

- 4.1. Upon receipt of a report of Title IX Conduct or Related Misconduct committed by an Employee, the Title IX Coordinator or designee in consultation with the University Behavioral Concerns Team, as necessary, will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator, directly or through a delegate, will:
  - 4.1.1. Assess the safety and well-being of both parties and offer the University's immediate support and assistance;
  - 4.1.2. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
  - 4.1.3. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
  - 4.1.4. Inform the parties about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
  - 4.1.5. Ensure that the parties receive a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options.
  - 4.1.6. Inform the Complainant of the right to seek Informal Resolution or Formal Investigation under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Informal Resolution, Formal Investigation or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and resolution under these Procedures;
  - 4.1.7. Explain the application of the Regulations and whether the allegations state a matter within the Title IX Regulation's jurisdiction or whether the matter may be an alleged incident of Related Misconduct under the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct.
  - 4.1.8. Explain the University's prohibition against Retaliation<sup>3</sup> and that the University will take prompt action in response to any act of Retaliation;
  - 4.1.9. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;

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<sup>3</sup> Retaliation is covered under the University's [Notice of Nondiscrimination and Affirmative Action Policy](#).

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- 4.1.10. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
  - 4.1.11. Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.
- 4.2. The assigned investigator will ensure that the Complainant is notified, receives a written explanation of all available resources and options, and is offered the opportunity to meet to discuss those resources and options with appropriate ECU officials.

### 5. Threat Assessment

- 5.1. Following the initial assessment, the Title IX Coordinator/Associate Provost for Equity and Diversity or designee will, when warranted by the available facts, promptly forward to the University's Behavioral Concerns Team ("UBCT") all information known about the reported incident. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

#### 5.2. University Behavioral Concerns Team ("UBCT")

5.2.1. The UBCT is established to receive, collect, consider, and advise upon information on behavior of concern exhibited by a student or group of students, faculty or staff member, or unaffiliated persons on campus in accordance with Regulation 05.20.01, University Behavioral Concerns Team. UBCT will evaluate every report of Title IX Conduct or Related Misconduct made against an employee except where there is no ongoing behavior of concern or threat to evaluate and mitigate. The UBCT convenes (in person, by telephone, or by videoconference) weekly or as needed to review information received from the Title IX Coordinator, as described above, and to review new information as it becomes available. The UBCT may include select members of the Sexual Misconduct Response Team ("SMRT"), as necessary. The UBCT has access to available University records, which may otherwise be confidential, including University disciplinary, academic and/or personnel records. The UBCT may seek additional information about the reported incident through any other legally permissible means.

5.2.2. Risk Factors. UBCT, if necessary, will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health and/or safety of the Complainant or to any other member of the University community. The UBCT will make this determination based upon a review of the totality of the circumstances, and will be guided by a consideration of the following factors (the "Risk Factors"):

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- 5.2.2.1. Whether the Respondent has prior relevant arrests, is the subject of prior reports and/or complaints related to any form of Title IX Conduct or Related Misconduct, or has any history of violent behavior;
- 5.2.2.2. Whether the Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order;
- 5.2.2.3. Whether the Respondent has threatened to commit violence or any form of Title IX Conduct or Related Misconduct;
- 5.2.2.4. Whether the Title IX Conduct or Related Misconduct involved multiple Respondents;
- 5.2.2.5. Whether the Title IX Conduct or Related Misconduct involved physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence includes, but is not limited to, hitting, punching, slapping, kicking, restraining, choking, pushing, and brandishing or using any weapon;
- 5.2.2.6. Whether the report reveals a pattern of Title IX Conduct or Related Misconduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- 5.2.2.7. Whether the Title IX Conduct or Related Misconduct was facilitated through the use of “date- rape” drugs or similar or intoxicants;
- 5.2.2.8. Whether the Title IX Conduct or Related Misconduct occurred while the Complainant was unconscious, physically helpless or unaware that the Title IX Conduct or Related Misconduct was occurring;
- 5.2.2.9. Whether the Complainant is (or was at the time of the Title IX Conduct or Related Misconduct) a minor (under 18); and/or
- 5.2.2.10. Whether any other aggravating circumstances or signs of predatory behavior are present.

### 5.3. University Actions Following Health and Safety Threat Assessment

5.3.1. Upon completion of the health and safety threat assessment, the Title IX Coordinator or designee, in consultation with the UBCT, if necessary, will determine the course of action under these Procedures, which may include, without limitation, implementation of remedial and protective measures and Formal Investigation and/or Informal Resolution (if available). Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health

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and safety threat assessment, and the determinations of the UBCI and Title IX Coordinator will be documented and retained by the University in accordance with applicable law.

- 5.3.2. For any report under the Regulation(s), every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation(s) and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects. As a result, OED will endeavor to protect the privacy of both the Complainant and the Respondent to the extent possible under applicable law. If the Complainant would like to remain anonymous, the investigator will explain that OED will endeavor to investigate the complaint in a manner that honors the Complainant's request for anonymity, but that the University cannot ensure complete confidentiality and/or it may be limited in its ability to address the allegations if the Complainant insists he/she remain anonymous, and/or the matter may be closed or dismissed under the Title IX Regulation. In certain situations, due process may require disclosure of information, including instances where the Complainant's identity must be disclosed, to the Respondent.

- 5.3.2.1. **Where the Complainant Wishes to Pursue Formal Complaint.** In most cases in which a Complainant files a Formal Complaint, alleging conduct that constitutes a violation of either Regulation, and requests an investigation, the Title IX Coordinator and/or the assigned investigator will promptly initiate a Formal Investigation. In certain circumstances, the University may be required to dismiss a Formal Complaint either through a mandatory dismissal or discretionary dismissal as outlined in Sections 3.2 and 3.3 in the Title IX Compliance and Resolution Regulation.

- 5.3.2.2. **Where the Complainant Requests an Investigation not be Pursued.** If Complainant requests that no investigation be pursued, the assigned investigator will explain to the Complainant that the University may not be able to honor such a request and still provide a safe and nondiscriminatory environment for all students and employees.

The Title IX Coordinator, in consultation with UBCI, as necessary, will consider the following factors in evaluating such request(s): (1) the totality of the circumstances; (2) the presence of any Risk Factors, as described in Section 5.2.2 of these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent

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made statements of admission or otherwise accepted responsibility for the Title IX Conduct or Related Misconduct; (5) the existence of any information or evidence other than Complainant's current testimony regarding the Title IX Conduct or Related Misconduct; and (6) any other available and relevant information. The University will seek to honor the Complainant's request(s) if it is possible to do so while also addressing the health and safety of the Complainant and the University community.

- 5.3.2.2.1. **Determination that a Complainant's Request(s) Can be Honored.** Where the Title IX Coordinator determines that a Complainant's request that no investigation be pursued) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Informal Resolution.

At any point, the Complainant may choose to pursue Informal Resolution (if available) or Formal Investigation under these Procedures. The Title IX Coordinator or designee also may request that a report be re-opened and pursued under these Procedures if any new or additional relevant information becomes available.

- 5.3.2.2.2. **Determination that a Complainant's Request(s) Cannot be Honored.** When the Title IX Coordinator determines that a Complainant's request(s) cannot be honored and an investigation must be pursued because honoring the Complainant's request(s) would impede the University's ability to address the health and safety of the Complainant or other members of the University community, the Title IX Coordinator's actions may include, without limitation, (i) causing the Respondent's supervisor, in consultation with the relevant Human Resources representative, to impose a No- Contact Directive and/or to place the Respondent on pre-disciplinary or investigatory placement leave, with or without pay in accordance with applicable university

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policies; (ii) initiating an investigation and Formal Investigation under these Procedures; and/or (iii) arranging, coordinating, or extending any other appropriate supportive or remedial measures.

### 5.4. Notice to Complainant and Respondent of University Actions

- 5.4.1. The assigned investigator or appropriate University administrator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a health or safety threat to the Complainant or the University community, including the decision to proceed with an investigation. The assigned investigator also will promptly inform the Respondent of any action(s) (including any interim remedial and supportive measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator or designee has the discretion to impose and/or modify any supportive measures based on all available information. The assigned investigator is available to meet with a Complainant or Respondent to address any concerns about the provision of supportive measures. Supportive measures will remain in effect through resolution of the report by the appropriate Vice Chancellor, unless new circumstances arise which warrant reconsideration of the protective and/or supportive measures and prior to Vice Chancellor Review and/or the Hearing Panel Hearing.

## 6. University Resolution

- 6.1. These Procedures offer two forms of resolution for reports of Title IX Conduct or Related Misconduct against an employee (EHRA Faculty, SHRA and CSS Staff, and EHRA Non-Faculty): (1) Informal Resolution (as described in Section 6.2 of these Procedures), which includes a variety of informal options for resolving reports, and (2) Formal Investigation, which involves an investigation, hearing, and sanctions will be referred to the appropriate management official, including an appropriate supervisor and HR Employee Relations for SHRA or CSS employees, or the Vice Chancellor for EHRA employees.

Any complaints of Title IX Conduct or Misconduct against a SHRA, CSS or EHRA Non-Faculty will be processed in accordance with these procedures. With respect to EHRA Faculty employees, these Procedures shall supersede the ECU Faculty Manual with respect to investigation and findings regarding any complaints Title IX Conduct or Related Misconduct. In compliance with “Regulation Applicable to Policy on Title IX Sexual Harassment”, Section 1300.11[R] of the UNC Policy Manual, at the conclusion of these procedures, the matter may be referred to the appropriate Vice Chancellor for review for additional employment action, to include any appropriate sanctions. If a Respondent seeks redress or appeal of the Vice Chancellor’s review and subsequent decision related to any

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impact on employment, including any disciplinary action assigned, the Respondent's appeal rights will be governed by those policies and procedures available to the Respondent based on his/her employment type (i.e. EHRA Faculty, EHRA-Non Faculty, SHRA, CSS). For example, an EHRA Faculty member may seek redress or appeal through the processes described in the ECU Faculty Manual, as applicable.

### 6.2. Informal Resolution

- 6.2.1. The University offers individuals the opportunity to resolve concerns of Title IX Conduct or Related Misconduct through Informal Resolution. Informal Resolution includes a variety of informal resolution options. Individuals can choose to resolve concerns via Informal Resolution, however, it must be voluntary and informed by both parties, and the University must receive written consent from both parties to attempt informal resolution. Informal Resolution is not be available where the SMRT and/or Title IX Coordinator/Associate Provost for Equity and Diversity or designee has determined that one or more of the Risk Factors listed in Section 5.2.2. of these Procedures are present. **Forms of Informal Resolution that involve face-to-face meetings between the Complainant and the Respondent, such as mediation, are not available in cases involving Sexual Assault, or Sexual Harassment where the Respondent is an employee and the Complainant is a student.** The Title IX Coordinator/Associate Provost for Equity and Diversity and/or the assigned investigator will maintain information about Informal Resolution availability and provide that information to any party to a complaint upon request.
- 6.2.2. Upon receipt of a Formal Complaint, the assigned investigator will issue the Notice of Investigation to both parties as outlined in Section 6.3.1.1. This Notice shall contain information about Informal Resolution.
- 6.2.3. At any time prior to the University reaching a determination of responsibility, the University may facilitate an Informal Resolution in which the assigned investigator will provide the parties written notice disclosing:
  - (1) The allegations;
  - (2) The requirements of the informal resolution process, including the circumstances under which the University precludes the parties from resuming a formal complaint arising from the same allegations, provided that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and proceed with a Formal Investigation;
  - (3) Any consequences resulting from participating in the Informal Resolution process;
  - (4) Any records that will be maintained or shared.

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- 6.2.4. If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Informal Resolution, the terms of the agreement are implemented and the matter is resolved and closed. If an agreement is not reached, and either party determines that a formal investigation is preferred, the matter will be referred for an investigation and Formal Resolution under these Procedures. At any time during the Informal Resolution process, any party has the right to withdraw and pursue a Formal Investigation.
- 6.2.5. The Office for Equity and Diversity will maintain records of all reports and conduct referred for Informal Resolution, which generally will be completed within sixty (60) business days, from the date the assigned investigator issues notice of the parties election to pursue Informal Resolution.

### 6.3. Formal Investigation

6.3.1. Investigation. Whenever Formal Investigation is commenced, the Title IX Coordinator/Associate Provost for Equity and Diversity or designee will designate one or more Investigators from the University's Office for Equity and Diversity and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability and honoring the rights of Complainants and Respondents.

6.3.1.1. Notice of Investigation. The assigned investigator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation or as soon thereafter as their identity is known. Such notice will:

- (1) identify the Complainant and the Respondent;
- (2) specify the date, time (if known), location, and nature of the alleged Title IX Conduct or Related Misconduct;
- (3) identify potential Regulation violation(s);
- (4) identify the Investigator;
- (5) include information about what the parties can expect under the Policy and these Procedures;
- (6) explain the prohibition against Retaliation;
- (7) instruct the parties to preserve any potentially relevant evidence in any format, and that they will have the right to review and inspect evidence acquired during the investigation;
- (8) inform the parties how to challenge participation by the

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- (9) Investigator on the basis of bias or a conflict of interest;
  - (10) a statement that the Respondent is presumed not responsible and a determination of responsibility will be made at a live hearing;
  - (11) a statement that the institution prohibits individuals from knowingly making false statements or knowingly submitting false information;
  - (12) provide a copy of the Policy and these Procedures; and
  - (13) the right to have an advisor of their choice, including an attorney (at their respective, sole expense), present at all meetings including a hearing if warranted.
- 6.3.2. If the University decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Investigation, then the University will provide a subsequent Notice of Investigation with the additional allegation to the parties.
- 6.3.3. Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible; this presumption may be overcome only where a Hearing Panel concludes that there is sufficient evidence, by a Preponderance of the Evidence, to support a finding that the Respondent violated the Regulation. All employee Respondents and witness(es) are strongly encouraged to participate in an investigation; Employees may be required to participate, to the extent allowed by law.
- 6.3.4. Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather, consistent with applicable policy and law, other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).
  - 6.3.4.1. Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor. The advisor may be any person, including an attorney, at the party's own expense. The parties may be accompanied by their respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. If an individual does not have an advisor at the time of hearing,

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the University will provide an individual to conduct the cross-examination of any party or witness on behalf of the party. The University reserves the right to remove any individual whose actions are disruptive to the proceedings.

- 6.3.4.2. The assigned investigator will send a written request for any meeting or interview with any party or witness. If an email address or physical location is not available, the party may be contacted by phone.
- 6.3.4.3. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence in the Investigation Report. Evidence is relevant if (1) it bears on a fact of consequence in the case, or (2) it reflects on the credibility of a testifying party or witness in a material way. In general, the Investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait.
  - 6.3.4.3.1. During any subsequent hearing made for the determination of responsibility, the Hearing Panel may review the relevance determination as contested by the parties.
- 6.3.4.4. Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- 6.3.4.5. Expert Consultation(s). The Investigator may consult medical, forensic, technological or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.
- 6.3.4.6. Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the written request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University

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investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.

### 6.3.4.7. Evidence Review

6.3.4.7.1. When the Investigator finishes gathering evidence, but prior to completing a draft of the Final Investigation Report, the Investigator will provide to the Complainant and Respondent (and their respective advisors, if any) a copy of all the evidence obtained by the Investigator that is directly related to the allegations. The Investigator will provide these records in either electronic format or hard copy. The Complainant and Respondent, with their respective advisors, will have ten (10) business days to review and provide any response to the Investigator. If either party needs additional time, they may request it from the Investigator, however it may not unreasonably delay the process. The Investigator will notify the other party of any extension and offer the same extension to the other party to submit their response.

6.3.4.8. Final Investigation Report. The Investigator will prepare a draft Final Investigation Report, which will include a factual summary of the evidence gathered by the Investigator during the investigation. Prior to completing the Final Investigation Report, the Investigator will consult with the Office of University Counsel.

6.3.4.8.1. The Investigator will inform both parties simultaneously when a draft of the Final Investigation Report is completed and provide a copy to each party and their advisor (if applicable) for the party to review and respond. The parties will have 10 business days to complete their review and send the response to the Investigator. The investigator will consider any responses received by the party, prior to issuing the Final Investigation Report.

6.3.4.8.2. The Investigator will notify both parties, simultaneously, provide a copy of the Final Investigation Report and case file to the identified Hearing Coordinator within OED.

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6.3.4.9. **Timing of Investigation.** The University will endeavor to complete the investigation and issue the report and notices within sixty (60) business days of the issuance of the Notice of Investigation, generally. This timeframe may be extended for good cause, as provided in Section 9 below. The Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension. Any extension and the reason for the extension, will be shared with the parties in writing. The assigned investigator will contact the Complainant and Respondent with a status update of the investigation approximately sixty (60) business days from the issuance of the Notice of Investigation (Section 6.3.1.1). If the investigation extends beyond sixty (60) business days, the Complainant and Respondent will be provided a status update at sixty (60) business days and then at regular intervals every thirty (30) business days thereafter.

6.3.5. **Acceptance of Responsibility.** The Respondent may, at any time, elect to resolve the Formal Investigation process by accepting responsibility for the allegations or conduct, in which case the Title IX Coordinator/Associate Provost for Equity and Diversity will refer the matter to the Appropriate Vice Chancellor for review and decision-making as to further employment action, including any sanctions. The Complainant will be notified and both parties will be given an opportunity to provide Mitigation/Impact Statements as described in 8.1 to the Title IX Coordinator/Associate Provost for Equity and Diversity or designee for submission to the appropriate Vice Chancellor for consideration.

### 6.4. Hearing Panel Hearing.

6.4.1. The Title IX Coordinator or designee will establish a standing pool of trained members of the University community, including CSS, SHRA, EHRA and EHRA faculty employees and, at the discretion of the Title IX Coordinator or designee, external professionals with experience adjudicating cases of Title IX Conduct or Related Misconduct. The Hearing Coordinator, or designee, will select three (3) members from this pool to serve on the Hearing Panel, one (1) of which will serve as the Hearing Chair. The Hearing Panel will review the information gathered by the Investigator during the investigation. All persons serving on any Hearing Panel must be impartial and free from actual bias and conflict of interest.

6.4.1.1. Either party may challenge the participation of any Hearing Panel member and such members may be removed at the discretion of the

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Title IX Coordinator in matters within the jurisdiction of the Title IX Regulation or the Associate Provost for Equity and Diversity, in matters of misconduct, or his/her designee in the event he/she believes that the Hearing Panel member cannot be impartial, when a conflict of interest becomes known and the Hearing Panel member has not recused himself/herself, and/or when it is clear that the Hearing Panel Member is unable or unwilling to appropriately apply the provisions of the Regulation and these Procedures.

- 6.4.2. Notice and Timing of Hearing. Typically, a Hearing will be held within sixty (60) business days from the date the Final Investigative Report is finalized. OED will notify the parties in writing of the date, time, and location of the Hearing; the names of the Hearing Panel members and the Hearing Chair; and how to challenge participation by any member of the Hearing Panel or the Hearing Chair for bias or conflict of interest. The Notice of Hearing will be issued at least ten (10) business days from the date of the Hearing, subject to extension for good cause at the discretion of the Title IX Coordinator or designee. Good cause for extension may include the unavailability of the parties, the timing of semester breaks or University holidays, or other extenuating circumstances. Any extension, including the reason for the extension, will be shared with the parties in writing by OED provided that the request to do so is based on compelling circumstances or an emergency and communicated to OED at least 2 business days prior to the time of the Hearing. The other party will be notified of the extension request and allowed to object, in writing, to the request.
- 6.4.3. Hearing Format. The live hearing is an opportunity for the parties to address the Hearing Panel, in person or virtually, to raise any concerns about the thoroughness, fairness, and/or impartiality of the investigation and whether there is sufficient evidence to support the finding(s) by a Preponderance of the Evidence. The parties may address any information related to the investigation, supplemental statements submitted in response to the Investigation, and any impact and mitigation statements if the Hearing enters the sanction phase. Each party has the opportunity to be heard, to identify witnesses for the Hearing Panel's consideration, and to respond to any questions of the Hearing Panel or the other party's advisor. The Hearing may take place with both parties in the same room or with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or witness answering questions. The Hearing Panel will be advised by a member of the Office of University Counsel and assisted by an individual with the Office for Equity and Diversity who will serve as the Hearing Coordinator.

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6.4.4. OED will audio and/or visually record the live hearing and retain it in compliance with the Regulation.

### 6.4.5. Participation in Hearing

6.4.5.1. Parties. Both the Complainant and the Respondent have a right to be present at the Hearing. Either party may request alternative methods for participating in the Hearing that do not require physical proximity to the other party, including participating through electronic means. This request should be submitted to the Hearing Chair at least two (2) business days prior to the Hearing. If, despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the Hearing may proceed if the Chair determines there is no good cause for postponement. Neither party is required to participate in the Hearing in order for the Hearing to proceed. However, if a party fails to attend the hearing or submit to live cross-examination (whether by in-person live participation or the use of technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions), the Hearing Panel may not rely on any statement of that party in reaching a determination regarding responsibility.

6.4.5.2. Investigator or other witnesses. The Hearing Panel or parties may request the presence of the Investigator or any other witness it deems necessary to the determination. The parties must provide, to the Chair, and the Title IX Coordinator or designee, the names of the witnesses each party deems relevant to the determination three (3) business days in advance of the hearing so that the Hearing Panel can request participation of those witnesses. The Hearing Chair will provide the lists of each party to the other party. The Hearing Panel may decline to hear from witnesses where, after consulting with the parties about the purpose of the testimony of the witness, it concludes that all the information the witness may provide is irrelevant to its review or is unhelpfully duplicative.

6.4.5.3. Advisors. Both the Complainant and the Respondent have the right to be accompanied at the Hearing by an advisor of their choosing. The University reserves the right to remove any individual whose actions are disruptive to the proceedings. If a party does not present to the hearing with an advisor, the University will provide the party with an available advisor, selected from a pool of university employees trained to participate as an advisor in the

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hearing process. The party will not be charged for utilizing an advisor provided by the University.

- 6.4.6. Cross-Examination. Each party's advisor shall cross-examine the other party and any witness. If a party or witness does not submit to cross-examination at the hearing, the Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. Further, the Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Before a party or witness answers a cross-examination or other question, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- 6.4.7. Once all relevant information and evidence has been presented at the hearing including both inculpatory and exculpatory evidence, the Hearing Panel will conclude the live hearing and enter into deliberations. The Hearing Panel may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness.
- 6.4.8. Prior or Subsequent Conduct. Relevant prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Title IX Conduct or Related Misconduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Title IX Conduct or Related Misconduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Title IX Conduct or Related Misconduct. Such prior or subsequent conduct may also constitute a violation of the Notice of Nondiscrimination and Affirmative Action policy and/or other University policy, in which case it may subject the Respondent to additional sanctions. The Investigator will determine the relevance of this information.
- 6.4.9. Prior Sexual History. The sexual history of a Complainant or Respondent will not be used to prove character or reputation. Evidence related to the prior sexual history of either of the parties with other persons is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Consent, as defined in the regulation, is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship, which may have

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bearing on whether Consent was sought and given during the incident in question. However, even in the context of a relationship, Consent to one sexual act does not, by itself, constitute Consent to another sexual act, and Consent on one occasion does not, by itself, constitute Consent on a subsequent occasion. In addition, prior sexual history between the parties may be relevant to explain the presence of a physical injury or to help resolve another question raised by the complaint. The Panel will determine the relevance of this information and both parties will be informed if evidence of prior sexual history, is deemed relevant as permitted or required by applicable law.

6.4.10. Determination by the Hearing Panel. Once all relevant information and evidence has been presented at the hearing including both inculpatory and exculpatory evidence, the Hearing Panel will conclude the live hearing and enter into deliberations. The Hearing Panel will utilize the preponderance of the evidence standard to determine whether the Respondent is responsible for the alleged violation of the applicable Regulation. The Hearing Panel may not make credibility determinations based on an individual's status as a Complainant, Respondent, or witness.

6.4.10.1. Notice of Hearing Panel Determination. Within fifteen (15) business days of the hearing, the Hearing Panel Chair will simultaneously notify in writing (which may include email) the Complainant, the Respondent, and the Title IX Coordinator/Associate Provost for Equity and Diversity (or designee) of the Hearing Panel's Final Determination. The Final Determination will include:

- 6.4.10.1.1. Identification of the allegations constituting sexual harassment under the Title IX Regulation, or identification of allegations of Related Misconduct.
- 6.4.10.1.2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 6.4.10.1.3. Findings of fact supporting the determination;
- 6.4.10.1.4. Conclusion regarding the application of the Title IX Compliance and Resolution Regulation (or the University Regulation on Reports of Prohibited Interpersonal Violence and Related Misconduct, as applicable) to the facts;
- 6.4.10.1.5. A statement of, and rationale for, the result as to each allegation including a determination regarding

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responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant;

6.4.10.1.6. The University's procedures and permissible basis for the Complainant and Respondent to appeal.

6.4.10.2. If either party desires to appeal the determination of responsibility or non-responsibility made by the Hearing Panel, they may do so pursuant to the appeal procedures outlined in Section 7 and by informing OED of the appeal in writing within five (5) business days of receiving the Hearing Panel's Final Determination.

### 7. Appeal of Determination.

7.1. Either party may appeal the determination by the Hearing Panel within five (5) business days of receiving the determination by informing the Title IX Coordinator/Associate Provost for Equity and Diversity or designee, in writing, of the appeal and the rationale for the appeal.

7.2. Basis for Appeal.

7.2.1. Either party may appeal on the following basis:

- 7.2.1.1. Procedural irregularity that affected the outcome of the matter;
- 7.2.1.2. The decision of the panel was unreasonable, erroneous, or arbitrary and not supported by the facts; or
- 7.2.1.3. New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; or
- 7.2.1.4. The Title IX Coordinator/Associate Provost for Equity and Diversity or designee, investigator, or decision-maker(s), had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

7.3. Upon receipt of the appeal, the Title IX Coordinator/Associate Provost for Equity and Diversity or designee will inform the other party of the appeal and request any information they wish to provide the appellate officer.

7.3.1. The appellate officer shall be an individual from a pool of individuals trained in the applicable Title IX regulations as well as appeal review.

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- 7.4. The Title IX Coordinator/Associate Provost for Equity and Diversity or designee shall provide a copy of the investigative record, the written decision, and any appeal materials submitted by the parties to the appellate officer for their review. The appellate officer shall conduct a review of the materials to determine if there is just cause to overturn the Hearing Panel's determination and inform the parties and the Title IX Coordinator/Association Provost for Equity and Diversity or designee simultaneously and in writing of the result and rationale for the result and final determination. The appellate officer shall consult with legal counsel from the Office of University Counsel for assistance in the review of the appeal.
- 7.5. The appellate officer will determine whether to confirm the final determination of the Hearing Panel or to modify the findings (which may include reversing the panel determination). The decision of the appellate officer is final; however, in matters where the appellate officer determines there was a material procedural irregularity, the appellate officer may refer the case back for a new hearing before a different Hearing Panel. In this case, the matter will proceed to a new hearing and the procedures beginning in Section 6.4., above shall apply, including any subsequent appeal rights from a Final Determination made before a subsequent hearing panel.
- 7.6. The decision of the appellate officer shall be in writing and include the requirements found in Section 6.4.10.1. of these procedures for all Final Determinations.
- 7.7. If the appellate officer upholds the final determination of the Hearing Panel and makes a finding of responsibility on the part of the respondent, the determination will be referred to the appropriate Vice Chancellor review and imposition of any disciplinary action(s) in compliance with University policies applicable to the respondent's employment type (EHRA Faculty, EHRA Non-Faculty, SHRA, CSS, etc).

### **8. Sanction Referral in findings of Responsibility; Notice of Outcome.**

- 8.1. Party Response/Impact and Mitigation Statements. Each party has an opportunity to provide the Title IX coordinator with a response to the Final Determination of the Hearing Panel regarding the responsibility of the respondent. Where there is a finding of responsibility on one or more of the allegations, both parties may also submit a statement to the Title IX Coordinator for consideration by the appropriate Vice Chancellor upon referral. The Complainant may submit a written statement describing the impact of the Title IX Conduct or Related Misconduct on the Complainant and expressing a preference about any disciplinary action to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining any disciplinary action imposed. All such responses and statements, if any, must be delivered to the Title IX Coordinator/Associate Provost for Equity and Diversity or designee within five (5) business days of issuance of the Final Determination. The Title IX Coordinator/Associate Provost for Equity and Diversity or designee will provide all such responses and statement(s), if any, with the investigative

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record and Hearing Panel determination or Final Determination of the appellate officer, and the parties' other written submissions to the Vice Chancellor.

- 8.2. Sanctions. Where disciplinary action is deemed appropriate by the Vice Chancellor upon referral for sanctions, such action may include one or more of the following: training, progressive disciplinary action, restrictions on interactions with students or other members of the ECU community, restrictions on university associated activities, No-Contact Directive(s), transfer or reassignment from position, removal of administrative appointment(s), demotion, suspension without pay, and discharge from employment.
- 8.3. In determining the appropriate employee disciplinary action following a referral, the appropriate Vice Chancellor will be guided by a number of considerations, including:
  - 8.3.1. The severity, persistence or pervasiveness of the Title IX Conduct or Related Misconduct;
  - 8.3.2. The nature or violence (if applicable) of the Title IX Conduct or Related Misconduct;
  - 8.3.3. The impact of the Title IX Conduct or Related Misconduct on the Complainant;
  - 8.3.4. The impact or implications of the Title IX Conduct or Related Misconduct within the University community;
  - 8.3.5. Prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history to the extent allowed by applicable law and policy, at the University or elsewhere, and any criminal convictions;
  - 8.3.6. Whether the Respondent has accepted responsibility for the Title IX Conduct or Related Misconduct;
  - 8.3.7. The maintenance of a safe, nondiscriminatory and respectful environment conducive to learning;
  - 8.3.8. The amount of time that elapsed between the date of the Title IX Conduct or Related Misconduct and the date of the Complainant's report; and
  - 8.3.9. Any other mitigating, aggravating, or compelling factors.
- 8.4. The Vice Chancellor will consult with other administrators as needed, including but not limited to Human Resources and the Title IX Coordinator, to ensure that any disciplinary action is appropriate for the violation and consistent with the disciplinary procedures applicable to the Respondent. The Vice Chancellor will also determine any other appropriate actions, which may include (1) imposing or extending a No- Contact Directive; (2) imposing or extending academic, University housing and/or University employment modifications; (3) other restorative remedies for the Respondent, such as formal referral to the Employee Assistance Program and education and training that encourage the Respondent to develop insight about the Title IX Conduct or Related Misconduct, learn about the impact of the Title IX Conduct or Related Misconduct on the Complainant and the University community, and identify how to prevent that Title IX Conduct or Related Misconduct in the future (including mandatory participation in training, education and/or

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prevention programs related to the Title IX Conduct or Related Misconduct); (4) imposing or extending increased monitoring, supervision, and/or security at locations or in connection with activities where the Title IX Conduct or Related Misconduct occurred or is likely to reoccur; (5) arranging for conducting targeted or broad-based educational programming or training for relevant persons or groups; and/or (6) imposing any other remedial or protective measures that are tailored to achieve the goals of the Regulation.

- 8.5. Any disciplinary action or combination of actions imposed upon a Respondent will be made in accordance with applicable University policies and documented in the Respondent's personnel file. Nothing in these Procedures prevents a Vice Chancellor from imposing disciplinary action against a Respondent where the Final Investigation Report demonstrates that the Respondent engaged in some other form of conduct prohibited by the University, regardless of whether the Respondent has been found responsible for violating the Regulations which are the subject of these procedures.
- 8.6. Any intended appeal for the disciplinary action imposed will follow in accordance with the procedures established by the applicable University policy related to the Respondent's employment type (EHRA Faculty, EHRA Non-Faculty, SHRA, CSS). Nothing in these Procedures abrogates post-adjudication rights as provided by state and federal law (i.e., North Carolina Civil Rights Division of the Office of Administrative Hearings; the Office for Civil Rights; and the Equal Opportunity Employment Commission).
- 8.7. Except as provided in Section 8.1 or Section 8.2, there is no right for a complainant to participate in the disciplinary and personnel matters, obtain confidential personnel information, or seek appeal of any decision on employee disciplinary action.
- 8.8. Notice to Parties of Results of disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking. The Vice Chancellor will notify the Complainant, Respondent and Title IX Coordinator/Associate Provost for Equity and Diversity or designee, simultaneously, in writing (which may include email) of the results and rationale of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking in compliance with 34 C.F.R. 668.46.
- 8.9. Employees and agents of the university may disclose confidential student records and confidential personnel information about others only to the extent allowed by law. The University does not impose restrictions on the parties regarding re-disclosure of the incident, their participation in proceedings under these Procedures, or the outcome, provided that the manner in which any disclosure is made must not be disruptive to the educational and/or work environment. Any party may disclose information about the incident, participation in the proceeding, and the outcome to and in connection with consultation with his or her own legal counsel

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### **9. Extension of Timelines for Good Cause**

- 9.1. The University will typically investigate and come to an initial decision regarding sanctions, if any, within 60 business days. However, any deadline or timeframe for a particular portion of these Procedures may be extended by the University for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. In the event an extension is necessary, the Investigator, Title IX Coordinator or designee, or the Vice Chancellor with supervisory responsibilities will notify the parties in writing of any extension of a deadline or timeframe and the reason for such extension.

### **10. Vice Chancellor Substitution**

- 10.1. For the purposes of these procedures, all references to the appropriate Vice Chancellor mean the Vice Chancellor with supervisory responsibility over the Respondent or, in the Chancellor's Division, the supervisor that the Chancellor determines to be appropriate, such as the Director of Athletics, Chief of Staff, Chief Audit Officer or Vice Chancellor for Legal Affairs. However, the Chancellor may assume this responsibility or designate another Vice Chancellor in the event the Vice Chancellor with supervisory authority over the Respondent is unavailable; is a witness in the investigation; has a conflict of interest; or when the Chancellor determines that a substitution is necessary to ensure a fair and timely review. In the event the Chancellor assumes the role of the appropriate Vice Chancellor, another Vice Chancellor will be appointed to assume responsibilities of the Chancellor under these procedures.