< https://a.cms.omniupdate.com/11/?skin=esu&account=www&site=2025_redesign&action=de&path=/policies/list-of-policies/esu-2020-01.pcf>

Title IX Policy

Purpose of Policy

Policy History

Policy Number
ESU-2020-01
Policy Number History
N/A
Effective
January 9, 2025
Adopted
August 14, 2020
Last Reviewed
July 13, 2023
Amended
July 13, 2023
Related Policies

- **Protection of Minors Policy**
- **Discrimination & Harassment Policy**

Title IX of the Education Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence) that are reflected in the definitions of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and

Regulatory Stalking included as Regulatory Prohibited Conduct under this Policy
- Addresses how the University must respond to reports of misconduct falling within the definitions of Regulatory Prohibited Conduct under this Policy, and
- Mandates a grievance (or resolution) process the University must follow before issuing disciplinary sanctions against a person accused of Regulatory Prohibited Conduct under this Policy.

Throughout this Policy, violations are generally termed as "Regulatory" consistent with the Department of Education's Final Rule under Title IX of the Education Amendments of 1972, when the behavior occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the Formal Complaint. For quid pro quo sexual harassment allegations, the designation of "Regulatory" is dependent on the employment of the Respondent. For hostile environment sexual harassment allegations, the designation of "Regulatory" is dependent on the impact of the unwelcome conduct on the individual targeted.

In addition to federal legislative requirements, Act 16 of 2019 of the General Assembly of Pennsylvania requires all postsecondary institutions in the Commonwealth of Pennsylvania to adopt a clear, understandable written policy on sexual harassment and sexual violence that informs victims of their rights under federal and state law, including the crime victims bill of rights.

General Contact Information

- University Police - (570) 422-3064 or 911
- Title IX Office - (570) 422-2277
  - **titleixreport@esu.edu**
  - **cbean1@esu.edu**

If the situation you wish to report is an emergency or imminent threat to your safety, please call the police at (570) 422-3064 or 911.

Prohibited Behavior

The University prohibits all Sexual Misconduct Violations, as defined in this Policy. This prohibited conduct can affect all genders, gender identities and sexual

orientations. Some of these prohibited forms of conduct may also be crimes under Pennsylvania or federal law.

The University will promptly and equitably respond to all reports of sexual misconduct in order to eliminate the misconduct, prevent its recurrence, and redress its effects on any individual or the community.

Title IX, VAWA and Nondiscrimination

The University prohibits any form of discrimination or harassment on the basis of sex, race, color, age, religion, national or ethnic origin, sexual orientation, gender identity or expression, pregnancy, marital or family status, medical condition, genetic information, veteran status, or disability in any decision regarding admissions, employment, or participation in a University program or activity in accordance with the letter and spirit of federal, state, and local non-discrimination and equal opportunity laws, such as Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination in Employment Act, the Americans with Disabilities Act and ADA Amendments Act, the Equal Pay Act, and the Pennsylvania Human Relations Act.

The University also complies with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crimes Statistics Act, as amended by the Violence Against Women Act (VAWA). Title IX prohibits retaliation for asserting or otherwise participating in claims of sex discrimination. VAWA imposes additional duties on universities and colleges to investigate and respond to reports of sexual assault, stalking, and dating or domestic violence, and to publish policies and procedures related to the way these reports are handled. The University has designated the Title IX Coordinator, with assistance of the Deputy Title IX Coordinators, to coordinate the University's compliance with Title IX and VAWA and to respond to reports of violations. The University has directed the Title IX Coordinator to coordinate the University's compliance with the VAWA-related Clery reporting requirements.

Statement on Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Every effort will be made to protect the privacy interests of all individuals involved. Privacy, confidentiality, and privilege have distinct meanings under this Policy.

Privacy: Generally, means that information related to a report of sexual misconduct will only be shared with a limited circle of individuals, including individuals who "need to know" in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. All participants in an investigation of sexual misconduct under this Policy, including Advisors and Witnesses, will be informed that privacy helps enhance the integrity of the investigation and protect the privacy interests of the parties, however, nothing in this Policy is intended to impose restraints on a party's ability to discuss the allegations under investigation or to gather and present evidence as part of the resolution process.

Confidentiality: Certain individuals are designated as having confidentiality. For reports made to employees designated with having confidentiality, the University will respect the reporting party's expectations of privacy to the extent permissible by law while still ensuring compliance with other reporting obligations such as mandatory reporting obligations concerning abuse, including sexual misconduct, involving minors. See Mandated Reporting Obligations of University Officials, Volunteers and Employees under the University Reporting Obligations Section for more information.

Individuals designated as having confidentiality are required to report the nature, date, time and general location of an incident to the Title IX coordinator. Individuals designated as having confidentiality will not share other information with the Title IX Coordinator or any other employee of the University without the express permission of the disclosing party. Individuals designated as having confidentiality can provide information about the University and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a confidential resource does not constitute a report or Formal Complaint to the University and will not result in a response or intervention by the University. A person consulting with a confidential resource may decide to make a report to the University and/or law enforcement. Confidential resources on the East Stroudsburg University campus are **The Department of Counseling and Psychological Services < https://www2019.esu.edu/counseling/index.cfm>** (CAPS) and **Student Health Services at Lehigh Valley Health Network – Pocono < https://www2019.esu.edu/health-and-wellness/express-care.cfm>** .

Privilege: Communication with certain individuals may be privileged by operation of law and reports made to these individuals will not be shared with the University Title IX Coordinator or law enforcement except in very limited situations, such as

when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.

All University proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX of the Education Amendments of 1972 ("Title IX"), Violence Against Women Act (VAWA), state and local law, and University policy. No information will be released from such proceedings, except as required or permitted by law and University policy. The University may share non-identifying information about reports received in aggregate form, including data about outcomes and Disciplinary Sanctions.

Disability Accommodations

This Policy does not alter any obligations of the University under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities at any point before or during the resolution process that do not fundamentally alter the process. Requests for accommodations may be made to the Title IX Coordinator and may be referred to another appropriate party or office on campus. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other University programs and activities.

Free Expression and Academic Freedom

The University is firmly committed to free expression and academic freedom and to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community. Sexual misconduct, including retaliation, against members of the University is not protected expression nor the proper exercise of academic freedom. The University will consider principles of free expression and academic freedom in the investigation of reports of sexual misconduct or retaliation that involve an individual's statements or speech.

Alcohol and Drug Use Amnesty for Students

The health and safety of every student at the University is of utmost importance. The University recognizes that students who have been drinking and/or using

drugs (whether such use is voluntary or involuntary) at the time sexual misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The University strongly encourages students to report incidents of sexual misconduct. A witness to or individual who experiences sexual misconduct, acting in good faith, who discloses any incident of sexual misconduct to University officials or law enforcement will not be sanctioned under the University's Code of Conduct for violations of alcohol and/or drug use policies occurring at or near the time of the incident(s) of sexual misconduct. The University may require the individual attend an approved alcohol or drug education program and without assessing any charges for such program. Amnesty does not preclude or prevent action by police or other legal authorities pursuant to relevant state or federal criminal statutes.

Scope of Policy

This Policy applies to all on campus and off-campus conduct that is likely to have a substantial adverse effect on any member of the University community. There is no time limit for reporting allegations of sexual misconduct, however, the University strongly encourages the prompt reporting of sexual misconduct to allow the University to respond promptly and effectively. If the reported Respondent is not a member of the University community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, the University may be unable to investigate or take disciplinary action and may be required to dismiss the Formal Complaint for a lack of jurisdiction. See the Jurisdiction and Dismissals section. Please see the Reporting Sexual Misconduct section below for more information on how and where to report misconduct, discrimination and/or harassment, or to file a Formal Complaint.

Burden of Proof

The burden of proof refers to who has the responsibility of showing a violation has occurred. It is always the responsibility of the University to satisfy the burden of proof. The Respondent does not have the burden to prove that a violation did not occur. Respondents may decide not to share their side of the story or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility. Additionally, Decision-Maker(s) shall not make an adverse inference against a Respondent for the Respondent's refusal to participate in an investigation or hearing, nor will

Respondent's refusal to participate result in increased sanctions if the Respondent is found responsible for the violation(s).

Standard of Proof

Consistent with requirements set forth in the Pennsylvania Code pertaining to student disciplinary due process requirements, the University will use the preponderance of the evidence standard in investigations of formal complaints alleging sexual misconduct violations under this Policy. This means that the individual(s) charged with making a finding must determine whether it is more likely than not that a violation of the Policy occurred.

Effective Date

Based on the Final Rule, this Policy will be effective January 9, 2025.

Impact on other Policies or Processes

As used in this Policy, sexual misconduct may also encompass criminal conduct under Pennsylvania and/or federal law. Additionally, sexual misconduct under this Policy may result in civil and/or administrative or legal consequences.

Revocation by Operation of Law

Applicability of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), is subject to future legislative or court actions. Should any portion of the Title IX Final Rule be set aside, stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require any of the elements of this Policy, this Policy, or the invalidated elements of this Policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication.

Sexual Misconduct Definitions

Dating Violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act)

Includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

Dating Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Dating Violence will be categorized as Non-Regulatory.

Domestic Violence (as defined in the VAWA amendments to the Clery Act)

Includes any violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under Pennsylvania's domestic or family violence laws or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

Domestic Violence is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Domestic Violence will be categorized as Non-Regulatory.

Retaliation

Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (A) for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations; or (B) because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy. A finding of retaliation under this Policy is not dependent on a finding that the underlying sexual misconduct occurred.

Sexual Assault

This includes any sexual act directed against another person, without the Consent of the Complainant, including instances where the Complainant is incapable of giving Consent. Sexual Assault may be one of the following categories:

A. Sexual Penetration Without Consent - Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when Consent is not present. This includes performing oral sex on another person when Consent is not present.
B. Sexual Contact Without Consent - Knowingly touching or fondling a person's genitals, breasts, buttocks, or anus, or knowingly touching a person with one's own genitals or breasts, when Consent is not present. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when Consent is not present, to similarly touch or fondle oneself or someone else.
C. Statutory Sexual Assault – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute .

Sexual Assault is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating

or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Sexual Assault will be categorized as Non-Regulatory.

Sexual Exploitation

Engaging in sexual behaviors directed toward or involving another person or use of another person's sexuality for purposes of sexual gratification, financial gain, personal gain or personal advantage when Consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods or devices:

A. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's Consent;
B. Indecent exposure or inducing others to expose private or intimate parts of the body when Consent is not present;
C. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's Consent;
D. Prostituting another individual;
E. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; or
F. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Regulatory Prohibited Conduct

For purposes of this Policy, the term includes the defined violations of Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking.

Regulatory Quid Pro Quo Sexual Harassment

An Employee conditioning the provision of aid, benefit or service of the University on an individual's participation in unwelcome sexual conduct.

Non-Regulatory Quid Pro Quo Sexual Harassment

Non-Regulatory Quid Pro Quo Sexual Harassment - An Official, Volunteer or Student conditioning the provision of aid, benefit or service of the University on the individual's participation in unwelcome sexual conduct.

Regulatory Hostile Environment Sexual Harassment

Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity.

Non-Regulatory Hostile Environment Sexual Harassment

Unwelcome conduct, on the basis of sex, that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from any educational, employment, social or residential program in offered connection with the University.

Stalking (as defined in the VAWA amendments to the Clery Act)

Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

A. fear for their safety or the safety of others; or
B. suffer substantial emotional distress.

A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property.

Stalking includes the concept of cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Stalking is categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, Stalking will be categorized as Non-Regulatory.

Other Definitions

Advisor

An individual who may be present to provide support to a Party throughout an investigation and/or hearing.

A. Advisors may accompany a Party to any meeting or hearing they are required or eligible to attend, but may not speak for the Party, except for the purposes of cross-examination.
B. Each party is responsible for coordinating and scheduling with their choice of Advisor.
C. The Advisor of choice may be an attorney or a union representative (when applicable) or other individual selected by the party.
D. If a party does not have an Advisor of choice present for a hearing, the University will appoint an Advisor for the limited purposes of asking questions and conducting cross-examination.
E. If a Party does not attend the hearing, the Party's Advisor may appear and ask questions or conduct cross-examination on the Party's behalf.
F. The Advisor is not prohibited from having a conflict of interest or bias in favor of or against a Party, nor is the Advisor prohibited from being a Witness in the Sexual Misconduct Resolution Process.

Appeals Officer

The individual or individuals with the authority under law or otherwise appointed by the University to decide appeals. The Appeals Officer will be free of conflict of

interest and bias, and will not serve as the Investigator, Title IX Coordinator, Advisor to any Party or a Decision Maker in the same matter.

Complainant

An individual who has reported being or is alleged to be subjected to conduct that could constitute covered sexual misconduct as defined under this Policy.

Consent

A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood. In order to be valid, Consent must be active, present and ongoing.

A. Consent is not present when it is the result of coercion, intimidation, force, or threat of harm.
B. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.
C. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently.
D. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity.
E. When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

Day(s)

Calendar days. A calendar day starts on the day that a communication and/or document is sent from the Title IX Office.

Decision Maker(s)

The individual or individuals appointed by the University to render a decision on a Formal Complaint that goes to a hearing. The Decision Maker(s) will be free of conflict of interest and bias, and will not serve as the Investigator, Title IX Coordinator, an Advisor to any Party or Appeals Officer in the same matter.

Disciplinary Sanction

The penalty imposed on an individual for violating this Policy. For Students, Disciplinary Sanctions are subject to applicable University/System policies, up to and including expulsion from the University. For Employees, Disciplinary Sanctions are subject to applicable collective bargaining agreement or University/System policies, up to and including separation from employment. For Officials or Volunteers, this may include the removal or the request for removal of the Official or Volunteer from their respective position.

Education Program or Activity

For purposes of this Policy, the term "Education Program or Activity" includes any activity that occurs in, on or within:

A. Any on-campus premises;
B. Any off-campus premises the University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization or a recognized affiliated entity.
C. Computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs and activities over which the University has substantial control.

Employee

An individual who is employed by the State System (either at a State System University or in the Office of the Chancellor) including, but not limited to, faculty members, coaches, staff, managers and student employees.

Final Rule

The Final Rule issued on May 19, 2020 by the U.S. Department of Education under Title IX of the Education Amendments of 1972.

Formal Complaint

A document, including an electronic submission, filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging sexual misconduct against a Respondent and requesting initiation of the process set forth in this Policy to investigate the allegation of sexual misconduct.

Hearing Officer

Administrative Hearing Officer, Adjudicator, Hearing Officer, or Conduct Board shall mean any person or group given the authority to review and adjudicate disciplinary matters.

Investigator

The Title IX Coordinator or the individual designated by the Title IX Coordinator to perform an investigation under this Policy. The Investigator may not have a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general. The Investigator may not serve as a Decision Maker, Appeals Officer or Advisor to any Party in the same matter.

Notice of Allegations

The written notice the Title IX Coordinator is required to provide to the Parties following receipt of a Formal Complaint. See Notice of Allegations section below.

Notice of Hearing

The written notice the Director of Student Conduct and Community Standards or other designee is required to provide the Parties prior to the hearing. See Notice of

Hearing section below.

Official

A member of a Council of Trustees or of the Board of Governors or their respective designees.

Parties or Party

A term that refers to the Complainant and the Respondent collectively or the Complainant or Respondent individually.

Respondent

Any individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct as defined under this Policy.

Student

Any person: (1) seeking admission to the University through the formal University application process; (2) admitted to the University, (3) eligible to register or schedule for classes, or (4) living in University or University-affiliated residence halls even though they are not enrolled at the University. The term “Student” shall include Employees, Volunteers and Officials where the Employee, Volunteer or Official otherwise meets the enrollment criteria set forth in this definition.

Supportive Measures

Non-disciplinary and non-punitive individualized services designed to restore or preserve access to the University's Education Programs or Activities without unduly burdening the other Party. Supportive Measures will be offered, as appropriate, to the Complainant or the Respondent, regardless of whether a Formal Complaint is filed. Supportive Measures may include, but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties (no contact orders), changes in work or housing

locations, leaves of absence, and increased security and monitoring of certain areas of the campus.

Title IX Coordinator

The individual designated by the University, with assistance of the Deputy Title IX Coordinators, to coordinate the University's compliance with Title IX and VAWA and to respond to reports of violations. The Title IX Coordinator may not have a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general. The Title IX Coordinator may serve as the Investigator of a Formal Complaint. The Title IX Coordinator may serve as the Investigator of a Formal Complaint for Formal Complaints against Respondents who are Employees. The Title IX Coordinator may not serve as a Decision Maker, Appeals Officer or as an Advisor to any Party.

Volunteer

A recognized volunteer or any individual who represents or acts on behalf of the university or whose actions may bind the university, regardless of whether the individual receives monetary or other compensation. For purposes of this Policy, employees and officials of recognized affiliated entities, ROTC instructors, visiting professors and unpaid camps and conference personnel will be considered contractors and not Volunteers.

Witness

A person who has knowledge related to specific aspects of a case and may have reported such aspects to the institution.

Reporting Sexual Misconduct

Any individual, including a third party, may make a report concerning sexual misconduct. Complainants and third-parties are encouraged to report sexual misconduct as soon as possible to allow the University to respond promptly and effectively.

The Title IX Coordinator (or designee), and any other University employees with authority to institute corrective measures, have authority to institute corrective measures for reports of alleged violations of this Policy. Mandated reports to the Title IX Coordinator by Officials, Volunteers and Employees shall not automatically result in corrective measures being instituted. Individuals are encouraged to report sexual misconduct directly to the Title IX Coordinator, through the University's electronic and anonymous reporting systems or by filing a Formal Complaint.

Contact Information for Title IX Coordinator

- Christopher Bean, Equal Opportunity and Title IX Coordinator
- Student Conduct and Community Standards, Ground Floor, Sycamore Suites
- **titleixreport@esu.edu** or **cbean1@esu.edu**
- (570) 422-2277

Reports to the Title IX Coordinator

Any person may report sex discrimination, including sexual misconduct (whether or not the person reporting is the person alleged to be the person subjected to conduct that could constitute sex discrimination or sexual misconduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

The University's Title IX Coordinator is trained to work with individuals who report sexual misconduct and have knowledge about resources and services, both on and off campus, including the availability of Supportive Measures.

If a report of misconduct discloses a serious or immediate threat to the campus community, the University will issue a timely warning to the community to protect the health or safety of the community. The timely warning will not include any identifying information about the Complainant.

Please note: Title IX Coordinators are not a confidential source of support. While they will address matters reported with sensitivity and will keep your information

as private as possible, confidentiality cannot be guaranteed. To speak with an individual designated as having confidentiality, please contact a member of the professional staff at the **Department of Counseling and Psychological Services < https://www2019.esu.edu/counseling/index.cfm>** (CAPS) at (570) 422-3277 or a member of the medical staff at Student Health Services at Lehigh Valley Health Network – Pocono at (272) 762-4378.

Please also note: Making a report is different from filing a Formal Complaint (see the section titled Filing a Formal Complaint). A report is defined as notification of an incident of sexual misconduct to the Title IX Coordinator or designee by any person. A report may be accompanied by a request for (1) Supportive Measures; (2) no further action; (3) filing a Formal Complaint, which initiates the University's formal investigation process (See Sexual Misconduct Resolution Process); and/or (4) a request to initiate an informal resolution process after filing a Formal Complaint.

Electronic and Anonymous Reporting

You may also file a report about sexual misconduct using the appropriate links below. While anonymous reports are accepted, the University's ability to address misconduct reported anonymously is significantly limited.

Individuals may use the ESU Guardian System online to electronically **file a report of sexual misconduct < https://esu.guardianconduct.com/incident-reporting>** with the University.

Individuals may also file a report electronically by email to: **titleixreport@esu.edu**.

Filing a Formal Complaint

The timeframe for the Sexual Misconduct Resolution Process under this Policy begins with the filing of a Formal Complaint and will be concluded within a reasonably prompt manner, and usually no longer than 90 days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, as set forth more fully in the Continuances and Granting Extensions section. Appeals may extend the timeframe for resolution.

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged.

If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. The Title IX Coordinator will inform the Complainant of this decision in writing, and the Complainant need not participate in the process further but will receive all notices issued under this Sexual Misconduct Resolution Process.

Please note: The Title IX Coordinator does not lose impartiality solely due to signing a Formal Complaint.

A Complainant who files a Formal Complaint may elect, at any time, to address the matter through the Informal Resolution Process (see the Informal Resolution section below).

Criminal Reporting Options

A Complainant may also seek to initiate a criminal complaint, independent of or parallel with any report made to the University.

East Stroudsburg University Campus Police
Hemlock Suites, Smith Street, Ground Floor
(570) 422-3064 or 911

Pennsylvania State Police
2730 Rimrock Drive Stroudsburg, PA 18360
(570) 619-6800

Please note: The University's policy, definitions, and burden of proof may differ from Pennsylvania criminal law. Neither law enforcement's decision whether to prosecute, nor the outcome of any criminal prosecution, is determinative of whether sexual misconduct has occurred under this Policy. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when the University may need to temporarily delay its investigation while law enforcement gathers evidence. However, the University will generally proceed with Formal Complaint even during the time of a pending law enforcement investigation.

The University may not be informed of reports made to law enforcement agencies.

External Reporting Options

A person may also file a complaint with the U.S. **Department of Education's Office for Civil Rights < https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>** regarding an alleged violation of Title IX by calling (800) 421-3481 ; (877) 521-2172 TTY or emailing **OCR.Philadelphia@ed.gov**.

A person may also file a complaint with the **Pennsylvania Human Relations Commission < https://www.phrc.pa.gov/Pages/default.aspx>** by calling (717) 787-9780 for the Harrisburg Regional Office; (412) 565- 5395 for the Pittsburgh Regional Office; or (215) 560-2496 for the Philadelphia Regional Office.

Employees may also file a charge with the **Equal Employment Opportunity Commission < https://www.eeoc.gov/employees/howtofile.cfm>** regarding an alleged violation of Title VII by calling (800) 669-4000.

The University may not be informed of reports made to external agencies.

Truthfulness

All participants in the reporting and resolution processes have the responsibility to be truthful with the information they share at all stages of the process. A report of a violation under this Policy is not considered a bad faith report merely because the evidence does not ultimately support the allegation. Individuals are prohibited from knowingly making a false report, filing a false Formal Complaint or making misrepresentations. If an investigation results in a finding that a person has willfully filed a bad faith report, filed a false Formal Complaint, or made misrepresentations as part of the reporting or resolution process, the person may be subject to appropriate Disciplinary Sanctions under the Code of Conduct in the case of Students or other relevant University policy and collective bargaining agreements in the case of Officials, Employees or Volunteers.

Multiple Party Complaints

The Title IX Coordinator may consolidate Formal Complaints involving multiple parties where the allegations of sexual misconduct arise from the same facts or circumstances; in such consolidated matters, the Sexual Misconduct Resolution Process applies to more than one Complainant and/or more than one Respondent, but each party is still an “individual” and not a group or organization. The decision

of the Title IX Coordinator to consolidate Formal Complaints is not subject to appeal.

University Reporting Obligations

Mandated Reporting Obligations of University Officials, Volunteers and Employees

All University Officials, Volunteers and Employees (including student employees) are obligated to report incidents of sexual misconduct of which they become aware to the Title IX Coordinator/designee, unless: 1) they serve in a role that makes such reports privileged or are recognized as providing a confidential resource (see Statement on Privacy and Confidentiality); or 2) they are a faculty member and learn of the report from a student during a classroom discussion, in a writing assignment for a class, or as part of a University-approved research project.

Please note: These reporting exceptions do not apply to reports of sexual misconduct involving an individual who was, or is, a child (a person under 18 years of age) when the abuse allegedly occurred. When a report involves suspected abuse of a child (an individual under the age of 18 at the time of the incident(s) as reported), all the University Employees, Officials and Volunteers are required to notify the University police and the ChildLine run by the Pennsylvania Department of Human Services (800) 932-0313. All other members of the University community are strongly encouraged to report suspected child abuse to law enforcement or the ChildLine.

University Employees designated as Campus Security Authorities (CSAs) under the Clery Act are required to report certain crimes for federal statistical reporting purposes.

University Obligations Regarding Timely Warnings

Parties reporting Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking should be aware that under the Clery Act, the University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community. If a report of sexual misconduct discloses a serious or immediate threat to the campus community, the

University will issue a timely notification to the community to protect the health or safety of the community. The timely notification will not include any identifying information about the Complainant.

Jurisdiction and Dismissals

In certain circumstances where violations defined under the Final Rule as Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking) do not meet jurisdictional requirements, the University must dismiss those allegations contained in the Formal Complaint.

In certain circumstances the Title IX Coordinator may dismiss a Formal Complaint, or any specific allegations raised in the Formal Complaint at any time during the investigation or hearing.

Any Party may appeal a dismissal determination. See the Determining Jurisdiction and Mandatory Dismissal for Certain Allegations under the Sexual Misconduct Resolution Process Section for more information.

Emergency Removal for Students

1. The University retains the authority to remove a Respondent from its Education Programs or Activities on an emergency basis. This action is also referred to as an emergency removal.
2. Before imposing an emergency removal on a student Respondent, the University will:
    A. Undertake an individualized safety and risk analysis; and
    B. Determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct justifies a removal.
3. If the University imposes an emergency removal on a student Respondent, the University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
    A. The University will provide written notice of the emergency removal and applicable charges.
    B. The University will provide an opportunity for the Respondent to appeal that decision to an appropriate Hearing Officer or designee within 10

days of the imposition of the emergency removal.

C. The designated University Hearing Officer will hear the evidence and determine whether there is sufficient evidence to support the conclusion that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual misconduct and that, based on that threat, removal is the appropriate course of action.

4. If the University learns of evidence that demonstrates that the emergency action is no longer justified after the emergency removal is imposed against a student Respondent, the University will take prompt action to rescind the emergency removal.
5. All emergency removals will also comply with requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel

Administrative Leave for Employees

The University retains the authority to place Employees on administrative leave consistent with applicable requirements of relevant University policies and collective bargaining agreements.

Informal Resolution Process

Informal means of resolution, such as mediation, may be used as an alternative to the formal investigation and hearing procedures. Informal resolution is a voluntary process and may be used only where a Formal Complaint has been filed. Upon written agreement of all parties, informal resolution may be initiated at any time prior to finding of responsibility in a hearing and may be terminated at any time prior to final resolution. If the informal process is terminated, the Sexual Misconduct Resolution Process, which includes an investigation and hearing, will proceed. Once a final resolution has been reached and documented and signed by all parties, the resolution cannot be appealed.

Informal resolution may not be utilized when a Student files a Formal Complaint against a University Employee, Volunteer or Official under this Policy.

Sexual Misconduct Resolution Process

Formal Complaint

The Sexual Misconduct Resolution Process is initiated by a Complainant providing the Title IX Coordinator a written, signed Formal Complaint describing the facts alleged. See the section titled Filing a Formal Complaint above.

Notice of Allegations

The Title IX Coordinator will draft and provide a written Notice of Allegations to any Party alleged to have violated this Policy. Such notice will occur as soon as practicable, but no more than 10 days, after the University receives a Formal Complaint of the allegations if there are no extenuating circumstances.

The Notice of Allegations will include the following:

A. Notice of the University's Sexual Misconduct Resolution Process including any Informal Resolution process and a hyperlink to a copy of the process.
B. Notice of the allegations potentially constituting violations(s) of any University policy, and sufficient details known at the time the Notice of Allegations is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting a policy violation; and the date and location of the alleged incident, if known.
C. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the hearing.
D. A statement that the Parties may have an Advisor of their choice.
E. A statement that before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source.
F. Individuals are prohibited from knowingly filing a false report or making misrepresentations. If, following an investigation and hearing as appropriate under applicable policy, a person is found to have willfully filed a bad faith

report or made misrepresentations as part of a resolution process, the party may be subject to appropriate Disciplinary Sanctions under the Code of Conduct in the case of Students or other relevant University policy in the case of Officials, Employees or Volunteers.

The Parties will be notified by their University email accounts if they are a Student or Employee, and by other reasonable means if they are neither. It is the responsibility of the Party to update the Title IX Coordinator of any email address or other changes to the means of contact.

The University will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview.

Determining Jurisdiction and Mandatory Dismissal for Certain Allegations

For alleged violations of Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking) the following elements will be determined in the reasonable determination of the Title IX Coordinator:

A. The conduct is alleged to have occurred in the United States;
B. The conduct is alleged to have occurred in the University's Education Program or Activity; and
C. The alleged conduct, if true, would constitute covered Regulatory Prohibited Conduct, as defined in this Policy.

If all of the elements are met, the University will investigate the allegations under the processes set forth in this Policy. If any one of these elements is not met, the Title IX Coordinator will notify the parties the specific allegation contained in the Formal Complaint does not meet the required jurisdictional requirements under the Final Rule and is being dismissed. Any Party may appeal a dismissal using the process set forth in the Appeals section below. Dismissal of any violations constituting Regulatory Prohibited Conduct will not affect the University's ability to proceed with an investigation of allegations categorized as Non-Regulatory or other allegations under this Policy or any other University Policy.

Discretionary Dismissals for All Allegations

The Title IX Coordinator may dismiss a Formal Complaint brought under this Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

A. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
B. The Respondent is no longer enrolled in, associated with or employed by the University; or,
C. If specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any Party may appeal a dismissal using the process set forth in the Appeals section below.

Allegations Potentially Falling Under Two Policies

If a Formal Complaint against a Respondent who is a Student contains allegations of a violation of any of the listed Sexual Misconduct Violations in this Policy, as well as any other violation in the Student Code of Conduct, the Sexual Misconduct Resolution Process set forth in this Policy will be applied in the investigation and adjudication of all of the allegations. If all of the alleged Sexual Misconduct Violations of this Policy are dismissed, and the remaining underlying allegations, if true, would violate another University policy or the University's Student Code of Conduct the matter may be referred for further action by the University's Office of Student Conduct and Community Standards as appropriate.

If a Formal Complaint against a Respondent who is an Employee contains allegations of violations of Regulatory Prohibited Conduct (Regulatory Quid Pro Quo, Regulatory Hostile Environment Sexual Harassment, Regulatory Dating Violence, Regulatory Domestic Violence, Regulatory Sexual Assault and Regulatory Stalking), the Sexual Misconduct Resolution Process set forth in this Policy will be applied in the investigation and adjudication of those allegations. For all other allegations, the University will follow applicable requirements in University policies and relevant collective bargaining agreements for resolution of the other allegations contained in the Formal Complaint.

If a Formal Complaint against a Respondent who is an Official or Volunteer contains any allegations under this Policy, the University or System will follow applicable requirements in University or System policies or procedures and standards for resolution of the allegations contained in the Formal Complaint.

Notice of Dismissal

Upon reaching a decision that any specific allegation contained in the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal and the reason for the dismissal, simultaneously to the Parties through their institutional or other provided email account. It is the responsibility of Party to update the Title IX Coordinator of any email address or other changes to the means of contact.

Investigation

A. **General Rules of Investigations**

The Title IX Coordinator and/or an Investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged under a reasonably prompt timeframe, following issuance of the Notice of Allegations.

The University and not the Parties, has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred. Either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the University and does not indicate responsibility.

The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., evidence that tends to prove and disprove the allegations). See Inspection and Review of Evidence section below.Medical records of a party (or parent, if applicable) will not be considered as part of the investigation unless the party to whom the medical records belong provides the records to the Investigator. Any relevant medical records shared with the Investigator will be attached to the Investigative Report and shared with the other party and Decision Maker(s).

B. **Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to issuance of the Investigative Report.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

a. Evidence that is relevant, even if that evidence does not end up being relied upon by the Decision Maker(s) in making a determination regarding responsibility
b. inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a Party or other source.

The University will make the evidence available to each Party and each Party's Advisor, if any, for inspection and review through an electronic format or a hard copy. The University will also provide a draft of the Investigative Report for review. The University is not under an obligation to use any specific process or technology to provide the evidence or report and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Parties will have 10 days to inspect and review the evidence and review the draft Investigative Report and submit a written response by email to the Investigator that includes any new or additional evidence the Party would like the Investigator to consider. The University will provide copies of the Parties' written responses, and any new or additional evidence provided, to the other Party and their Advisor. The other Party will have 5 days to inspect, review, and respond to the new or additional evidence through a written response to the Investigator. The University will provide copies of the Party's supplemental written response to the other Party and their Advisor.

The Parties and their Advisors may not disseminate, photograph, copy or otherwise use the draft Investigative Report or use any of the evidence subject to inspection and review for any purpose unrelated to the Sexual Misconduct Resolution Process. Any violation of this confidentiality

requirement may result in separate disciplinary action under the Student Code of Conduct or other University Policy, as appropriate.

Any evidence subject to inspection and review will be available at any hearing held, including for purposes of cross-examination.

The Investigator will consider the parties' written responses before completing the Investigative Report. Parties may request a reasonable extension of the time to submit a written response, which may be denied in the sole discretion of the Investigator, in consultation with the Title IX Coordinator.

The Investigator has 10 days to generate a report or after the responses to additional evidence are due; the Investigator may provide the Parties and their Advisors with written notice extending the investigation and explaining the reason for the extension.

C. **Investigative Reports**

The Investigator will create an Investigative Report that fairly summarizes relevant evidence.

The Investigative Report is not intended to catalog all evidence obtained by the Investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory relevant evidence – i.e., tending to prove and disprove the allegations, respectively) will be referenced in the Investigative Report.

Evidence obtained in the investigation that is determined in the reasoned judgment of the Investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in otherwise relevant documents or evidence.

The Investigative Report will be shared with the Parties and their Advisors at least 10 days prior to any hearing for their review and written response. Any written response received will be shared with the Decision-Makers(s) and the other Party and their Advisor prior to the hearing.

D. **Ongoing Notice**

If, in the course of an investigation, the University decides to investigate allegations about either Party that are not included in the Notice of Allegations and are otherwise covered Sexual Misconduct Violations falling within this Policy or other violations of the University's Student Code of Conduct the University will notify the Parties of the additional allegations by their University email accounts or other reasonable means. It is the responsibility of the Party to update the Title IX Coordinator of any email address or other changes to the means of contact.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

General Rules of Hearing

A. **Notice of Hearing**

No less than 10 days prior to the hearing, the Director of Student Conduct and Community Standards, or other designee will send written notice of the hearing to the Parties. The Parties will be notified by their University email accounts or by other reasonable means. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing will contain:

a. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential Disciplinary Sanctions actions that could result.
b. The time, date, and location of the hearing.
c. Information about the option for the hearing to occur with the parties located in separate rooms using technology that enables the Decision Maker(s) and Parties to see and hear a Party or Witness answering questions. Parties should inform the Office of Student Conduct and Community Standards, or other designee of any desire to have the hearing occur in separate rooms at least 3 days prior to the hearing to ensure appropriate technology is in place.
d. Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
e. A copy of the rules of decorum for all hearing participants.

f. A list of the Decision Makers, Hearing Facilitator, Hearing Chair and any other University personnel who will attend the hearing, along with an invitation to object to any actual or perceived conflicts of interest or bias of any individual attending the hearing prior to the hearing. The President of the University shall serve as the Decision Maker for all cases involving a Respondent who is a faculty member. In all cases involving a Respondent who is an Employee, the President may designate a Decision-Maker.
g. A statement that if any Party or Witness does not appear at the scheduled hearing, the hearing may be held in their absence.
h. Notification that the parties may have the assistance of an Advisor of their choice at the hearing and will be required to have one present for any questions they may desire to ask of the other Party or Witnesses. The Party should notify the Office of Student Conduct and Community Standards, or other designee in advance of the hearing if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present.
i. A copy of all the materials provided to the Decision Maker(s) about the matter and the opportunity to provide a written response in advance of the hearing.
j. Information regarding who to contact to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing.
k. For compelling reasons, the Office of Student Conduct and Community Standards, or other designee may reschedule the hearing.

B. **Hearing**

The University will not issue a Disciplinary Sanction arising from an allegation of a violation of this Policy without holding a hearing, unless otherwise resolved through an informal resolution process or an alternate process permitted under this Policy. If the University determines a hearing is necessary, the Parties cannot waive the right to a hearing.

The University may still proceed with the hearing in the absence of a Party and may reach a determination of responsibility in their absence. The University will not threaten, coerce, intimidate, or discriminate against the Party in an attempt to secure the Party's participation.

The Decision Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the hearing

or refusal to answer cross examination or other questions.

The hearing may be conducted with all Parties physically present in the same geographic location, or, at the University's discretion, any or all Parties, Witnesses, and other participants may appear at the hearing virtually through video conferencing technology. This technology will enable participants simultaneously to see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors.

All proceedings will be recorded through audio recording. That recording or a transcript, if one is available, will be made available to the Parties for inspection and review upon request.

All hearings for student Respondents will comply with requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel. All hearings for employee Respondents will comply with applicable collective bargaining requirements and University and Board of Governors Policy and Procedure/Standard requirements.

C. **Continuances or Granting Extensions**

The University may determine that multiple sessions or a continuance (i.e., a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

D. **Participants in the Hearing**

Hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

a. The Decision Maker(s)
b. The Hearing Chair
c. The Hearing Board
d. Conduct Administrator or designee
e. The Parties
f. Advisor of choice or Advisor provided by the University for each Party
g. Witnesses
h. The Title IX Coordinator or Title IX Deputy Coordinator
i. Other University Personnel
j. Any individuals necessary to provide interpretation or other support services (such as IT support) associated with reasonable

accommodations to facilitate participation in the hearing.

The Decision Maker(s) and Hearing Chair will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the Parties to the particular case. The Parties will have an opportunity to raise any objections regarding a Decision Maker's actual or perceived conflicts of interest or bias at the beginning of the hearing.

Parties and Witnesses cannot be compelled to participate in the hearing and have the right not to participate in the hearing free from retaliation.

E. **Hearing Procedures**

For all hearings conducted under this Policy, the procedure will be as follows:

a. Hearing Chair will open and establish rules and expectations for the hearing.
b. The Parties will each be given the opportunity to provide opening statements.
c. The Investigator will present a summary of the final Investigative Report, including items that are and are not contested. The Investigator will be subject to questioning by the Decision Maker(s) and the Parties (through their Advisors). The Investigator should not be asked their opinion on credibility, recommended findings or determinations. If such information is introduced, the Hearing Chair will direct that it be disregarded.
d. Hearing Chair and Decision Maker(s) will ask questions of the Parties and Witnesses.
e. Parties will be given the opportunity for cross-examination after Decision Maker(s) conduct(s) its initial round of questioning See Cross-Examination Procedure below.
f. During the Parties' cross-examination, the Hearing Chair will have the authority to pause cross-examination at any time for the purposes of asking Decision Maker(s) own follow up questions; and any time necessary in order to enforce order for the hearing or the established rules of decorum. If an Advisor does not comply with the established rules of decorum, the Hearing Chair may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.
g. Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision Maker(s). A Party's

waiver of cross-examination does not eliminate the ability of the Decision Maker(s) to use statements made by the Party.

F. **Relevant Evidence and Questions**

"Relevant" evidence and questions are those questions and evidence that tends to make an allegation of sexual misconduct more or less likely to be true. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of any process initiated under this Policy:

a. Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
    a. They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
    b. They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
b. Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege including attorney-client privilege; or
c. Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

G. **Cross-Examination**

a. Each Party's Advisor may conduct cross-examination of the other Party or Parties and Witnesses and ask follow-up questions, including those challenging credibility directly, orally, and in real time.
b. Parties will not be permitted to personally cross-examine each other.
c. If a Party does not participate in a hearing, the Party's Advisor may attend and conduct cross-examination on behalf of the Party.
d. If neither a Party nor their Advisor appear at the hearing, the University will provide an Advisor to appear on behalf of the non-appearing Party and ask cross-examination questions.
e. Before any cross-examination question is answered, the Decision Maker(s) will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Decision Maker(s) may be deemed irrelevant if they have been asked and answered.
f. The Decision Maker(s) must explain to the Party proposing the question any decision to exclude a question as not relevant.

g. The Decision Maker(s) may not draw an inference about a determination of regarding responsibility based solely on a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.
h. Failure to answer questions at the hearing may impact the information the Decision Maker(s) will consider. In accordance with due process requirements applicable to Pennsylvania universities, hearings must include the opportunity to cross-examine witnesses when credibility determinations are at issue. However, if any witness is not available for cross examination, the Decision Maker(s) may consider any previous statements, testimony, or evidence provided by the witness in reaching a determination regarding responsibility.

Decisions

A. **General Considerations for Evaluating Testimony and Evidence**
   a. While the opportunity for cross-examination is required in all hearings under this Policy, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision Maker(s).
   b. Hearsay evidence may not be used to establish a fact necessary to establish responsibility consistent with the requirements under Chapter 505 of Title 22 of the Pennsylvania Code concerning Student Personnel.
   c. Decision Maker(s) shall not draw inferences regarding a Party or Witness' credibility based on the Party or Witness' status as a Complainant, Respondent, or Witness, nor shall it base its judgments in stereotypes about how a Party or Witness would or should act under the circumstances.
   d. Generally, credibility judgments should rest on the demeanor of the Party or Witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.
   e. Credibility judgments should not rest on whether a Party or Witness' testimony is non-linear or incomplete, or if the Party or Witness is displaying stress or anxiety.
   f. Where a Party or Witness' conduct or statements demonstrate that the Party or Witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision Maker(s) may draw an adverse inference as to that Party or Witness' credibility.

g. Decision Maker(s) will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.
h. The Final Rule requires the University to admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.
i. The Final Rule requires the University allow parties to call character witnesses to testify. The University does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision Maker(s) will be instructed to afford very low weight to any non-factual character testimony of any Witness.

B. **Timeline for Decision**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the University within 10 days of the completion of the hearing.

C. **Finality**

The determination regarding responsibility becomes final either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested as set forth in the Appeals section below.

Disciplinary Sanctions Against Students

A. **Possible Disciplinary Sanctions**

The University may impose the following Disciplinary Sanctions upon Students, singly or in combination:

Educational Sanctions: The following are educational sanctions that may be assigned to the student or student organization when there is responsibility for violating the student code of conduct. These sanctions are not progressive

in nature. More than one sanction may apply.

Restitution: Payment and/or reimbursement for replacement and/or repair of damages to public or private property.

Campus/ Community Service: a specified number of hours of service to the campus/community. When possible, the service requested shall be related to the disciplinary infraction.

Educational Program Referral: may include but not be limited to alcohol and/or other drug education, time management education, and/or; emotions management education.

Other educational sanctions may include writing a paper, presenting a program, designing a bulletin board, checking fire safety equipment, and/or attending an assigned workshop. The student must provide documentation of satisfactory completion of assigned program.

Alcohol and Illegal Drug Violations: Parental notification may be rendered for students under 21 years of age when a student is either found, or takes, responsibility for the violation.

Administrative Hold: A hold may be placed on a student's record to ensure that the student complies with sanctions or pending the resolution of conduct matters. If a hold is placed on a record, the Registrar may prohibit the student from registering or receiving an official transcript or a diploma until the conditions of the hold have been met. Holds on student records will be initiated and released by the office of Student Conduct and Community Standards.

Official Warning: An official notice that indicates to the student that future violations during the period covered by the warning may result in additional sanctions.

Residence Hall Suspension: Removal from university housing for a specified amount of time. Students suspended from the residence halls for disciplinary reasons, will not be eligible for a refund of room fees. Students must properly check out of their rooms in accordance with existing university procedures and within the time frame established by the Office of Student Conduct and Community Standards/designee. Students are prohibited from re-entering

any University residential area without approval of the Office Student Conduct and Community Standards/designee once they have officially checked out.

Restriction(s): Students may be restricted from holding executive roles, leadership positions, living in, and/or visiting university owned or affiliated housing, participating in campus sponsored organizations and/or events.

Deferred Adjudication: refers to the process when a student is responsible for a violation but the finding is held so the student can complete certain requirements in an allotted timeframe. In order to receive Deferred Adjudication, the student must begin by accepting responsibility. At the completion of all requirements, the student will be adjudicated "not responsible." This may only be used for specific non-violent first time offenses.

Disciplinary Probation: A status indicating that the student or student organization is not in good standing. This sanction may limit the student or organization in participating in certain roles and/or functions at the university or in representing the university.

Deferred Suspension: The student's continued enrollment depends upon the successful maintenance of satisfactory behavior and completion of other mandated sanctions, if applicable, during the specified time of deferred suspension and there are no further policy violations. This status also renders the recipient not in good standing.

Suspension: The student is suspended from the University for a definite period of time. When the period of suspension is completed, the student may be allowed to reapply and/or return to the University under stipulation(s) provided by SCCS/designee. Students suspended from the institution for disciplinary reasons, will not be eligible for a refund from classes or residence hall fees. The student is also trespassed from all ESU property and events during the time of suspension.

Expulsion: The student is permanently separated from the University without the ability to return. Students' expulsed from the institution for disciplinary reasons, will not be eligible for a refund from classes or residence hall fees. The student is also trespassed from all ESU property and events.

The following are the possible educational sanctions for cases involving Sexual Harassment/Sexual Misconduct/Dating Violence/Domestic Violence/Stalking:

- Official warning for one semester
- Official warning for two semesters
- Disciplinary probation for one semester
- Disciplinary probation for two semesters
- Deferred suspension for one semester
- Suspension for one semester
- Suspension for two semesters
- Suspension for three semesters
- Suspension for four semesters
- Suspension for five semesters
- Suspension for six semesters
- Expulsion
- Educational program referral such as the civility workshop or ethics seminar
- Outside mental health assessment with a licensed clinician-at the student's own cost
- Trespass from campus
- Suspension from housing for one semester
- Suspension from housing for two semesters
- Suspension from housing indefinitely
- Restriction of activity for one semester
- Restriction of activity for two semesters
- Restriction from activity for three semesters
- Restriction from activity for four semesters
- Restriction from activity for duration of undergraduate or graduate enrollment
- Administrative hold on student account.

B. **Previous Disciplinary Sanctions**

Previous Disciplinary Sanctions of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

C. **Timing**

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

Disciplinary Sanctions Against, Officials and Volunteers

A. **Possible Disciplinary Sanctions**

Disciplinary Sanctions imposed on an Employee for violating this Policy, subject to an applicable collective bargaining agreement or University/System policies, may include a penalty up to and including separation from employment.

Disciplinary Sanctions imposed on an Official or Volunteer may include a penalty up to removal or the request for removal of the Official or Volunteer from their respective position.

B. **Timing**

The Disciplinary Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

Appeals by Where the Respondent is a Student

A. Each Party may appeal the dismissal of a Formal Complaint or any included allegations or a determination of responsibility on the following grounds:
    a. A procedural irregularity under the University policy or procedures that more likely than not affected the hearing outcome.
    b. New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that more likely than not could affect the outcome of the matter.
    c. The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or

against complainants or respondents in general, that more likely than not affected the outcome of the matter.

d. The Disciplinary Sanction imposed was arbitrary or capricious or the appropriateness of the sanction.

B. Appeals must be filed in writing within 5 days of being notified of the decision and must indicate the grounds for the appeal.
C. The submission of an appeal stays any Disciplinary Sanctions for the pendency of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.
D. If a party appeals, the University will notify the other party in writing of the appeal as soon as practicable, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal. If the basis of the appeal is the Disciplinary Sanction imposed was [arbitrary or capricious or inappropriate], the other Party will be given 5 days to respond to the Disciplinary Sanctions basis of appeal after being notified of the appeal.
E. Appeals will be decided by the Vice President for Campus Life and Inclusive Excellence, or designee, who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, Advisor or Decision Maker in the same matter.
F. The role of the Vice President for Campus Life and Inclusive Excellence, or designee, is not to reweigh the evidence. The Vice President for Campus Life and Inclusive Excellence, or designee, will confine their review to the basis of appeal alleged and may modify the sanction. The Vice President for Campus Life and Inclusive Excellence, or designee, may modify the Disciplinary Sanction if an appeal on the basis of an arbitrary or capricious Disciplinary Sanction being imposed is granted. In the event a Disciplinary Sanction is modified, the other party will be notified of the modified Disciplinary Sanction.
G. The outcome of appeal will be provided in writing simultaneously to both Parties and include rationale for the decision.

Appeals Where the Respondent is an Employee

A. Each Party may appeal the dismissal of a Formal Complaint or any included allegations or a determination of responsibility on the following grounds:
    a. A procedural irregularity under the University policy or procedures that affected the hearing outcome.
    b. New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the

Formal Complaint that could affect the outcome of the matter.

c. The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

B. Appeals must be filed in writing within 5 days of being notified of the decision and must indicate the grounds for the appeal.
C. The submission of an appeal stays any Disciplinary Sanctions for the pendency of an appeal. Supportive Measures remain available during the pendency of the appeal.
D. If a Party appeals, the University will notify the other Party in writing of the appeal as soon as practicable, however the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.
E. Appeals will be decided by an Appeals Officer who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, Advisor or Decision Maker in the same matter. In cases of appeal of a finding of responsibility filed by an Employee who is a faculty member, the Chancellor or their designee will serve as the Appeals Officer. In all other cases of an appeal of either a dismissal or finding of responsibility, filed by an Employee, the President or their designee will serve as the Appeals Officer.
F. The appealing party must meet its burden to demonstrate the outcome was affected by a preponderance of the evidence. The role of the Appeals Officer is not to reweigh the evidence. The Appeals Officer will confine their review to the basis of appeal alleged.
G. The outcome of appeal will be provided in writing simultaneously to both parties and include rationale for the decision.
H. All local or step 3 grievance rights under a collective bargaining agreement will be stayed pending the disposition of the appeal.

Rights / Responsibilities

A. Reports and Formal Complaints have different meanings. An individual has a right to make a report of sexual misconduct to the University, which may be accompanied by a request for Supportive Measures. An individual also has a right to make a Formal Complaint of sexual misconduct, which is a request to initiate the University's informal resolution process or a formal disciplinary process, which includes an investigation and may proceed to a hearing.

B. Prior to the conclusion of a sexual misconduct investigation, the Complainant may request to withdraw the Formal Complaint by contacting the Title IX Coordinator/designee in writing. The Title IX Coordinator/designee will determine whether to close the case or conclude the investigation without the Complainant's continued participation.
C. An individual also has the right to report sexual misconduct to law enforcement, separate and apart from any report or Formal Complaint made to the University.
D. Victims and witnesses of sexual misconduct have the right to be assisted by the University in notifying law enforcement authorities of sexual misconduct or they can decline to notify such authorities.
E. Witnesses and Parties cannot be compelled to participate in the hearing and have the right not to participate in the hearing free from retaliation.
F. Each Party who is charged with a violation of this Policy where jurisdiction is appropriate has a right to a hearing and for an Advisor to cross-examine Parties and Witnesses.
G. At the time a report is made, the reporting party does not have to decide whether to file a Formal Complaint or make a report of sexual misconduct to law enforcement.
H. An affected party has the right to request Supportive Measures from the University, which may include interim contact restrictions.
I. The reporting party has the right to seek medical treatment to address physical and mental health and to preserve evidence.
J. Parties may also have options to file civil actions in court or with administrative agencies.
K. To file a Formal Complaint, please contact the Title IX Coordinator/designee