

It is the policy of ESU 2 that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any of the programs or activities. The Unit is required by Title IX to not discriminate in such a manner.

1. **Title IX Coordinator**

1.1. **Designation.** The Unit will designate and authorize one employee to coordinate its efforts to comply with this policy, who will be referred to as the “**Title IX Coordinator.**” Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). This report may be made by any means, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including non-business hours). See Policy 5611.

2. **Definitions.** As used in this policy, the following terms are defined as follows:

2.1. **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to any Unit employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only Unit employee with actual knowledge is the respondent (as that term is defined below). “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in subsection 1.1 above.

2.2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

2.3. **Formal complaint** means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the Unit investigate the allegation of sexual harassment. The only Unit official who is authorized to initiate the Grievance Process for Formal Complaints of Sexual Harassment against a respondent is the Title IX Coordinator (by signing a formal complaint). At the time of filing a formal complaint with the Unit, a complainant must be an employee or potential employee. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the Unit) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

2.4. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

2.5. **Consent** for purposes of this policy means the willingness in fact for conduct to occur. An individual may, as a result of age, incapacity, disability, lack of information, or other circumstances be incapable of providing consent to some or all sexual conduct or activity. Neither verbal nor physical resistance is required to establish that an individual did not consent. Unit officials will consider the totality of the circumstances in determining whether there was consent for any specific conduct. Consent may be revoked or withdrawn at any time.

2.6. **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:

- 2.6.1. An employee of the Unit conditioning the provision of an aid, benefit, or service of the Unit on an individual's unwelcome sexual conduct;
- 2.6.2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Unit's service;
- 2.6.3. **Sexual assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation:
 - 2.6.3.1. **Sex Offenses, Forcible**—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - 2.6.3.1.1. **Rape**—(Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - 2.6.3.1.2. **Sodomy**—Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - 2.6.3.1.3. **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - 2.6.3.1.4. **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - 2.6.3.2. **Sex Offenses, Non-forcible**—(Except Prostitution Offenses) Unlawful, non-forcible sexual intercourse.
 - 2.6.3.2.1. **Incest**—Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - 2.6.3.2.2. **Statutory Rape**—Non-Forcible sexual intercourse with a person who is under the statutory age of consent
- 2.6.4. **Dating violence**, which means violence committed by a person—
 - 2.6.4.1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and

2.6.4.2. where the existence of such a relationship shall be determined based on a consideration of the length, type and frequency of interactions within the relationship.

2.6.5. **Domestic violence**, which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

2.6.6. **Stalking**, which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety, the safety of others; or suffer emotional distress.

2.7. **Supportive measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the Unit's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Unit's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Unit will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the Unit to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

3. **Discrimination Not Involving Sexual Harassment.**

3.1. **General Prohibition.** Except as provided elsewhere in Title IX, or this policy, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the Unit.

3.2. **Specific Prohibitions.** Except as provided elsewhere in Title IX, or this policy, in providing any aid, benefit, or service, (collective benefits) the Unit will not on the basis of sex:

3.2.1. Treat one person differently from another in determining whether such person satisfies a requirement or condition for such benefits;

3.2.2. Provide different benefits, or benefits in a different manner;

3.2.3. Deny any person any such benefits;

PERSONNEL

Equity and Legal Compliance Title IX

5610

- 3.2.4. Subject any person to separate or different rules of behavior, sanctions, or other treatment;
- 3.2.5. Apply any rule concerning the domicile or residence of a student or applicant;
- 3.2.6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any benefits to students or employees;
- 3.2.7. Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

3.3. **Complaint Procedure.** All complaints regarding any alleged discrimination on the basis of sex, including without limitation violations of this policy, or other state or federal law—when the alleged discrimination does not arise from or relate to an allegation of sexual harassment as defined in subsection 2.6 above—shall be addressed pursuant to the Unit’s general complaint procedures.

4. **Response to Sexual Harassment**

4.1. **Reporting Sexual Harassment.** Any person who witnesses an act of unlawful sexual harassment is encouraged to report it to the Unit’s Title IX Coordinator. No person will be retaliated against based on any report of suspected sexual harassment. Any Unit employee who receives a report of sexual harassment or has actual knowledge of sexual harassment must convey that information to the Title IX Coordinator as soon as reasonably practicable, but in no case later than the end of the following school day.

4.2. **General Response to Sexual Harassment.** When the Unit has actual knowledge of sexual harassment in its education program or activity against a person in the United States, the Unit will respond promptly in a manner that is not deliberately indifferent. The Unit will be deemed to be deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. For the purposes of this policy “education program or activity” includes locations, events, or circumstances over which the Unit exercised substantial control over both the respondent and the context in which the sexual harassment occurs. The Unit’s response will treat complainants and respondents equitably by offering supportive measures as defined in subsection 2.7 above to a complainant, and by following the grievance process described in section 5 below before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent. The Title IX Coordinator will contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, inform the complainant of availability of supportive measures with or without the filing of a complaint, and explain to the complainant the process for filing a formal complaint.

4.3. **Emergency Removal.** Nothing in this policy precludes the Unit from removing a respondent from the Unit on an emergency basis, provided that the Unit undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. In the event the Unit so removes a respondent on an emergency basis, the Unit will provide the respondent with notice and an opportunity to challenge the decision. This provision may not modify any rights under IEP’s, 504 Plans, or ADA rights.

- 4.4. **Administrative Leave.** Nothing in this policy precludes the Unit from placing an employee respondent on administrative leave during the pendency of a grievance process that complies with section 5 below. This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.
- 4.5. **General Response Not Conditioned on Formal Complaint.** With or without a complaint, the Unit will comply with the obligations and procedures described in section 4.
5. **Grievance Process for Formal Complaints of Sexual Harassment.**
- 5.1. **General Requirements.**
- 5.1.1. **Equitable Treatment.** The Unit will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following the grievance process described in section 5 before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies will be designed to restore or preserve equal access to the Unit’s program or activity. Remedies may include the same individualized services described in subsection 2.7 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- 5.1.2. **Objective Evaluation.** This grievance process requires an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person’s status as a complainant, respondent, or witness.
- 5.1.3. **Absence of Conflicts of Interest or Bias.** The Unit will require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents.
- 5.1.4. **Training.** The Unit will ensure that all individuals or entities described in this Training section 5.1.4 receive training as provided below. Any materials used to train these individuals will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints.
- 5.1.4.1. **Training.** All Unit employees and board members will be trained on how to identify and report sexual harassment.
- 5.1.4.2. **Title IX Coordinators, Investigators, Decision-Makers, or Informal Resolution Facilitators.** The Unit will ensure these designated individuals by the Unit receive training on:
- 5.1.4.2.1. The definition of sexual harassment in subsection 2.6;
- 5.1.4.2.2. The scope of the Unit’s education program or activity;

- 5.1.4.2.3. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and
- 5.1.4.2.4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 5.1.4.3. **Decision-Makers.** The Unit will ensure that decision-makers receive training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in subsection 5.6.
- 5.1.4.4. **Investigators.** The Unit will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth in subsection 5.5.8.
- 5.1.5. **Presumption.** It is presumed that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 5.1.6. **Reasonably Prompt Time Frames.** This grievance process shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the Unit offers informal resolution processes. The process shall also allow for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- 5.1.7. **Range of Possible Sanctions and Remedies.** Following a determination of responsibility, the Unit may impose disciplinary sanctions and remedies in conformance with this and the Unit's student discipline policy, and other state and federal laws. Depending upon the circumstances, these policies provide for disciplinary sanctions and remedies up to and including expulsion.
- 5.1.8. **Supportive Measures.** The range of supportive measures available to complainants and respondents include those listed in subsection 2.7.
- 5.1.9. **Respect for Privileged Information.** The Unit 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.
- 5.2. **Notice of Allegations.**
 - 5.2.1. **Initial Notice.** Upon receipt of a formal complaint, the Unit will provide the following written notice to the parties who are known:

- 5.2.1.1. A copy of this policy.
- 5.2.1.2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in subsection 2.6, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice will include 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 grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under subsection 5.5.5, and may inspect and review evidence under subsection 5.5.5. The written notice will inform the parties of any provision in the Unit's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

5.2.2. **Supplemental Notice.** If, in the course of an investigation, the Unit decides to investigate allegations about the complainant or respondent that are not included in the Initial Notice described above, the Unit will provide notice of the additional allegations to the parties whose identities are known.

5.3. **Dismissal of Formal Complaint.**

- 5.3.1. The Unit will investigate the allegations in a formal complaint.
- 5.3.2. **Mandatory Dismissals.** The Unit **must** dismiss a format complaint if the conduct alleged in the formal complaint:
 - 5.3.2.1. Would not constitute sexual harassment as defined;
 - 5.3.2.2. Did not occur in the Unit's education program or activity; or
 - 5.3.2.3. Did not occur against a person in the United States.
- 5.3.3. **Discretionary Dismissals.** The Unit **may** dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:
 - 5.3.3.1. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the complaint or any allegations;
 - 5.3.3.2. The respondent is no longer enrolled in or employed by the Unit; or
 - 5.3.3.3. Specific circumstances prevent the Unit from gathering evidence sufficient to reach a determination.
- 5.3.4. Upon a dismissal required or permitted pursuant to subsections 5.3.2 or 5.3.3 above, the Unit will promptly send written notice of the dismissal and an explanation of that action simultaneously to the parties.

PERSONNEL

Equity and Legal Compliance Title IX

5610

- 5.3.5. Dismissal of a formal complaint under this policy does not preclude the Unit from taking action under another provision of the Unit's code of conduct or pursuant to another Unit policy.

5.4. **Consolidation of Formal Complaints.** The Unit may consolidate formal complaints as to allegations of sexual harassment 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 sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

5.5. **Investigation of Formal Complaint.** When investigating a formal complaint and throughout the grievance process, the Unit will:

- 5.5.1. Designate and authorize one or more persons as investigator(s) to conduct the investigation of a complaint.
- 5.5.2. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the Unit and not on the parties provided that the Unit cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional and who are made and maintained in connection with the provision of treatment to the party, unless the Unit obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," then the Unit will obtain the voluntary, written consent of a parent/guardian);
- 5.5.3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- 5.5.4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- 5.5.5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the Unit may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- 5.5.6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare;
- 5.5.7. Provide both parties 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 Unit 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. Prior to completion of the investigative report, the Unit will send to each party, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report; and

- 5.5.8. Create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to the time of determination regarding responsibility, send to each party the investigative report in an electronic format or a hard copy, for their review and written response.

5.6. **Exchange of Written Questions.** After the Unit has sent the investigative report to the parties pursuant to subsection 5.5.8, but before reaching a determination regarding responsibility, the decision-maker(s) will afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. The decision-maker(s) will explain to the party proposing the questions any decision to exclude a question as not relevant.

5.7. **Determination Regarding Responsibility**

- 5.7.1. **Decision-Maker(s).** The Decision-Maker cannot be the same person as the Title IX Coordinator or the Investigator.

- 5.7.2. **Written Determination.** The decision-maker will issue a written determination regarding responsibility. To reach this determination, the decision-maker will apply the preponderance of the evidence standard. The written determination will include:

5.7.2.1. Identification of the allegations potentially constituting sexual harassment as defined in subsection 2.6;

5.7.2.2. 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;

5.7.2.3. Findings of fact supporting the determination;

5.7.2.4. Conclusions regarding the application of the Unit's code of conduct to the facts;

5.7.2.5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary

sanctions the Unit imposes on the respondent, and whether remedies designed to restore or preserve equal access to the Unit's education program or activity will be provided by the Unit to the complainant; and

5.7.2.6. The Unit's procedure for the complainant and respondent to appeal.

5.7.3. The Unit will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the Unit 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.

5.7.4. The Title IX Coordinator is responsible for implementation of any remedies.

5.8. **Appeals.** The Unit will offer both parties the opportunity to appeal from a determination regarding responsibility, and from the Unit's dismissal of a formal complaint or any allegations therein, on the grounds identified below.

5.8.1. **Time for Appeal.** Appeals may only be initiated by submitting a written Notice of Appeal to the Unit Office within ten (10) calendar days of the date of the respective written determination of responsibility or dismissal from which the appeal is taken. The Notice of Appeal must include (a) the name of the party or parties making the appeal, (b) the determination, dismissal, or portion thereof being appealed, and (c) a concise statement of the specific grounds (from subsection 5.8.2 below) upon which the appeal is based. A party's failure to timely submit a Notice of Appeal will be deemed a waiver of the party's right to appeal under this policy and Title IX.

5.8.2. **Grounds for Appeal.** Appeals from a determination regarding responsibility, and from the Unit's dismissal of a formal complaint or any allegations therein, are limited to the following grounds:

5.8.2.1. Procedural irregularity that affected the outcome of the matter;

5.8.2.2. 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; and

5.8.2.3. The Title IX Coordinator, Investigator, or Decision-Maker had a conflict of interest or bias for or against complainants or respondents that affected the outcome of the matter.

5.8.3. As to all appeals, the Unit will:

5.8.3.1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

5.8.3.2. Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator;

PERSONNEL

Equity and Legal Compliance Title IX

5610

- 5.8.3.3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in subsections 5.1.3–5.1.4.
- 5.8.3.4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- 5.8.3.5. Issue a written decision describing the result of the appeal and the rationale for the result; and
- 5.8.3.6. Provide the written decision simultaneously to both parties.

5.9. **Informal Resolution.** The Unit will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, the Unit will not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the Unit may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the Unit:

- 5.9.1. Provides to the parties a written notice disclosing:
 - 5.9.1.1. The allegations;
 - 5.9.1.2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - 5.9.1.3. That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - 5.9.1.4. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- 5.9.2. Obtains the parties' voluntary, written consent to the informal resolution process; and
- 5.9.3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

5.10. **Recordkeeping.**

- 5.10.1. The Unit will maintain for a period of seven years records of:
 - 5.10.1.1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the Unit's program or activity;

- 5.10.1.2. Any appeal and the result therefrom;
- 5.10.1.3. Any informal resolution and the result therefrom; and
- 5.10.1.4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The Unit will make these training materials publicly available on its website, or if the Unit does not maintain a website then the Unit will make these materials available upon request for inspection by members of the public.

5.10.2. For each response required under section 4, the Unit will create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Unit will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the Unit's education program or activity. If the Unit does not provide a complainant with supportive measures, then the Unit will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the Unit in the future from providing additional explanations or detailing additional measures taken.

6. **Authorized to Contract.** The board authorizes the Administrator to contract for, designate, and appoint individuals to serve in the roles of the Unit's investigator, decision-maker, informal resolution facilitator, or appellate decision-maker as contemplated by this policy.

7. **Access to Classes and Schools.**

7.1. **General Standard.** Except as provided in this section the Unit will not provide or otherwise carry out any of its education programs or activities separately on the basis of sex, or require or refuse participation therein by any of its students on the basis of sex.

7.1.1. **Physical education classes.** This section does not prohibit separation of students by sex within physical education classes or activities.

7.1.2. **Ability grouping in physical education classes.** This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

7.1.3. **Human sexuality classes.** Classes or portions of classes that deal primarily with human sexuality may be conducted in separate sessions.

7.1.4. **Choruses.** The Unit may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

7.2. **Classes and Extracurricular Activities.** The Unit may provide nonvocational single-sex classes or extracurricular activities.

PERSONNEL

Equity and Legal Compliance Title IX

5610

8. **Athletics.** N/A

9. **Certain Different Treatment on the Basis of Sex Permitted.** Nothing herein shall be construed to prohibit the Unit from treating persons differently on the basis of sex as permitted by Title IX. For example, and without limiting the foregoing, the Unit may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

10. **Retaliation Prohibited.** Neither the Unit nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. The Unit will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or as required by law, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to policy.

10.1. **Specific Circumstances.**

10.1.1. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this section.

10.1.2. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

11. **Notification of Policy.** The Unit will notify employees, students, and guardians, of the existence of this policy. The requirement to not discriminate, as stated in Title IX extends to all employees, and inquiries about the application of Title IX may be referred to the Title IX Coordinator, the Assistant Secretary for Civil Rights of the United States Department of Education, or both.

12. **Publication of Policy.** The Unit will prominently display on its website, if any, and in each handbook that it makes available to applicants for admission and employment, students, parents or legal guardians of students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Unit, the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator(s).

13. **Application Outside the United States.** The requirements of this policy apply only to sex discrimination occurring against a person in the United States.

14. **Scope of Policy.** Nothing herein shall be construed to be more demanding or more constraining upon the Unit than the requirements of Title IX. To the extent that the Unit is in compliance with Title IX, then all of the Unit's obligations under this policy shall be deemed fulfilled.

PERSONNEL

Equity and Legal Compliance Title IX

5610

15. **Procedural Chain.** Coordinator Business Manager
Investigator titleix@esu2.org
Decision-Maker Coordinator of Mental Health
Appellate Administrator
Designated Board Member
Vice President

Date of Adoption

09-12-2011

Date of Revision

1/18/2016
9/14/2020