

**RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE PROHIBITED SEX DISCRIMINATION,
SEX-BASED HARASSMENT, AND RETALIATION POLICY
(Hereinafter the “Resolution Process”)**

Overview

The ENMU System (ENMU) will act on any notice, complaint, or knowledge of a potential violation of the Title IX Policy (“the Policy”) that the Title IX Coordinator or any other Mandated Reporter receives by applying the Resolution Process below.

The procedures below apply to all allegations of discrimination on the basis of sex, sex-based harassment, retaliation, or other prohibited conduct involving students, employees, or third parties.

Notice/Complaint

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine ENMU’s next steps. The Title IX Coordinator will contact the complainant/source of the notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

Collateral Misconduct

Collateral misconduct is defined to include potential violations of other ENMU policies not incorporated into the Title IX Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with ENMU officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

Initial Evaluation

The Title IX Coordinator conducts an initial evaluation, typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct. If circumstances require, the President or Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
- If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether ENMU has jurisdiction over the reported conduct, as defined in the Policy.
- If the conduct is not within ENMU jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate ENMU office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

Helping a Complainant to Understand Resolution Options

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- a supportive and remedial response, and/or
- Informal Resolution, or
- the Resolution Process described below.

The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the Title IX Coordinator has determined the Policy applies and that ENMU has jurisdiction, they will route the matter to the appropriate Resolution Pool member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

Title IX Coordinator Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if ENMU cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of sex discrimination would occur if a Complaint is not initiated.
- The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is a ENMU employee.
- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals.
- The availability of evidence to assist a Decision-maker in determining whether sex discrimination occurred.
- Whether the ENMU could end the alleged sex discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate ENMU employees, and/or conduct a violence risk assessment See detailed information regarding Violence Risk Assessment in Appendix D to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

Dismissal

ENMU may dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- ENMU is unable to identify the Respondent after taking reasonable steps to do so
- ENMU no longer enrolls or employs the Respondent
- A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Title IX Coordinator declines to initiate a Complaint
- ENMU determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

In addition to other members of the Title IX Team, as authorized by the Title IX Coordinator, a Decision-maker can recommend dismissal to the Title IX Coordinator if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, ENMU will promptly send the Complainant a written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, ENMU will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

Appeal of Dismissal

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, ENMU will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.
- The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
- The dismissal was erroneously granted.

The appeal request should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request with all other Parties and provide three (3) business days for other Parties and the Title IX Coordinator to respond to the request. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties and/or the Title IX Coordinator to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Title IX Coordinator, designee, and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

Emergency Removal of a Student

ENMU may emergency remove a student accused of Sex Discrimination or Sex-based Harassment upon receipt of Notice/Knowledge, a Complaint, or at any time during the

Resolution Process. Prior to an emergency removal, ENMU will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.

When an emergency removal is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal within two (2) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal may be affirmed, modified, or lifted because of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

Placing an Employee on Leave

When the Respondent is an employee, accused of misconduct in the course of their employment, existing provisions in policy [40-7 Leave](#) for interim action are typically applicable instead of the above emergency removal process.

Counter Complaints

ENMU is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although ENMU permits the filing of counter-complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

Advisors in the Resolution Process

Who Can Serve as an Advisor?

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor if the Advisor is eligible and available. "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. The Advisor cannot have institutionally conflicting roles, such as being a Title IX Coordinator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

The Title IX Coordinator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the ENMU pool available, ENMU will have trained the Advisor and familiarized them with the Resolution Process.

ENMU cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the ENMU is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

ENMU may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, ENMU will agree to copy both the party and their Advisor on all communications.

Advisors appointed by the institution cannot be Confidential Employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

Advisor's Role in the Resolution Process

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records ENMU shares with them, per Section 19 of the Policy addressing Confidentiality. Advisors may not disclose any ENMU work product or evidence ENMU obtained solely through the Resolution Process for any purpose not explicitly authorized by ENMU.

ENMU may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by ENMU's confidentiality expectations.

Advisor Expectations

ENMU generally expects an Advisor to adjust their schedule to allow them to attend ENMU meetings, interviews and/or hearings when planned. ENMU may change scheduled meetings, interviews, and/or hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

ENMU may also make reasonable provisions to allow an Advisor who cannot be present in person to attend meetings, interviews and/or hearings by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same ENMU policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by ENMU. Advisors are expected to advise without disrupting proceedings.

As noted throughout our policy and procedure, advisors are expected to keep information learned solely through this process confidential, except as needed to advise their advisee.

Advisor Policy Violations

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the ENMU's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview may be ended, or other appropriate measures implemented, including ENMU requiring the party to use a different Advisor or providing a different ENMU-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Resolution Options Overview

This Resolution Process, consisting of Informal Resolution or Administrative Resolution is ENMU's chosen approach to addressing sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with ENMU Policy.

Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. ENMU will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, ENMU will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume ENMU's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.

- What information ENMU will maintain, and whether and how it could disclose such information for use in its Resolution Process.

ENMU offers four categories of Informal Resolution:

- **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and ENMU are agreeable to the resolution terms.
- **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Categories of Informal Resolution

Supportive Resolution

The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to ENMU's

education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage in the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

Educational Conversation

The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. Considering this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

Accepted Responsibility

The Respondent may accept responsibility for any or all the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If an Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and ENMU are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of ENMU Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate Title IX Coordinator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.¹ The Parties may not want discussions that take place within Informal Resolution to be admissible in a later Resolution Process, but essential facts must and do transfer from the informal process to subsequent resolution proceedings. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so Title IX Coordinators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and

remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate ENMU officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the facilitator with this type of Complaint
- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator will

determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the ENMU will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

Resolution Process Pool

The Resolution Process relies on a pool of Title IX Coordinators ("the Pool") to carry out the process. External, trained third-party neutral professionals may also be used to serve in Pool roles

Pool Member Roles

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Title IX Coordinator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Hearing Facilitator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker
- Pool Member Appointment

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, ENMU can also designate permanent roles for individuals in the Pool.

Training (see Appendix F for details on training for Pool Members)

Notice of Investigation and Allegations (NOIA)

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to notify the Title IX Coordinator of any conflict of interest the Investigator(s) may have in advance of the interview process
- A statement that the ENMU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share ENMU work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that the ENMU's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Resolution Process
- A link to the ENMU's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official

ENMU records, or emailed to the Parties' ENMU-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

Resolution Timeline

ENMU will make a good faith effort to complete the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, ENMU reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

ENMU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. ENMU will promptly resume its Resolution Process as soon as feasible. During such a delay, ENMU will implement and maintain supportive measures for the Parties as deemed appropriate.

ENMU action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

ENMU will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-makers for impartiality by ensuring there are no actual or apparent conflicts of

interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with The Executive Director System HR/Policy/Planning or the applicable campus president.

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

Investigator Appointment

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to ENMU's community.

Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in ENMU's investigation and Resolution Process. Student witnesses and witnesses from outside the ENMU community cannot be required to participate but are encouraged to cooperate with ENMU investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. ENMU will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Resolution Process. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact of prior consensual sexual conduct occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as

their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

ENMU may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.

- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.

The Investigator may share the investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback.

Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct (as defined in Policy) or when Informal Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Title IX Coordinator, the assigned Decision-maker will be an individual or a panel drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution. The choice of a single Decision-maker or panel should generally be consistent for the same types of Complaints, and not vary Complaint-by-Complaint.

Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

Investigator-led Questioning Meetings

The Title IX Coordinator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.

To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.

The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.

To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.

All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.

The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible. The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.

For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).

Typically, within three (3) business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have five (5) business days to review these recordings or transcripts and propose any follow-up questions for the Investigator to ask.

The Investigator will review the proposed questions with the Decision-maker to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker.

The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.

The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and

incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.

The Investigator will then share the Final Investigation Report with the Title IX Coordinator, designee, and/or legal counsel for their review and feedback.

The Investigator will then provide the Title IX Coordinator with the Final Investigation Report and investigation file.

The Decision-maker's Determination

The Title IX Coordinator will provide the Decision-maker, the Parties, and their Advisors with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.

The Decision-maker will review the FIR, all appendices, and the investigation file.

If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.

Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:

To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.

At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.

The Decision-maker will then apply the preponderance of the evidence standard to decide on each of the allegations and, if applicable, any associated sanctions.

Timeline. The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.

Impact Statements. Prior to a determination, the Title IX Coordinator will also provide the Parties with an opportunity to submit a written impact and/or mitigation statement. The Title IX Coordinator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the sex discrimination, sex-based harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination, sex-based harassment, and/or retaliation
- The need to remedy the effects of the sex discrimination, sex-based harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker(s)

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

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

Student Sanctions

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

- Reprimand: A formal statement that the conduct was unacceptable and a warning that further violation of any ENMU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- Required Counseling: A mandate to meet with and engage in either ENMU-sponsored or external counseling to better comprehend the misconduct and its effects.
- Restrictions: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations.
- Probation: An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from extra-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- **Suspension:** Separation from the institution, or one or more of its facilities, for a defined period of time, typically not to exceed two (2) years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript, per institutional policy and/or state law.
- **Expulsion:** Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript, per institutional policy and/or state law.
- **Withholding Diploma:** ENMU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating Policy.
- **Revocation of Degree:** While very rarely exercised, ENMU reserves the right to revoke a degree previously awarded from ENMU for fraud, misrepresentation, and/or other violation of ENMU policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to, or in place of, the above sanctions, ENMU may assign any other sanctions as deemed appropriate.

Student Group and Organization Sanctions

The following are the common sanctions that may be imposed upon student groups or organizations singly or in combination:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any ENMU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation:** An official sanction for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of ENMU funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.

- Suspension: Termination of student group or organization recognition and/or institutional support for a defined period of time not to exceed two (2) years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in ENMU-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from the ENMU.
- Expulsion: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- Loss of Privileges: Restricted from accessing specific ENMU privileges for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, ENMU may assign any other sanctions as deemed appropriate.

Employee Sanctions/Responsive/Corrective Actions

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

- Verbal or Written Warning
- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Shift or schedule adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to a New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave with Pay
- Suspension/Administrative Leave without Pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, ENMU may assign any other responsive actions as deemed appropriate.

Notice of Outcome

Within ten (10) business days of the conclusion of the Resolution Process, the Title IX Coordinator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that ENMU is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent ENMU is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official ENMU records, or emailed to the Parties' ENMU-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

Withdrawal or Resignation Before Complaint Resolution

Students

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from ENMU, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, ENMU will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, ENMU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to ENMU in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar, Office of Admissions, and HR may be notified, accordingly.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to ENMU unless and until all sanctions, if any, have been satisfied.

Employees

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent leaves their employment with ENMU with unresolved allegations pending, the Resolution Process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, ENMU may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged sex discrimination, sex-based harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, the employee may not return to ENMU in any capacity. The Registrar, Office of Admissions, and HR will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with ENMU. The records retained by the Title IX Coordinator will reflect that status.

Appeal of the Determination

The Title IX Coordinator will designate an Appeal Decision-maker — either a three-member panel, or an individual chosen from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process. If a panel is used, a voting chair will be designated by the Title IX Coordinator.

Appeal Grounds

Appeals are limited to the following grounds:

- A procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 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 specific Complainant or Respondent that would change the outcome.
- The Final Determination is substantially contrary to the weight of the evidence in the record (applicable to sanctions of suspension, expulsion, or termination, only).
- The sanctions fall outside the range of sanctions designated for this offense, considering the cumulative conduct/disciplinary record of the Respondent (applicable to sanctions of suspension, expulsion, or termination, only).

Request for Appeal

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker will notify all Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which ENMU is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent ENMU is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address as indicated in official institutional records, or emailed to the Parties’ ENMU-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding, or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the five (5) available appeal grounds.

Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) business days of implementation.

Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the ENMU community that are intended to stop the sex discrimination, sex-based harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.>>

At the discretion of the Title IX Coordinator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Title IX Coordinator will address any remedies the ENMU owes the Respondent to ensure no effective denial of educational access.

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

Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Panel or Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the ENMU.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

Recordkeeping

For a period of at least seven (7) years following the conclusion of the Resolution Process, the ENMU will maintain records of:

Each sex discrimination, sex-based harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.

Any disciplinary sanctions imposed on the Respondent.

Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the ENMU's education program or activity.

Any appeal and the result therefrom.

Any Informal Resolution and the result therefrom.

All materials used to provide training to the Title IX Coordinator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the ENMU's Resolution Process, or who has the authority to modify or terminate supportive measures. ENMU will make these training materials available for review upon request.

All materials used to train all employees consistent with the requirements in the Title IX Regulations.

The ENMU will also maintain any and all records in accordance with federal and state laws.¹

Accommodations and Support During the Resolution Process

Disability Accommodations

¹ A model record maintenance and access policy can be found in [Appendix I](#).

ENMU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the ENMU's Resolution Process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with <<disability support>> as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Other Support

ENMU will also address reasonable requests for support for the Parties and witnesses, including:

Language services/Interpreters

Access and training regarding use of technology throughout the Resolution Process

Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

Revision of these Procedures

These procedures succeed any previous procedures addressing sex discrimination, sex-based or sexual harassment, and retaliation for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update these procedures. The ENMU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

These procedures are effective August 2, 2024

APPENDIX A: DEFINITIONS

The following definitions apply to the Policy and Resolution Process:

Advisor. Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.

Title IX Coordinator. The person with primary responsibility for overseeing and enforcing the Policy and Resolution Process. As used in these policies and procedures, the “Title IX Coordinator” also includes their designee(s).

Appeal Decision-maker. The person or panel who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.

Complainant. A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct under the Policy and who was participating or attempting to participate in ENMU’s education program or activity at the time of the alleged sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct.

An oral or written request to ENMU that can objectively be understood as a request for ENMU to investigate and make a determination about the alleged Policy violation(s).

Confidential Employee.

An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or

An employee whom ENMU has designated as confidential under this Policy for the purpose of providing services to persons related to sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct. If the employee also has a duty not associated with providing those services, the employee’s confidential status only applies with respect to information received about sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct in connection with providing those services; or

An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct. The employee’s confidential status only applies with respect to information received while conducting the study.

Day. A business day when the ENMU is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.

Decision-maker. The person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.

Education Program or Activity. Locations, events, or circumstances where ENMU exercises substantial control over the context in which the sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct occurs and also includes any building owned or controlled by a student organization that the ENMU officially recognizes.

Employee. A person employed by ENMU either full- or part-time, including student employees when acting within the scope of their employment.

Final Determination. A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.

Finding. A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).

Informal Resolution. A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.

Investigation Report. The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.

Investigator. The person(s) authorized by ENMU to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.

Knowledge. When ENMU receives Notice of conduct that reasonably may constitute sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct in its Education Program or Activity.

Mandated Reporter. A ENMU employee who is obligated by Policy to share Knowledge, Notice, and/or reports of sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct with the Title IX Coordinator. Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

Notice. When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct.

Parties. The Complainant(s) and Respondent(s), collectively.

Pregnancy or Related Conditions. Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

Relevant Evidence. Evidence that may aid a Decision-maker in determining whether the alleged sex discrimination, sex-based harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.

Remedies. Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to ENMU's Education Program and Activity.

Resolution Process. The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, Administrative Resolution, and/or Hearing Resolution.

Respondent. A person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.

Sanction. A consequence imposed on a Respondent who is found to have violated the Policy.

Sex. Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Student. Any person who has gained admission.

Title IX Coordinator. At least one official designated by the ENMU to ensure ultimate oversight of compliance with Title IX and ENMU's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the Coordinator for specific tasks.

Title IX Team. The Title IX Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.

APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and procedures, the Parties have the right to:

An equitable investigation and resolution of all credible allegations of prohibited sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct, when reported in good faith to ENMU officials.

Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.

Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.

Be informed in advance of any ENMU public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

Have all personally identifiable information protected from ENMU's release to the public without consent, except to the extent permitted by law.

Be treated with respect by ENMU officials.

Have ENMU Policy and these procedures followed without material deviation.

Voluntarily agree to resolve allegations under this Policy through Informal Resolution without ENMU pressure, if Informal Resolution is approved by the Title IX Coordinator.

Not be discouraged by ENMU officials from reporting sex discrimination, sex-based harassment, retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities.

Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by ENMU in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.

Have allegations of violations of this Policy responded to promptly and with sensitivity by ENMU law enforcement, security, and/or other ENMU officials.

Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.

An ENMU-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of sex discrimination, sex-based harassment, retaliation, and/or Other

Prohibited Conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:

Relocating a residential student's housing to a different on-campus location

Assistance from ENMU staff in completing the relocation

Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)

Transportation assistance

Visa/immigration assistance

Arranging to dissolve a housing contract and provide a pro-rated refund

Rescheduling or adjusting an exam, paper, and/or assignment

Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)

Transferring class sections

Temporary withdrawal/leave of absence (may be retroactive)

Campus safety escorts

Alternative course completion options

Have the ENMU maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair ENMU's ability to provide the supportive measures.

Receive sufficiently advanced written notice of any ENMU meetings or interviews involving another party, when possible.

Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.

Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.

Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.

Access the relevant evidence obtained and respond to that evidence.

A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.

Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given ten (10) business days to review and comment on the evidence.

The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed and to have at least seven (7) business days to review the report prior to the determination.

Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.

Regular status updates on the investigation and/or Resolution Process.

Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.

A Decision-making panel that is not single sex in its composition, if a panel is used.

Preservation of confidentiality/privacy, to the extent possible and permitted by law.

Meetings, interviews, and/or hearings that are closed to the public.

Petition that any ENMU representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.

Apply the appropriate standard of proof, preponderance of the evidence OR clear and convincing evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.

Be present, including presence via remote technology, during all testimony given and evidence presented during any live hearing.

Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.

Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).

Be informed in writing of when an ENMU decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.

Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the ENMU's grounds for appeal.

A fundamentally fair resolution as defined in these procedures.

APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms privacy, confidentiality, and privilege have distinct meanings.

Privacy. Means that information related to a complaint will be shared with a limited number of ENMU employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in ENMU’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.

Confidentiality. Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by ENMU as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the office can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.

Privilege. Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. ENMU treats employees who can have privileged communications as Confidential Employees.

ENMU reserves the right to determine which ENMU officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the institution’s unauthorized disclosure policy.

ENMU may contact students’ parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.

APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to describe assessment of any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other Behavioral Intervention Team (BIT) (sometimes known as CARE team) members.

A VRA occurs in collaboration with the Behavior Intervention Team (BIT) and must be understood as an ongoing process, rather than as a single evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

An appraisal of risk factors that escalate the potential for violence.

A determination of stabilizing influences, or protective factors, that reduce the risk of violence.

A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on target; grievance collection; and action and time imperative for violence.

The application of intervention and management approaches to reduce the risk of violence.

To assess a person's level of violence risk, the Title IX Coordinator will initiate the VRA process through the BIT. The BIT will assign a trained person(s) to perform the assessment, according to the specific nature of the complaint.

The assessor(s) will follow the process for conducting a VRA as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include:

The NABITA Risk Rubric, <https://www.nabita.org/training/nabita-risk-rubric/>.

The Structured Interview for Violence Risk Assessment (SIVRA-35),
<https://www.nabita.org/training/sivra-35/>

Violence Risk Assessment of the Written Word (VRAWW),
<https://www.nabita.org/training/vraww/>

Workplace Assessment of Violence Risk (WAVR-21), www.wavr21.com

Historical Clinical Risk Management (HCR-20), <http://hcr-20.com>

and MOSAIC, www.mosaicmethod.com

The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or imminent and serious threat to the health and/or safety of a person or the community.

In some circumstances, the Title IX Coordinator may determine that a VRA should be conducted by the BIT as part of the initial evaluation of a Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)

Whether the Title IX Coordinator should pursue/initiate a Complaint absent a willing/able Complainant

Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment

To help identify potential predatory conduct

To help assess/identify grooming behaviors

Whether it is reasonable to try to resolve a Complaint through Informal Resolution, and if so, what approach may be most successful

Whether to impose transcript notation or communicate with a transfer institution about a Respondent

Assessment of appropriate sanctions/remedies (to be applied post-determination)

Whether a Clery Act Timely Warning/Trespass order/Persona Non Grata is needed

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Institutions may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

APPENDIX E: RECORD MAINTENANCE AND ACCESS

Policy Scope

This Policy covers records maintained in any medium that are created pursuant to ENMU's Title IX Policy and/or the regular business of the ENMU's Title IX office. All such records are considered private or confidential by the Title IX office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to discrimination, harassment, and retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared with the Parties to a Complaint under applicable federal and/or state law. The Title IX office controls the dissemination and sharing of any records under its control.

Types of Records Covered Under this Policy

Records pertaining to the policy include, but are not limited to:

- The Complaint
- NOIAs
- Documentation of notice to the institution, including incident reports
- Anonymous reports later linked to a specific incident involving known Parties
- Any documentation supporting the initial evaluation
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation and appeals
- Documentation related to Emergency Removals, leaves, and interim actions and challenges
- Documentation related to the Resolution Process
- The Final Investigation Report and file
- Remedy-related documentation
- Supportive measures-related documentation
- Appeal-related documentation
- Informal Resolution records
- Outcome Notices
- Any other records typically maintained by the ENMU as part of the Complaint file
- **Drafts and Working Files:** Preliminary drafts and "working files" are not considered records that ENMU must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the Title IX Coordinator. An example of a "working file" would be the Investigator's notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the Parties are maintained.

- **Attorney Work-Product:** Communications from the Title IX office or its designees with ENMU's legal counsel may be work product protected by attorney-client privilege. These privileged communications are not considered records to be maintained by the Title IX office or accessible under this Policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

Record Storage

Records may be created and maintained in different media formats; this Policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in digital format and maintained by Title IX office. The complete file must be transferred to the Title IX office, typically within fourteen (14) business days of the complaint resolution (including any appeal), if the file is not already maintained within the Title IX office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX office during the pendency of an investigation.

The Title IX office will store all records created pursuant to the Policy, regardless of the identities of the Parties. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with any applicable Clery Act/Violence Against Women Act (VAWA) requirements will be maintained along with the Complaint file by the Title IX office.

Title IX Training Materials

ENMU will also maintain copies of the slides or other materials from all Title IX training for the Resolution Process Pool members, the Title IX Team, and employees. Trainings occurring prior to August 1, 2024, are posted online at [Title IX Training Materials](#), and trainings occurring after August 1, 2024, are available for review upon request to the Title IX Coordinator.

Record Retention

All records created and maintained pursuant to the Policy will be retained by the Title IX office for a minimum of seven (7) years in database, digital, and/or paper form. Except for records pertaining to Title IX and the Clery Act/VAWA, the Title IX Coordinator may authorize destruction or expungement acting under their own discretion, or in accordance with a duly executed and binding claim settlement and/or by court or government order.

Record Access

Access to records created pursuant to the Policy or housed in the Title IX office is strictly limited to the Title IX Coordinator and any person they authorize in writing, at their discretion, or via permission levels within the database. Those who are granted broad access to the Title IX office records are expected to access only those pertinent to their scope, work, or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this Policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant ENMU policies and procedures.

Student Parties may request access to their complaint file. ENMU will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection, or any copy is shared.

During the investigation, materials may be shared with the Parties using secure file transmission software. The Title IX office will watermark any such file with the watermark identifying the role of the person in the process (e.g., Complainant, Respondent, Decision-maker; Complainant's Advisor) before sharing.

ENMU will maintain an access log of each case file, showing when and by whom it was accessed and for what purpose.

Record Security

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from floods, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the Title IX office or another appropriate secure location. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalog of all physical evidence will be retained with the Complaint file.

APPENDIX F: TRAINING FOR MEMBERS OF THE RESOLUTION PROCESS POOL

All Investigators, Decision-makers, and other persons who are responsible for implementing ENMU's Title IX policies and procedures will receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX, and annually thereafter. Materials will not rely on sex stereotypes. Training topics include, but are not limited to:

- The role of the Title IX Coordinator
- The scope of ENMU's Title IX Policy
- ENMU's Resolution Process
- How to conduct a sex discrimination resolution process consistently, including issues of disparate treatment, disparate impact, sex-based harassment, quid pro quo, hostile environment harassment, and retaliation
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Treating Parties equitably
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to conduct an investigation and grievance process, including administrative resolutions, hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants
- Any technology to be used at a live hearing
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under the Title IX Regulations
- Issues of relevance and creating an Investigation Report that fairly summarizes relevant and not impermissible evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

- Recordkeeping
- Training for Informal Resolution facilitators on the rules and practices associated with ENMU's Informal Resolution process
- Supportive Measures
- Clery Act/VAWA requirements applicable to Title IX
- ENMU's obligations under Title IX
- How to apply definitions used by the ENMU with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- Reasonable modifications and specific actions to prevent discrimination and ensure equal access for pregnancy or related conditions
- Any other training deemed necessary to comply with Title IX.

APPENDIX G: 2024 TITLE IX OFFENSE REGULATORY DEFINITIONS

Sexual Assault

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, also unlawful sexual intercourse. This definition of sexual assault does not constitute a chargeable offense under the Policy. It is a description encompassing the six chargeable offenses listed below it.

Rape:

Penetration, without the consent of the Complainant,
including instances where the Complainant is incapable of giving consent
because of their age or
because of their temporary or permanent mental or physical incapacity

Sodomy:

Oral or anal penetration
Of the Complainant by the Respondent
without the consent of the Complainant,
including instances where the Complainant is incapable of giving consent
because of their age or because of their temporary or permanent mental or physical incapacity

Sexual Assault with an Object:

Respondent's use of an object or instrument
to unlawfully penetrate, however slightly, the genital or anal opening
of the body of the Complainant,
without the consent of the Complainant,
including instances where the Complainant is incapable of giving consent
because of their age or
because of their temporary or permanent mental or physical incapacity

Fondling:

The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent

or causing the Complainant to touch the Respondent's private body parts

intentionally for a sexual purpose

without the consent of the Complainant, including instances where the Complainant is incapable of giving consent

because of their age or

because of their temporary or permanent mental incapacity or physical incapacity.

Incest:

Nonforcible sexual intercourse between persons who are related to each other

within the degrees wherein marriage is prohibited by <<state>> law.

Statutory Rape:

Nonforcible sexual intercourse with a person

who is under the statutory age of consent of the <<state>>.

Dating Violence:

Violence committed by a Respondent, for purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

who is in or has been in a social relationship of a romantic or intimate nature with the Complainant;
and

where the existence of such a relationship shall be determined based on a consideration of the following factors:

- length of the relationship
- type of relationship
- frequency of the interaction between the Parties involved in the relationship.

Domestic Violence:

Felony or misdemeanor crimes committed by a person who:

is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of New Mexico or a person similarly situated to a spouse of the Complainant;

is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;

shares a child in common with the Complainant; or

commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of New Mexico.

Stalking:

engaging in a course of conduct. For purposes of this definition, “A ‘course of conduct’ requires that there be more than one incident, and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to, watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. (Federal Register, Vol 89, No. 83, 04/29/2024, p. 33523). Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

on the basis of sex, that is,

directed at a specific person that would cause a reasonable person. Reasonable person is an objective standard meaning a person in the Complainant’s shoes (having similar characteristics/demographics to the Complainant).

to:

fear for the person’s safety, or

the safety of others; or

suffer substantial emotional distress. In the context of stalking, a Complainant is not required to obtain medical or other professional treatment, and counseling is not required to show substantial emotional distress.

APPENDIX H: PREGNANCY, RELATED CONDITIONS AND PARENTING STUDENT

Non-Discrimination Statement

ENMU does not discriminate in its education program or activity against any applicant for admission, student, applicant for employment, or employee on the basis of current, potential, or past pregnancy or related conditions as mandated by Title IX of the Education Amendments of 1972 (Title IX). ENMU prohibits members of the ENMU community from adopting or implementing any policy, practice, or procedure which treats an applicant for admission, student, applicant for employment, or employee differently on the basis of current, potential, or past parental, family, or marital status. This policy and its pregnancy-related protections apply to all pregnant persons, regardless of gender identity or expression.

Definitions

Familial Status. The configuration of one's family or one's role in a family.

Marital Status. The state of being married or unmarried.

Parental Status. The status of a person who, with respect to another person who is under the age of 18, or a person who is 18 or older but who is incapable of self-care because of a mental or physical disability is a biological, adoptive, foster, or stepparent; a legal custodian or guardian; in loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.

Pregnancy and Related Conditions. The full spectrum of processes and events connected with pregnancy, including pregnancy, childbirth, termination of pregnancy, or lactation; related medical conditions; and recovery therefrom. The Department interprets 'termination of pregnancy' to mean the end of pregnancy in any manner, including, miscarriage, stillbirth, or abortion."

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 89 F.R. 33474, April 29, 2024, codified at 34 C.F.R. 106.

Reasonable Modifications. Individualized modifications to the ENMU's policies, practices, or procedures that do not fundamentally alter ENMU's education program or activity.

Information Sharing Requirements

Any ENMU employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access to the ENMU's education program and activity. If the employee has a reasonable belief that the Title IX Coordinator is already aware of the pregnancy or related condition, the employee is not required to provide the student with the Title IX Coordinator's contact information.

Upon notification of a student's pregnancy or related condition, the Title IX Coordinator will contact the student and inform the student of ENMU's obligations to:

- Prohibit sex discrimination.
- Provide reasonable modifications.
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity.
- Allow a voluntary leave of absence.
- Ensure lactation space availability.
- Maintain a Resolution Process for alleged discrimination.
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes.

The Title IX Coordinator will also notify the student of the process to file a complaint for alleged discrimination, harassment, or retaliation, as applicable.

Reasonable Modifications for Students

Students who are pregnant or are experiencing related conditions are entitled to Reasonable Modifications to prevent sex discrimination and ensure equal access to ENMU's education program and activity. Any student seeking Reasonable Modifications must contact the Title IX Coordinator to discuss appropriate and available Reasonable Modifications based on their individual needs. Students are encouraged to request Reasonable Modifications as promptly as possible, although retroactive modifications may be available in some circumstances. Reasonable Modifications are voluntary, and a student can accept or decline the offered Reasonable Modifications. Not all Reasonable Modifications are appropriate for all contexts.

Reasonable Modifications may include:

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom
- Intermittent absences to attend medical appointments
- Access to online or homebound education
- Changes in schedule or course sequence
- Time extensions for coursework and rescheduling of tests and examinations
- Allowing a student to sit or stand, or carry or keep water nearby
- Counseling
- Changes in physical space or supplies (for example, access to a larger desk or a footrest)
- Elevator access
- A larger uniform or other required clothing or equipment
- Other changes to policies, practices, or procedures determined by the Title IX Coordinator

In situations such as clinical rotations, performances, labs, and group work, the institution will work with the student to devise an alternative path to completion, if possible. In progressive curricular and/or cohort-model programs, medically necessary leaves are sufficient cause to permit the student to shift course order, substitute similar courses, or join a subsequent cohort

when returning from leave. Students are encouraged to work with their faculty members and ENMU's support systems to devise a plan for how to best address the conditions as pregnancy progresses, anticipate the need for leaves, minimize the academic impact of their absence, and get back on track as efficiently and comfortably as possible. The Title IX Coordinator will assist with plan development and implementation as needed.

Supporting documentation for Reasonable Modifications will only be required when it is necessary and reasonable under the circumstances to determine which Reasonable Modifications to offer to determine other specific actions to take to ensure equal access.

Information about pregnant students' requests for modifications will be shared with faculty and staff only to the extent necessary to provide the Reasonable Modification.

Students experiencing pregnancy-related conditions that manifest as a temporary disability under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act are eligible for reasonable accommodations just like any other student with a temporary disability. The Title IX Coordinator will consult with Accessibility Resources Center to ensure the student receives reasonable accommodations for their disability as required by law.

Certification to Participate

All students should be informed of health and safety risks related to participation in academic and co-curricular activities, regardless of pregnancy status. A student may not be required to provide health care provider or other certification that the student is physically able to participate in the program or activity, unless:

- The certified level of physical ability or health is necessary for participation.
- The institution requires such certification of all students participating; and
- The information obtained is not used as a basis for pregnancy-related discrimination.

Lactation Space Access

ENMU provides students and employees with access to lactation spaces that are functional, appropriate, and safe. Such spaces are regularly cleaned, shielded from view, and free from the intrusion of others.

Lactation spaces are located in the following locations: Please call for questions about procedures for use and unlocking.

- Campus Union Building, Mesquite Room, Campus Life 575.562.2108
- Child Development Center, Room 107, 575.562.2805 (Please ring the doorbell as the building remains locked all day)
- Golden Student Success Center, Room 126C, 575.562.2628

- Jack Williamson Liberal Arts Building, Room 119I, 575.562.2421 or go to room 202 for the code to access the room
- Music Building, Room 101, 575.562.2377

Leaves of Absence

Students

Students are permitted to take a voluntary leave of absence for a reasonable time as deemed medically necessary by their healthcare provider because of pregnancy and/or the birth, adoption, or placement of a child. The leave term may be extended in the case of extenuating circumstances or medical necessity. [Students who elect to take leave under this policy may register under an “on leave/inactive” status to continue their eligibility for certain benefits.] While registered under that status, students who choose to take a leave of absence under this policy can elect to keep their health insurance coverage and continue residing in ENMU housing, subject to the payment of applicable fees.

To the extent possible, ENMU will take reasonable steps to ensure that students who take a leave of absence or medical leave return to the same position of academic progress that they were in when they took leave, including access to the same or an equivalent course catalog that was in place when the leave began.

Continuation of students’ scholarships, fellowships, or similar ENMU-sponsored funding during the leave term will depend on student registration status and the policies of the funding program regarding registration status. Students will not be negatively impacted by or forfeit their future eligibility for their scholarship, fellowship, or similar ENMU-supported funding by exercising their rights under this policy.

The Title IX office can and will advocate for students with respect to financial aid agencies and external scholarship providers if a leave of absence places eligibility into question.

In order to initiate a leave of absence, the student must contact the Title IX Coordinator at least 30 calendar days prior to the initiation of leave, or as soon as practicable. The Coordinator will assist the student in completing any necessary paperwork.

Employees

Information on employment leave can be found here. [40-7 Leave Policy](#)

If an employee, including a student-employee, is not eligible for leave under the aforementioned leave policy because they either:

- do not have enough leave time available under that policy, or
- have not been employed long enough to qualify for leave under that policy, they are eligible to qualify for pregnancy or related condition leave under Title IX. Pregnancy and related

conditions will be regarded as a justification for a leave of absence without pay for a reasonable period of time.

Employees who take leave under Title IX must be reinstated to the status held when leave began or a comparable position without a negative effect on any employment privilege or right.

and take preliminary and qualifying examinations, and an extension of up to <<months>> toward normative time to degree while in candidacy, to the extent those deadlines are controlled by the ENMU. Longer extensions may be granted in extenuating circumstances.

A copy of this policy will be made available to faculty and employees in annually required training and posted on the ENMU website. ENMU will alert all new students about this policy and the location of this policy as part of orientation. The Title IX office will make educational materials available to all members of the ENMU community to promote compliance with this policy and familiarity with its procedures.