

Eckerd College Procedures for Resolving Complaints of Sexual Misconduct

Including Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence and Stalking

I. Introduction

Eckerd College (the “College”) is committed to providing a prompt and equitable response to reports and formal complaints of Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as prohibited by Title IX (collectively, Title IX Sexual Harassment), and Sexual and Gender-Based Harassment, Sexual Exploitation and Retaliation, all of which are prohibited by the Eckerd College Policy against Discrimination and Harassment (the “Policy”). The College’s Procedures for addressing Prohibited Conduct are grounded in fairness and support for all parties, include procedural protections that ensure notice, equitable opportunities to participate, and a neutral and impartial investigation, resolution, and appeal. The definitions for specific forms of Prohibited Conduct and other core concepts are included in the Policy.

Any person may make a report of Prohibited Conduct to the Title IX Coordinator under these Procedures. Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator will conduct a Preliminary Inquiry of the available information. At the conclusion of the Preliminary Inquiry, the matter may be resolved through:

1. Provision of supportive measures only;
2. Pursuing a formal resolution process, which is initiated by the filing of a formal complaint, and involves an investigation, hearing, and appeal;
3. Pursuing an informal resolution process, after the filing of a formal complaint, which requires the consent of the Complainant and the Respondent; or
4. Dismissal of a formal complaint.

All informal and formal resolution processes will be conducted in accordance with federal and state law, as set forth in the Policy.

II. Scope

These Procedures will be used to resolve reports and formal complaints against students, staff, and faculty for the following forms of Prohibited Conduct:

Title IX Sexual Harassment, which includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking

Other Forms of Prohibited Conduct, which includes Sexual or Gender-Based Harassment and Sexual Exploitation

Retaliation (when related to Title IX Sexual Harassment or Other Forms of Prohibited Conduct listed above)

These Procedures apply to reports and formal complaints against students, faculty, and staff that occur within the College's education program or activity, including employment and admissions. The College's education program or activity includes all of the College's operations, including locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the conduct occurs; or any building owned or controlled by a student organization that is officially recognized by the College.

Under certain circumstances, the Procedures may also apply pertain to reports of Prohibited Conduct that occur outside of the education program or activity but have continuing effects in the education program or activity, or that fall within the scope of conduct otherwise regulated by the College, the conduct has or could have a continuing impact within the College's education program or activity, or the conduct may have the effect of posing a serious threat to the College community. See the Policy for additional information about scope and jurisdiction.

Any individual may make a report to the College of Prohibited Conduct and receive access to reasonably available supportive measures. A student, employee or other individual who is participating in, or attempting to participate in, the College's education program or activity may also file a formal complaint requesting an investigation under this Policy. In addition, the Title IX Coordinator may file a formal complaint on behalf of a third party where the reported conduct occurred in the College's education program or activity.

The College's ability to respond to a report of Prohibited Conduct under this Policy is based on its disciplinary authority over the Respondent (the individual accused of violating the Policy).

If the Respondent is not an employee or student, the College's ability to take disciplinary action will be limited and is determined by the context of the Prohibited Conduct and the nature of the relationship of the third party Respondent to the College. The College will determine the appropriate manner of resolution, which may include referral to local law enforcement or to the home school or employer of the third party Respondent, and/or restriction from access to campus or College programs or activities.

In the event any individual with a responsibility identified in the Policy or these Procedures, including the Title IX Coordinator, investigator, or decision-maker, has a conflict of interest that would compromise that individual's objectivity in discharging that responsibility, the College will appoint a designee. Concerns about a potential conflict of interest involving an investigator, hearing officer, or other implementer should be raised with the Title IX Coordinator. Concerns about a potential conflict of interest with the Title IX Coordinator should be raised with the Human Resources Director.

III. Confidential Resources

The College offers access to Confidential Resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to

(or without) making a report to the College. Confidential Resources include the Counseling Center, Student Health Services, Office of Advocacy Services, Center for Spiritual Life, Charles Nechtem Associates, Employee Assistance Program, Pinellas County Rape Crisis; and Suncoast Center Inc.

IV. Reporting Options

The College encourages anyone who has experienced Prohibited Conduct to report it directly to the Title IX Coordinator. Any individual may make a report of Prohibited Conduct regardless of affiliation with the College and regardless of whether or not the person reporting is the person alleged to be the victim of conduct. Reports can be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. A report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Michelle Espinosa
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St. Petersburg, Florida, 33711
(727) 864-7810
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Eckerd College also encourages all individuals to report Prohibited Conduct that may be criminal in nature to the Title IX Coordinator and/or to local law enforcement. A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the College will assist a Complainant in contacting law enforcement at any time. Under limited circumstances posing a threat to health or safety of any individual or to comply with applicable law, Eckerd College may independently notify law enforcement.

Campus Safety and Security (727)
864-8260

St. Petersburg Police Department
911 (in an emergency)
(727) 893-7780 (24-hour non-emergency number)

The College's overarching goal is that all formal complaints be investigated and adjudicated in a prompt, fair, and impartial manner. If a Complainant also chooses to file a criminal report with law enforcement, the College will not unduly delay its investigation unless requested to do so by the appropriate legal authorities. Although this may require the College to temporarily suspend the fact-finding portion of an investigation while the law enforcement agency gathers evidence, the College will promptly resume its investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process. The College will not, however, wait for the

conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures for the Complainant.

V. Role of the Advisor

The Complainant and Respondent each have the right to be accompanied and assisted at any meeting or hearing under the Policy and these Procedures by an advisor of their choice. The advisor may be any person, including an attorney, but need not be an attorney. A party may decline to use an advisor for all stages of the formal or informal resolution process, with the exception of the hearing, where any questioning of the other party must be conducted by the party's advisor. If a party does not have an advisor for the hearing, the College will provide an advisor, free of charge, to the party for the sole purpose of facilitating questioning on the party's behalf of other parties and witnesses.

A party's advisor of choice may provide support and advice to the parties at any meeting and/or proceeding, but they may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings. Advisors may ask to suspend any meetings, interviews, or hearings briefly to provide consultation; the College retains the discretion to deny such requests if they are excessive, burdensome, or otherwise unreasonable. With the exception of the advisor's live questioning during a hearing, the advisor may observe, provide support, and provide guidance or advice to the party (in a non-disruptive manner). The College may remove or dismiss advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. An advisor may be asked to meet with the Title IX Coordinator in advance of any meetings or proceedings to receive and acknowledge the College's overview of the Policy and Procedures, expectations of the role, privacy considerations, and appropriate decorum. An advisor should plan to make themselves reasonably available for all meetings and proceedings. The College will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

An advisor is entitled to review all information gathered in the investigation that is directly related to the allegations (as part of evidence review), to access to the investigation report, and to cross-examine the other party and all witnesses during the hearing.

VI. Preliminary Inquiry

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator (or designee) will conduct a Preliminary Inquiry of the reported information. As part of the Preliminary Inquiry, the Title IX Coordinator will determine whether the Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy and/or Title IX. The first step in an initial assessment is typically an intake meeting with the Complainant or reporting individual.

During the Preliminary Inquiry, a Complainant may request supportive measures only, or may file a formal complaint. Alternatively, as described below, the Title IX Coordinator may determine

that it is appropriate to file a formal complaint on behalf of a Complainant. After the filing of a formal complaint, the Complainant may decide to seek an informal resolution in lieu of a formal resolution process (investigation and hearing). A Complainant is always entitled to reasonably available supportive measures, regardless of whether a formal or informal resolution process is initiated.

A. Intake Meeting

The Title IX Coordinator will promptly contact the reporting individual or Complainant to request a meeting. During the intake meeting, the Title IX Coordinator will discuss the availability of supportive measures, provide information about the College's procedural options, and gather supplemental information. The Title IX Coordinator will provide information about reasonably available supportive measures (available with or without filing a formal complaint), the process for filing a formal complaint, the Complainant's right to report the alleged conduct to law enforcement (either on campus or off), the difference between privacy and confidentiality, and the right to be protected from Retaliation.

In addition to the initial conversation and any subsequent meeting with the Complainant, the College will provide the Complainant with written information about resources, procedural options, including local law enforcement resources as applicable and reasonably available supportive measures. The written information will also include information about campus and community resources and services, including counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other available services. This written information will also include a notification about the process for seeking disability-based accommodations, academic adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act.

B. Steps in the Preliminary Inquiry

As part of the Preliminary Inquiry, the Title IX Coordinator will:

1. Promptly contact the Complainant to discuss the availability of supportive measures;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Assess the nature and circumstances of the report based on reasonably available information;
4. Address immediate physical safety and emotional well-being of the Complainant or other campus community members;
5. Conduct an individualized analysis of safety and risk for the campus community to determine whether a student Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual such that it justifies removal;

6. Evaluate the need for administrative leave for an Employee Respondent;
7. Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
8. Notify the Complainant of the right to contact or decline to contact law enforcement, and if requested, assist them with notifying law enforcement;
9. Notify the Complainant of the availability of medical and counseling resources to address physical and mental health concerns and to preserve evidence;
10. Notify the Complainant of the importance of preservation of evidence;
11. Share information with Campus Safety and Security to comply with Clery Act reporting requirements and timely warning assessment;
12. Provide the Complainant with information about on- and off-campus resources;
13. Provide the Complainant with a copy of the Policy, these Procedures and an explanation of the procedural options, including seeking supportive measures, the process for filing a formal complaint, the formal resolution process, and alternative resolution;
14. Inform the Complainant that they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the report, that the advisor may accompany them to any meeting or proceeding under the Procedures, and that if the matter proceeds under the formal resolution process and either party does not have an advisor, the College will provide a hearing advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing;
15. Assess for evidence of a pattern or other similar conduct by the Respondent; and
16. Explain the College's prohibition against Retaliation.

C. Supportive Measures

Upon receipt of a report of Prohibited Conduct, regardless of whether a Complainant chooses to pursue a formal complaint, the Title IX Coordinator will provide supportive measures, as reasonable, available, and appropriate. Respondents are also eligible for supportive measures as reasonable, available, and appropriate.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent, before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to Eckerd College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the campus community, or deter Prohibited Conduct.

Supportive measures may include, but are not limited to the following:

- Referral to counseling, medical, and/or other health services
- Referral to the Employee Assistance Program
- Visa and immigration assistance
- Education to the community or community subgroup
- Altering work arrangements for employees;
- Safety planning;
- Providing campus escorts;
- Providing transportation accommodations;
- Implementing contact limitations (no contact directives) between the parties;
- Offering adjustments to academic deadlines, work schedules, course schedules, etc.; and,
 - Assisting the reporting party with reporting to law enforcement.

Additional relief such as protective orders may be available through the criminal and/or family court process.

Eckerd College will maintain as confidential any supportive measures provided to a Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures.

The Title IX Coordinator will document each report or request for assistance, including requests for supportive measures, as well as the response to any such report or request. The records will be kept private to the extent required or permitted by law.

1. Emergency Removal of a Student

Certain circumstances may warrant removing a student Respondent from an Eckerd College educational program or activity. The College may remove a student Respondent on an emergency basis from College property or employment, education or research programs or activities. Before imposing an emergency removal, the College will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct and justifies removal of the Respondent from the College program or activity.

The Title IX Coordinator will promptly provide the Respondent with written notice of any removal and an opportunity to challenge the removal. During any challenge, the Respondent will remain off-campus and must comply with the notice of removal. That notice shall include a statement that the use of any information the Respondent chooses to provide may subsequently be used in implementing any aspect of this Policy, including the investigation and adjudication. The Respondent will have three (3) business days to submit a written challenge to the safety and risk analysis to the Title IX Coordinator. Challenges will be reviewed by the Vice President of Student Life.

2. Administrative Leave

Following a report of Prohibited Conduct, the College may place a non-student employee Respondent on administrative leave, with or without pay.

D. Formal Complaint

The formal resolution process (investigation, hearing and appeal process) is initiated by the filing of a formal complaint. A formal complaint is a document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The formal complaint may be submitted to the Title IX Coordinator in person, by mail, or by electronic mail, using the formal complaint form. The Complainant may also contact the Title IX Coordinator directly for assistance in making a formal complaint. At the time of filing the formal complaint, the Complainant must be participating in or attempting to participate in the College's education program or activity. In addition, the Title IX Coordinator retains discretion, in consultation with relevant College stakeholders, to file a formal complaint on behalf of any individual. Where a Complainant files a formal complaint and requests an investigation, and the reported conduct falls within the scope and jurisdiction of the Policy, the College must pursue an investigation.

1. Dismissal of Formal Complaint

The Title IX Coordinator will determine whether the conduct alleged in the formal complaint falls within the scope of the Policy and the definitions of Prohibited Conduct. The Title IX regulations require the College to dismiss some or all of the allegations in the formal complaint related to Title IX Sexual Harassment if: 1) the conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment as defined in the Title IX regulations; 2) the conduct did not occur within the College's education program or activity; or, 3) the conduct did not occur against a person in the United States. This means that the College may be required by law to dismiss some or all of the allegations in the formal complaint under Title IX and provide the parties notice of the dismissal and the opportunity to appeal that dismissal.

However, where the allegations in the formal complaint include other forms of conduct prohibited by the College, the conduct occurred outside of the United States, or the conduct is not within the education program or activity (but still within the scope of conduct regulated by the College), the formal resolution process will apply and the remaining allegations will proceed to an investigation and hearing.¹ Although the formal resolution process is the same for conduct regulated by the Title IX regulations and other forms of conduct prohibited by the College, the parties nonetheless have

¹ As noted above, this includes circumstances where the College otherwise regulates the conduct, the conduct has or could have a continuing impact within the College's education program or activity, or the conduct may have the effect of posing a serious threat to the College community.

the opportunity to appeal the mandatory dismissal of the allegations related to Title IX Sexual Harassment.

In addition, the Title IX Coordinator may dismiss a formal complaint, at any stage of the process, in any of the following three circumstances: (1) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; (2) the Respondent is no longer enrolled or employed by the College; (3) or specific circumstances, including a Complainant's decision not to respond to outreach by the Title IX Coordinator, prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The decision about whether to dismiss a formal complaint, in whole or in part, may be made at any time in the process. Dismissal of the formal complaint will be communicated to the parties simultaneously and in writing. Either party may challenge the dismissal of a formal complaint by notifying the Title IX Coordinator in writing of the challenge within five (5) business days of the dismissal of the formal complaint. The other party will be notified of the challenge. Challenges to dismissals will be reviewed by an individual otherwise trained to serve as a Hearing Officer or Appellate Officer within five (5) business days.

2. Title IX Coordinator Discretion to File Formal Complaint

Eckerd College endeavors to respect the wishes of a Complainant to not pursue a formal complaint, to not be identified and/or to not participate in the process. Where possible, the College attempts to address complaints in accordance with the Complainant's wishes. However, the College may not always be able to do so. In order to protect the community, the College may be obligated to investigate and adjudicate serious incidents even when the Complainant would prefer otherwise. Additionally, although a Complainant may withdraw a formal complaint at any time, the College may be compelled to continue an investigation or disciplinary process. The College will not compel a Complainant to participate, nor retaliate against a Complainant for non-participation.

The Title IX Coordinator has the discretion, in consultation with relevant College stakeholders, to file a formal complaint on behalf of any individual. In evaluating the appropriate manner of resolution, including whether the Title IX Coordinator will file a formal complaint in the absence of a formal complaint by the Complainant, the Title IX Coordinator will consider the following factors: the seriousness, persistence or pervasiveness of the reported conduct; whether the Complainant has requested anonymity; whether the Complainant is willing to participate in an investigation; the severity and impact of the alleged conduct; whether the circumstances suggest there is a risk of the Respondent committing additional acts of Prohibited Conduct, including but not limited to reported threats of violence, sexual or otherwise, by the Respondent against the Complainant or others; whether the misconduct was committed with a weapon; the respective ages of the parties; whether the Complainant is a minor under the age of 18; whether the Respondent

has admitted to the Prohibited Conduct; whether the Respondent has a history of prior conduct violation; whether there have been other complaints about the same Respondent; whether the Respondent is alleged to have threatened further misconduct; whether the misconduct was committed by multiple individuals; whether the report reveals a pattern of misconduct (e.g., at a given location or by a particular group); the existence of independent evidence that may be available without the participation of the Complainant, and the extent of prior remedial methods taken with the Respondent.

The Title IX Coordinator will take all reasonable steps to respond to the report consistent with a Complainant's requested course of action, but its ability to do so may be limited based on the nature of the reported information and without the full participation of a Complainant. Where the Title IX Coordinator files a formal complaint on behalf of the Complainant, the Title IX Coordinator or designee will inform the Complainant about the chosen course of action.

3. Consolidation of Formal Complaints

The College may consolidate formal complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

E. Conclusion of the Preliminary Inquiry

The Preliminary Inquiry will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and the College has sufficient information to determine the appropriate course of action. Eckerd College will seek to complete the Preliminary Inquiry as promptly as possible, typically within ten (10) business days. There may be circumstances, however, where the Preliminary Inquiry takes longer based on the availability of the Complainant or other necessary information, a Complainant's request to maintain privacy or not file a formal complaint, or other factors outside of the College's control. The College also understands that a Complainant may engage in delayed decision-making, which may impact the timing of the conclusion of the Preliminary Inquiry. At the conclusion of the Preliminary Inquiry, the Complainant will receive a written notice of the determination about how the College will proceed.

V. Formal Resolution

A formal resolution process will occur when the Complainant or Title IX Coordinator file a formal complaint.

A. Notice of Investigation

The Title IX Coordinator (or designee) will provide written notice of the formal complaint to all known parties. The written notice will include, at a minimum (a) a link to, or copy of, these procedures; (b) details regarding the identities of the parties, date, time and location, and nature of

the reported conduct; (c) the potential policy violations; (d) the name of the investigator; (e) how to challenge participation by the investigator on the basis of conflict of interest or bias; (f) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal complaint process; (g) the parties' rights to be accompanied by an advisor of their choice throughout the process; (h) the importance of preserving any potentially relevant evidence; (i) information about the parties' rights and responsibilities; and (j) prohibition against making false statements during the process.

If the investigation reveals the existence of additional potential policy violations, Eckerd College will issue a supplemental notice of investigation. This initial notice, and any supplemental notices, will be provided to the intended recipient in advance of any interview or meeting with investigators to allow the party sufficient time to prepare a response.

B. Investigator

The Title IX Coordinator will assign an investigator to complete a fact-finding investigation of the formal complaint. The investigator may be an Eckerd College employee or an external professional. The Title IX Coordinator will ensure that the investigator has the appropriate training and experience and is free of a conflict of interest or bias for or against either party. The name of the investigator will be provided to the parties in the notice of investigation and the parties will be allowed to challenge the appointment of an investigator based on conflict of interest or bias. The Title IX Coordinator will also ensure that the investigator has received training on the definition of Prohibited Conduct, including Sexual Harassment, the scope of the College's education program or activity, how to conduct an investigation, how to serve impartially, conflicts of interest and bias, and issues of relevance to create an investigative report that fairly summarizes the relevant evidence.

C. Overview of Fact-Gathering Process

During an investigation, the investigator will seek to meet separately with the Complainant, Respondent, and relevant witnesses. The investigator will also gather other relevant information or evidence, including documents, photographs, communications between the parties, and medical records (subject to the consent of the applicable person), and other electronic records as appropriate. The investigator may receive any information presented by the parties, but the investigator not the parties, is responsible for gathering relevant evidence. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution.

The investigator will send written notice of the interview date, time, and location, name of participant(s) and purpose of the interview to the parties and witnesses, in sufficient time for the party to prepare and participate. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to voluntarily

provide material information, the College's ability to conduct a prompt, thorough, and equitable investigation may be impacted. The College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

1. Witnesses

The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters.

Witnesses may also be offered to provide subject matter expert information. If parties wish to provide expert testimony or evidence, they are solely responsible for securing attendance of any expert witness at a hearing, and for the costs or fees associated with any expert report or testimony.

Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be shared with the parties at the conclusion of the investigation. The investigator has the discretion to determine which of those potential witnesses, or other persons, may have relevant information about the alleged conduct. Witnesses may include individuals outside the Eckerd College community.

Witnesses wishing to submit evidence to the investigator must submit all known evidence in existence and in their possession prior to completion of investigation report. If a witness fails to provide known evidence in their possession during the investigation, they may be precluded from offering it at a later hearing.

2. Site Visits

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, 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.

3. Evolving Evidence/Social Media

The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The investigator does not actively monitor social media or online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witness should bring online information to the attention of the investigator.

During the course of the investigation, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation and will also share any information about retaliation or violation of the terms of an interim protective measure with the Title IX Coordinator for further action.

4. Obligation to Provide Truthful Information

All Eckerd College community members are expected to provide truthful information in any report or proceeding under the Policy and are further expected to cooperate with the College in any such proceeding. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

5. Evidentiary Considerations

Evidence is relevant if it makes a material fact more or less probable than it would be without the evidence. In general, the investigator and decision-maker have the discretion to determine the relevance and probative value of information proffered or received.

In addition, the investigator has the discretion to evaluate the relevance of the following evidentiary considerations:

Medical or Counseling Records: The investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the investigator, they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond. At the conclusion of the investigation, the Complainant and the Respondent will both have the opportunity to review and respond to all information gathered in the investigation that is directly related to the allegations, including information shared by the Complainant or the Respondent during their interviews or through evidence either provides.

Prior Sexual History of the Complainant: A Complainant's prior sexual history is generally not relevant, although evidence may be admitted if determined relevant in two circumstances: (1) where the Respondent alleges the sexual contact was consensual, as evidence of the manner and nature of how the parties communicated consent in the past may be relevant in assessing whether consent in the current allegation, recognizing however, that the mere fact of a current or previous dating or sexual relationship, by itself,

is not sufficient to constitute consent; and (2) to show that someone other than Respondent committed the conduct.

Any party seeking to introduce information about prior sexual history should bring this information to the attention of the investigator at the earliest opportunity. Where a sufficient informational foundation exists, the investigator will assess the relevance, form, and reliability of the information and determine if it is appropriate for inclusion in the investigative report.

Prior or Subsequent Conduct: In gathering information, the investigator may also consider other reports of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or another material fact. For example, where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be relevant and probative to the determination of responsibility and/or assigning of a sanction. Similarly, prior or subsequent conduct of a Complainant, even when it involves conduct that may violate College policy, may be considered when relevant.

D. Evidence Review

At the conclusion of the fact-gathering process, and prior to the completion of the investigation report, the investigator will make information gathered in the investigation available for review by the parties and their advisors. The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The investigator will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report. In the written submission, the parties may offer additional comment or feedback on the facts as gathered, clarify information previously shared, suggest additional witnesses, or identify any other relevant information or evidence to assure the thoroughness, sufficiency and reliability of the investigation.

E. Investigation Report

The investigator will produce a written investigation report that fairly summarizes the relevant information and facts gathered during the investigation. The investigator has the discretion to determine the relevance of any witness or other evidence. The investigation report will include

inculpatory and exculpatory information and may include direct observations and reasonable inferences drawn from the facts and discussion of any consistencies or inconsistencies between the various sources of information.

The investigation report will conclude with the investigator's recommended findings of fact and determination of responsibility based on an objective evaluation of the relevant information. This finding is a recommendation only. As noted below, the Hearing Officer has complete autonomy and independence and is not bound by the investigator's recommendation.

The investigator will apply the preponderance of the evidence standard in making a recommendation as to a determination of responsibility. A preponderance of the evidence means it is more likely than not, based upon the information provided, that the Respondent is responsible for the alleged violation(s).

The Title IX Coordinator will provide the investigative report, along with a written notice of hearing, to the parties, their advisors, and the Hearing Officer, in an electronic format or a hard copy at least ten (10) days prior to the scheduled hearing. The Complainant and Respondent are provided the opportunity, in writing, to offer any additional comment or feedback with respect to the facts, the investigator's recommended finding, or the investigator's determination of relevance. The Title IX Coordinator will set a reasonably prompt time frame for submission of comment.

F. Conduct That Does Not Constitute Title IX Sexual Harassment or Sexual or Gender-Based Harassment

In some instances, the investigator, in consultation with the Title IX Coordinator will determine that the allegations, even if accepted as true, would not rise to the level of Title IX Sexual Harassment, but nonetheless require remediation. The Title IX Coordinator, in partnership and consultation with relevant stakeholders, may address unprofessional, disrespectful, and/or offensive conduct that: 1) does not rise to the level of creating a hostile environment (e.g., a one-time derogatory comment) or a violation of this Policy, or 2) is of a generic nature not clearly based on a Protected Characteristic (e.g., socioeconomic status); and/or 3) runs counter to the College's mission and values. Addressing such behaviors will not typically result in the imposition of disciplinary sanctions under the Policy, but may be addressed through restorative remedial actions, such as coaching, education, and/or effective conflict resolution or other alternative resolution mechanisms.

G. Acceptance of Responsibility

At any point during the investigation, the Respondent may elect to accept responsibility for some or all of the Policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the potential policy violations, the investigation will

continue to conclusion. Where there is an acceptance of responsibility as to all of the potential policy violations, the investigator will complete an investigation report of all information gathered to date and refer the matter to the Hearing Officer for sanctioning as described below.

Alternatively, the parties may also agree to stop the formal resolution process and engage in an informal resolution of the formal complaint at any time before a determination of responsibility, provided that the Complainant and Respondent give voluntary, written consent and the College deems it appropriate to stop the investigation. Through alternative resolution, the parties may agree to a proposed sanction.

H. Notice of Hearing

The Title IX Coordinator or designee will provide the Complainant and Respondent with a written notice of hearing. The notice of hearing will include: the specific policy violations that will be the subject of the hearing; the date time, and location of the hearing; the name of the Hearing Officer; how to challenge participation by the Hearing Officer on the basis of conflict of interest or bias; the right to have an advisor present at the hearing for cross-examination on the party's behalf; that all evidence that is directly related to the allegations, as shared in evidence review, will be available to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; that the parties can challenge the investigator's determination of relevance at the hearing; that Eckerd College will provide an advisor, without fee or charge, to conduct cross-examination on behalf of the party at the hearing if the party does not have an advisor present for the hearing; and, how to request that witnesses be present at the hearing. Notice will be emailed at least ten (10) calendar days prior to the hearing to the parties and their advisors, or in any other manner reasonably designed to give notice to the parties.

I. Live Hearing

Hearings will be conducted either in-person or virtually with technology that enables the Hearing Officer and parties to simultaneously see and hear the party and witnesses speaking. The College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.

1. Hearing Officer

The hearing will be heard or conducted by a fair and impartial Hearing Officer, who will conduct an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. The Hearing Officer may be an Eckerd College faculty or staff member, or an external

professional, as determined in the sole discretion of the Title IX Coordinator.² Any individual serving as a Hearing Officer will be free from conflicts of interest and bias for or against either party, and trained on the definition of Prohibited Conduct, including Sexual Harassment, the scope of the College's education program or activity, how to conduct a hearing, how to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and how to serve as an informed and impartial decision-maker. Training for Hearing Officers will include training content provided to investigators, as well training on any technology to be used at a live hearing and on issues of relevance of questions and evidence.

The role of the Hearing Officer is to provide all parties with an equitable opportunity to be heard and to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility. The Hearing Officer will review the investigative report and any written statements provided by the parties in response to the investigative report, all exhibits and any additional relevant evidence introduced at the hearing. The Hearing Officer will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue. The Hearing Officer may reach credibility determinations, but may not base credibility determinations on a person's status as a Complainant, Respondent or witness. Where a Complainant or Respondent declines to participate in a hearing, the Hearing Officer may not make an adverse inference against that party. The Hearing Officer may consult with or be advised by the Title IX Coordinator, although the Hearing Officer retains full discretion and decision-making authority.

2. Hearing Format

The hearing is an opportunity for the parties to address the Hearing Officer. The parties may address any information in the investigative report and supplemental statements submitted in response to the investigative report. The College will make all evidence directly related to the allegations, as shared in evidence review, available to the parties at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Hearing Officer has the discretion to determine the format for the hearing and its deliberations. Typically, the Complainant and Respondent will have an opportunity to provide an opening statement to the Hearing Officer. Each party will then have an opportunity to address the Hearing Officer and respond to questions by the Hearing Officer, or as described below, the other party's advisor. The Hearing Officer will also hear from relevant witnesses, including the investigator. Each party will have the opportunity to question the other party, the witnesses, and the investigator through their advisor of choice or hearing advisor provided by the College directly, orally, and in

² During the course of the fall semester, the College, in consultation with campus stakeholders, will evaluate whether to reincorporate a Hearing Panel. In light of the expanded procedural requirements of a live hearing, the compressed time frame for implementation, and the interim nature of this Policy, the use of an external professional as a Hearing Officer is designed to provide the greatest flexibility and sensitivity in implementing the procedures.

real time. If a party does not have an advisor present at the live hearing, the College will provide an advisor, free of charge, who may be, but is not required to be, an attorney, for questioning on behalf of that party.

Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent, or witness responds to a question, the Hearing Officer will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant as defined above. If a party or witness does not submit to questioning by the other party's advisors at the hearing, the Hearing Officer may rely on statements of that party or witness in reaching a determination regarding responsibility, after assessing the relevance of each statement and weighing the reliability of the statement against the fact that the statement was not further tested through questioning at a hearing. The Hearing Officer may not draw any inference from the decision of a party or witness to not participate at the hearing.

After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement. The advisor may not provide the opening or closing statement and may not provide answers or responses on behalf of a party. The advisor's role during the hearing is to conduct questioning of the other party and any witnesses. A party may never conduct questioning of the other party themselves.

The hearing will be audio-recorded. Neither the parties, nor any participants or observers, will be permitted to make any audio or video recordings.

J. Standard of Evidence

At the conclusion of the hearing, the Hearing Officer will deliberate in private to determine whether there is sufficient evidence, by a preponderance of the evidence, that Respondent engaged in conduct that violated the Policy. This means that the Hearing Officer will decide whether it is more likely than not, based upon the information provided, that the Respondent is responsible for the alleged violation(s).

A Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the resolution process.

K. Sanctions

If the Hearing Officer determines that the Respondent is responsible for one or more violations of the Policy or other applicable Eckerd College policies, then, following the finding of responsibility, the Hearing Officer will then deliberate as to an appropriate sanction. The Hearing Officer may consult with the Title IX Coordinator, the Human Resources Director, the Vice President for Academic Affairs and Dean of Faculty, or another appropriate College official.

1. Range of Sanctions

The Policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the College's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Hearing Officer has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community, and accountability for the Respondent. Sanctions should support Eckerd College's educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension or separation from Eckerd College.

The Hearing Officer may impose one or more sanctions, which may include any of the sanctions that are listed below:

The range of sanctions applicable to employees includes, but is not limited to:

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

The range of sanctions applicable to students includes, but is not limited to:

- Warning – Verbal or Written
- Community Service
- Housing and/or Student Conduct Probation (including, but no limited to Campus Location Restrictions, Residential relocation, No Contact Directive
- Referral for Educational Programs, Mental Health assessment, Counseling Center and/or Outreach Services
- Suspension or Expulsion

In addition to or in place of the above sanctions for Students or Employees, Eckerd College may assign any other sanctions as deemed appropriate.

2. Sanctioning Considerations

The Hearing Officer may solicit information from the Complainant, the Respondent, the Title IX Coordinator, and any other College administrator who can provide information relevant to a determination regarding potential sanctions, including information about, any previous violations of Eckerd College policies. The Hearing Officer may also review any written impact or mitigation statement submitted by the Complainant or Respondent.

In determining the appropriate sanction, the Hearing Officer shall consider the following factors:

- 1) the nature and context of the conduct at issue;
- 2) the impact of the conduct on the Complainant;
- 3) the impact or implications of the conduct on the community or the College;
- 4) prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the College or elsewhere (if available), including criminal convictions;
- 5) whether the Respondent has accepted responsibility for the conduct;
- 6) maintenance of a safe and respectful environment conducive to learning; protection of the College community; and
- 7) any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

3. Impact and Mitigation Statements

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) 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 the sanctions(s) imposed. The Title IX Coordinator will provide any statement(s) to the Hearing Officer, which will only be considered if there is a finding of responsibility. Each party has the opportunity to view the other party's statement.

4. Timing and Effect of Sanctions

Sanctions will be imposed immediately. If a Respondent is found responsible and the sanction includes separation, they will be immediately removed from campus residentially and (depending on circumstances, and at the discretion of the Title IX Office, either severely restricted in their movements on campus (e.g. only able to attend classes and labs) or barred completely during the entirety of the appeal process.

In cases involving student-respondents adjudicated prior to the last day of classes, if the final sanction is separation from Eckerd College (i.e. suspension, suspension with conditions, or expulsion), the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the College. At any time, for example, for cases where the outcome has not been determined prior to the last day of classes, the College may place an administrative hold on the Respondent's transcript, make a transcript notification, or defer or withhold the award of the Respondent's degree.

L. Remedies

Regardless of the outcome, the Hearing Officer may recommend to the Title IX Coordinator additional Remedies for the Complainant to address the effects of the conduct on the Complainant, restore or preserve the Complainant's access to Eckerd College educational programs and activities, and restore to the Complainant, to the extent possible, benefits and opportunities lost as a result of the Prohibited Conduct. The Hearing Officer may also identify remedies to address the effects of the conduct on the College community.

The Title IX Coordinator will review the remedies recommended by the Hearing Officer and will consider the appropriateness of continuing supportive measures on an ongoing basis. The Title IX Coordinator is responsible for the effective implementation of remedies.

M. Notice of Outcome

The Hearing Officer will prepare a written decision and rationale, including the finding of responsibility or non-responsibility, and, if applicable, the sanction and rationale. The Hearing Officer will simultaneously issue the written notice of outcome to the Complainant, the Respondent, their advisors, and the Title IX Coordinator within ten (10) business days following the conclusion of the deliberations. The notice of outcome will include:

- 1) Whether the Respondent(s) violated the Policy by using a preponderance of the evidence or "more likely than not" standard of evidence;
- 2) Identification of the allegations potentially constituting Prohibited Conduct;

- 3) 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;
- 4) Findings of fact supporting the determination;
- 5) Conclusions regarding the application of the policy violations to the facts;
- 6) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided to the Complainant or the broader College community;
- 7) The sanction(s), if any, imposed, and a rationale for the sanctions; and
- 8) The procedures and permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result 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.

N. Appeals

Both parties have the right to appeal the dismissal of the formal complaint, the final determination of responsibility and/or the resulting sanction based on the following limited grounds:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- 3) The Title IX Coordinator, investigator(s), 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; and
- 4) The sanction(s) imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the Respondent.

A concise written request for appeal must be submitted to the Title IX Coordinator within five (5) business days following delivery of the notice of the outcome. Appeals are reviewed by a designated Appellate Officer, who may be a College administrator or an external professional. The

Title IX Coordinator will provide the parties with the name of the Appellate Officer and allow the parties to challenge participation by the Appellate Officer on the basis of conflict of interest or bias.

The Appellate Officer's responsibility will be strictly limited to determining the issues on appeal. If any of the appellate issues are substantiated by the Appellate Officer, the appeal will be granted. If the appeal is denied, the matter is closed and the Appellate Officer will issue a written decision describing the result of the appeal and the rationale for the result. The Appellate Officer will notify the parties in writing of its decision within approximately ten (10) business days.

If the appeal is granted:

- 1) due to a procedural irregularity, the matter shall be heard by a new Hearing Officer or the Appellate Officer may remand the matter for further process to remedy the error (based on the nature of the procedural error);
- 2) due to the discovery of new evidence not reasonably available at the time of the initial hearing, the matter will be returned to the same Hearing Officer that originally heard the matter for reconsideration in light of the new evidence;
- 3) due to bias or conflict of interest, the matter will be remanded for further action consistent with the appellate finding.

In the event of a reconsideration, the Appellate Officer will provide the Hearing Officer with written instructions regarding the nature and extent of its reconsideration. The Hearing Officer will act promptly to reconsider the matter consistent with those instructions. Following reconsideration, the finding of the Hearing Officer will be final and not subject to further appeal.

The Hearing Officer will simultaneously notify the parties in writing of the outcome consistent with the time frames set forth in the hearing process.

XII. Time Frames for Resolution

The College will seek to complete the formal resolution process in a prompt and timely manner consistent with the reasonably prompt timeframes for the major stages of the process designated in these Procedures. All time frames throughout these Procedures are approximate, and the College may extend any timeframe for good cause with written notice to the parties. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the academic calendar, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or other considerations that impact the timing of the investigation, hearing or appeal.

While requests for delays by the parties may be considered, the College cannot unduly or unreasonably delay the prompt resolution of a report under this policy.

Reasonable requests for delays by the parties will serve to extend the anticipated time period for resolution of the report. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances, and will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

The College's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner. Although cooperation with law enforcement may require the College to suspend the fact-gathering portion of the investigation temporarily, the College will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures for the Complainant.

XIII. Informal Resolution

Eckerd College may resolve reports informally, as appropriate, based on the circumstances. Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, or restorative justice. The informal resolution process provides a mechanism for the College to take prompt action through the imposition of individual and community remedies designed to maintain or restore access to the educational, extracurricular, and employment activities at Eckerd and to remedy the impacts of conduct on members of the College community.

Potential forms of informal resolution include targeted or broad-based educational programming or training, supported direct conversation or interaction with the Respondent, and/or indirect action by the Title IX Coordinator. An informal resolution may include mediation, as deemed appropriate by Eckerd College, although the College will generally not pursue mediation where the Prohibited Conduct involves severe or egregious forms of Prohibited Conduct. Eckerd College will not compel a Complainant to engage in mediation, to confront the Respondent directly, or to participate in any particular form of informal resolution. With the voluntary consent of the parties, alternative resolution may be used to impose agreed-upon disciplinary sanctions.

The informal resolution process may only be offered after the filing of a formal complaint. However, at any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process that does not involve a full investigation and adjudication.

To proceed with an Informal Resolution:

- Eckerd College must provide the Complainant and Respondent with a written notice disclosing the allegations; the requirements of the Informal Resolution; the circumstances

under which the parties are precluded from resuming a formal complaint arising from the same allegations; the right to withdraw from the Informal Resolution and resume the formal resolution process at any time prior to agreeing to a resolution; the name of the facilitator; how to challenge participation by the facilitator on the basis of conflict of interest or bias; and, any consequences resulting from participating in the Informal Resolution, including what records will be maintained and if they will be shared; and,

- Both the Complainant and Respondent must give voluntary, written consent to the Informal Resolution process.

The informal resolution process is not available to resolve allegations that an employee sexually harassed a student. An informal resolution process is voluntary, and a Complainant or Respondent can ask to end the informal resolution process at any time before its completion. Before the completion of an informal resolution process, or if the resolution is not successfully concluded, the parties may request and Eckerd College may pursue the formal resolution process. If an informal resolution process is ended by request, any information obtained may be used in a subsequent formal resolution process and hearing if the investigator or Hearing Officer determines that it is relevant.

Once a formal complaint has been resolved through an informal resolution process that involves the participation of a Respondent in lieu of a formal investigation, the matter will generally be considered closed. Both the Complainant and Respondent will receive written notice when participation in informal resolution will be considered a final resolution of the report.

In all cases, the Title IX Coordinator will have discretion to determine whether or not informal resolution is appropriate to the circumstances. The determination to use informal resolution, and the particular form of informal resolution will be communicated in writing to the Complainant and the Respondent. The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution, which will typically be complete within sixty (60) to ninety (90) business days of the initial report.