

NON-DISCRIMINATION AND NON-HARASSMENT POLICY

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1) DEFINITION OF TERMS

The following section contains definitions of prominent terms included in this Policy.

Advisor: A person chosen by a party or appointed by the institution to accompany the party to meetings related to a resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

Business Day: Monday through Friday of a given week while the University is in normal operation.

Complainant: An individual who is reported to be the victim of conduct that could constitute harassment, discrimination, sexual harassment, or retaliation.

Confidential Advisor: A person who has received at least 40 hours of training on sexual violence and works solely on the Complainant's behalf to provide empathetic guidance and educate them on their various rights and options.

Confidentiality: Exists in the context of laws that protect information shared within certain relationships, including those who provide services related to medical and clinical care, mental health providers, and confidential advisors.

Confidential Resource: Staff who work in Student Health Services and Counseling Services who can keep reports of sexual harassment and retaliation confidential per patient privacy rights.

Decision-Maker: A person who chairs a hearing and has decision-making and sanctioning authority within Process A.

Education Program or Activity: Locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Formal Complaint: A document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation against a Respondent and requesting to engage in a grievance process.

Formal Grievance Process: Process A or Process B.

Formal Grievance Process Pool: Deputy Coordinators, Investigators, Decision-Makers, Appellate Officers, and University-appointed Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Informal Resolution: A grievance process in place of or prior to an investigation under Process A or Process B in which supportive measures, alternate resolution mechanisms, or other informal means can be used to resolve a formal complaint.

Investigator: A person by charged by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, compile this information into an Investigative Report, and make determinations of responsibility under Process B only.

Mandated Reporter: An employee or designated student employee of the University who is obligated by this Policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.

Party/Parties: The Complainant or Respondent, or the Complainant and Respondent collectively.

Privacy: Suggests that information will be shared with a limited number of employees who “need to know” in order to assist in the assessment, investigation, and resolution of a report.

Process A: A method of formal resolution designated by the University to address conduct related to sexual harassment and retaliation and which complies with the requirements of the Title IX regulations.

Process B: A method of formal resolution designated by the University to address conduct related to sexual harassment and retaliation that does not meet the standards required for Process A or to address conduct that is related to forms of discrimination or harassment not based on sex.

Respondent: An individual who is reported to be the perpetrator of conduct that could constitute harassment, discrimination, sexual harassment, or retaliation.

Sexual Harassment: An umbrella category that includes the offenses of sexual harassment, sexual assault, dating violence, domestic violence, and stalking.

Student: An individual who is registered or enrolled for credit or non-credit bearing coursework, who maintains an ongoing relationship with the University, and/or regarding whom the institution maintains education records.

Title IX Coordinator: An official designated by the University who has authority to institute corrective measures on behalf of the University and who ensures compliance with Title IX and the University’s Title IX program.

Title IX Deputy Coordinator: An official designated by the University to also have authority to institute corrective measures on behalf of the University based upon the status of the Respondent.

Title IX Team: The Title IX Coordinator, Deputy Coordinators, and any member of the Formal Grievance Process Pool.

2) STATEMENT AGAINST DISCRIMINATION & HARASSMENT

It is the policy of Elmhurst University (the University) to afford equal opportunity to and not discriminate against students, employees, and applicants regardless of race, color, national origin, religion, sex, gender identity, sexual orientation, age, disability, citizenship, veteran status, pregnancy, marital status, or other protected status as those terms are defined by applicable federal, state, and local law.

The University believes that all employees and students should be able to work and learn in an educational environment free from discrimination and harassment. Harassment includes unwelcome conduct, whether verbal, physical, written, or graphic, that is based on any protected status outlined above.

The University does not discriminate and will not tolerate discrimination against any member of its community that is based on protected status. Nor will it tolerate harassing conduct that affects tangible job or educational benefits or that interferes unreasonably with an individual's work or academic performance or that creates an intimidating, hostile, or offensive working, educational, or learning environment. Such conduct shall be considered discriminatory harassment and is specifically prohibited by this Policy.

Examples of discriminatory or harassing conduct that may violate this Policy include, but are not limited to:

- Verbal abuse, slurs, derogatory comments or insults about, directed at, or made in the presence of an individual or group based on a protected status
- Display or circulation of written materials or pictures that are degrading, based on protected status
- Damage to, trespass to, or unauthorized use of property, such as spraying or scratching of a motor vehicle, damage or theft of property, based upon protected status
- Physical contact or verbal threats based upon the protected status

Furthermore, the University is committed to addressing sexual misconduct and interpersonal violence. These behaviors include sexual harassment, sexual assault, dating violence, domestic violence, and stalking and are prohibited by this Policy.

Conduct of this sort is prohibited by this Policy without regard to whether the conduct would violate applicable law. Any student, student organization, faculty, administrator, staff, or third parties such as guests, visitors, volunteers, invitees, and campers who engage in prohibited discrimination or harassment will be subject to disciplinary action up to and including permanent

expulsion from the University in the case of students, termination in the case of employees, or termination of contract/removal from campus in the case of third parties.

Complaints of discrimination or harassment should be made to the Title IX Coordinator as outlined in Section 9.a. Complaints of discrimination or harassment that meet the standards governed by Title IX will be resolved through Process A outlined in Section 32 of this Policy. Complaints of discrimination or harassment outside the standards outlined by Title IX will be resolved through Process B outlined in Section 33 of this Policy.

3) PROHIBITION OF RETALIATION

Retaliation exists when the institution or an individual intimidates, threatens, coerces, or discriminates against any individual to interfere with any right or privilege secured by the Non-Discrimination and Non-Harassment Policy, or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in an investigation, proceeding, or hearing as outlined in this Policy.

Intimidation, threats, coercion, or discrimination, including complaints against an individual for policy violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any existing investigation, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance process under this Policy does not constitute retaliation, provided that a determination regarding responsibility alone is not sufficient to conclude that any party has made a materially false statement in bad faith.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Elmhurst University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

4) PROHIBITION OF SEXUAL HARASSMENT

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Illinois regard sexual harassment as an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex or that is sexual that satisfies one or more of the following:

a) **Quid Pro Quo Harassment**

An employee of the University, conditions (implicitly or explicitly) the provision of an aid, benefit, or service of the University, on an individual's participation in unwelcome sexual conduct.

b) **Sexual Harassment**

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and/or objectively offensive that it effectively denies a person equal access to the University's education program or activity.*

Title IX requires sexual harassment to be severe, pervasive, **and objectively offensive, which may result in a formal complaint being resolved under Process A, whereas University Policy allows for reports that allege sexual harassment to be severe, pervasive, **or** objectively offensive, which may result in a formal complaint being resolved under Process B.*

c) **Sexual Assault**

- i. **Forcible Sex Offenses:** Any sexual act directed against a person, without the consent of the victim, including instances in which the victim is incapable of giving consent. Forcible sex offenses include:
 - (a) **Non-Consensual Sexual Penetration:** Actual or attempted penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This includes penetration forcibly and/or against the victim's will or not forcibly or against the victim's will in instances where the victim is incapable of giving consent because of their age or temporary or permanent mental or physical incapacity.
 - (b) **Forcible Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- ii. **Non-forcible Sex Offenses:**
 - (a) **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law.
 - (b) **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent of 17.

d) Dating Violence

Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition, 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.

e) Domestic Violence

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

f) Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition, *course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim. *Substantial emotional distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

The policies of Elmhurst University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited above, when those behaviors occur in or have an effect on the University's education program and activities or use the University's networks, technology, or equipment.

Although Elmhurst University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the institution, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; engaging in unwelcome sexual or sex-based messaging; distributing or threatening to distribute sexual photos, video, or other revenge pornography; breaching privacy via watching or recording sexual activity without consent of the individual(s) involved in the sexual act(s); or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Elmhurst community.

Related to these definitions of prohibited sexual harassment are the following definitions of specific terms used in the offenses described above.

g) **Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

h) **Coercion**

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

i) **Consent**

Clear, unambiguous, voluntary, positive agreement by word or action between the participants, to engage in specific sexual activity.

Consent is a freely given agreement to sexual activity. Consent to sexual activity can be communicated in a variety of ways, but one should presume that consent has not been given in the absence of clear, positive agreement. While verbal consent is not a requirement for consensual sexual activity, verbal communication prior to engaging in sexual activity helps to clarify consent. Individuals are strongly encouraged to communicate verbally before engaging in sexual activity.

Consent must be clear and unambiguous for each participant at every stage of a sexual encounter. Consent to one type of sexual activity does not imply consent to a different type of sexual activity. Silence, the absence of verbal or physical resistance, or submission resulting from the use or threat of force does not constitute consent. Coercion, force, or threat of force invalidates consent. A prior relationship or prior consent to sexual activity does not indicate consent to future sexual activity. Consent to

engage in sexual activity with one person does not imply consent to engage in sexual activity with another person. A person's manner of dress does not constitute consent. Consent can also be withdrawn at any time through clear communication in words or actions.

Consent in relationships must also be considered in context. When parties consent to bondage, discipline/dominance, submission/sadism, masochism or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether this Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent because they are underage, asleep, unconscious, or mentally or physically incapacitated, either through the use of drugs or alcohol, because of a disability, or for any other reason. Additionally, the use of alcohol or drugs may seriously interfere with the participants' judgment about whether consent has been sought and given.

j) Incapacitation

A person cannot consent if they are unable to understand what is happening or they are underage, disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual harassment policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

5) RESTRICTIONS ON CONSENSUAL AMOROUS RELATIONSHIPS

At the core of the University's mission is an implied responsibility of trust and ethical behavior in every relationship in which a University faculty member, staff member, or administrator has a supervisory, evaluative, or advisory relationship with a student or another faculty member, staff member, or administrator. Conflicts of interest can arise in a consensual romantic and/or sexual relationship (i.e., "amorous relationship") because of the power differential that often exists between the parties to such relationships. Such relationships can present serious ethical concerns about issues such as validity and consent, sexual harassment, and unfair treatment by others. As a result, such relationships can have a negative effect on the parties involved and the entire Elmhurst community. Although consensual amorous relationships do not necessarily constitute sexual harassment, such relationships may be problematic or even give rise to allegations of sexual harassment or other inappropriate conduct if, 1) a consensual relationship ends and one of the parties continues behavior that is unwelcome by the other party, and/or 2) a consensual relationship creates an unfair, hostile, or intimidating learning or work environment. Therefore, this Policy places certain limitations and restrictions on consensual amorous relationships and imposes certain obligations on the party in such relationships who has the supervisory, evaluative, or advisory authority.

The University strongly discourages all employees from participating in consensual amorous relationships with students or other employees whenever a "professional relationship" (as defined below) between the parties exists. For purposes of this Policy, "employee" includes all University faculty, staff, and administrators. "Professional relationship" is a relationship that involves the exercise of supervisory, evaluative, or advisory authority, including but not limited to teaching, grading, academic advising, mentoring, coaching, supervision, making decisions relating to employment or financial support, or other oversight over campus business or activities.

No employee may have a professional relationship with a student with whom the employee is having or has recently concluded a consensual amorous relationship. In addition, employees are strongly discouraged from engaging in consensual amorous relationships with other employees with whom they have a professional relationship.

If a consensual amorous relationship exists or has existed between an employee and a student or other employee with whom the employee also has a professional relationship, the employee in the supervisory, evaluative, or advisory role must report the relationship to the Director of Human

Resources or the Vice President for Academic Affairs and Dean of the Faculty. The University will then determine what action is appropriate, including whether the duties giving rise to the reporting employee's professional relationship with the student or other employee will be reassigned. An employee's violation of this Policy may lead to disciplinary action, up to and including termination of employment at the University.

Retaliation against any person who reports concerns about consensual amorous relationships is prohibited and constitutes a violation of this Policy. Questions regarding this Policy may be directed to the Director of Human Resources or the Vice President for Academic Affairs and Dean of the Faculty.

6) RESOURCES FOR COMPLAINANTS OF SEXUAL HARASSMENT

The following resources are available for individuals who have experienced sexual harassment.

a) Elmhurst University Resources

- Public Safety—Lehmann Hall, Lower Level or (630) 617-3000
- Counseling Services—Niebuhr Hall, Lower Level or (630) 617-3565
- Student Health Services—Niebuhr Hall, Lower Level or (630) 617-3565
- Student Affairs—Frick Center, Room 240 or (630) 617-3187
- Housing and Residence Life Staff “On Call”

b) External Resources

Local Resources

- [Family Shelter Service](#) (24 hours a day)
605 E. Roosevelt Road, Wheaton, Illinois 60187
Hotline: (630) 469-5650
Non-emergency Number: (630) 221-8290
- [YWCA Patterson and McDaniel Family Center](#)
2055 West Army Trail Road, Suite 140, Addison, Illinois 60101
24-hour Rape Crisis Hotline: (630) 971-3927
Non-emergency Number: (630) 790-6600
- [DuPage County State's Attorney Victim Services](#)
505 North County Farm Road, Wheaton, Illinois 60187
(630) 407-8000
- [Apna Ghar](#) (Immigrant Specific Resources)
4350 N Broadway, 2nd Floor, Chicago, IL 60613
Crisis Line: (773) 334-4663
Text Hotline: (773) 899-1041
Non-Emergency Number: (773) 883-4663
- [Youth Outlook](#) (LGBTQ+ Specific Resources)
1828 Old Naperville Road, Naperville, IL 60563

(815) 754-5331

State Resources

- [Illinois Coalition Against Domestic Violence](#)
806 South College Street, Springfield, Illinois 62704
Illinois Domestic Violence Help Line: (877) 863-6338
Non-emergency Number: (217) 789-2830
- [Illinois Coalition Against Sexual Assault](#)
100 North 16th Street, Springfield, Illinois 62703
(217) 753-4117

National Resources

- [RAINN \(Rape, Abuse & Incest National Network\)](#)
(800) 656-4673
- [The National Domestic Violence Hotline](#)
(800) 799-7233
- [VictimConnect Resource Center](#)
(855) 484-2846

c) Medical Support

In some instances of sexual harassment, the Complainant should consider seeking medical attention as quickly as possible. This will serve to protect evidence and provide support for the health and safety of the Complainant. Sexual Assault Nurse Examiners (SANEs) are available at the Elmhurst Hospital Emergency Room and are on call 24/7 to provide free forensic examinations and comprehensive care to sexual assault patients. An evidence kit can be collected up to 7 days after the assault, and a survivor does not need to complete a kit to receive an exam and treatment. The kit also does not need to be released to the police right away. The hospital location and contact information is provided below.

[Elmhurst Hospital](#)

155 E. Brush Hill Road, Elmhurst, Illinois 60126
Main number: (331) 221-1000

7) THE ROLE OF THE TITLE IX COORDINATOR & DEPUTY COORDINATORS

The Title IX Coordinator is responsible for implementing discrimination and harassment resolution procedures and for monitoring Title IX and other related state and federal law compliance on behalf of Elmhurst University. This includes the coordination of training, education, communications, and administration of the University's intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this Policy. The Title IX Coordinator manages the Title IX Team and

acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures and has the authority to institute corrective measures on behalf of Elmhurst University related to sexual harassment and retaliation complaints.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice President for Student Affairs, Dr. Phil Riordan, at phil.riordan@elmhurst.edu or (630) 617-3050. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Complaints, notice of alleged policy violations, or any inquiries regarding Title IX or the University's Prohibition of Sexual Harassment should be directed to the University's Title IX Coordinator:

Jennifer K. Duffield
Assistant Dean of Students & Title IX Coordinator
Office of Student Affairs
Frick Center 240A
Elmhurst University
190 Prospect Avenue
Elmhurst, IL 60126
(630) 617-5199
jenn.duffield@elmhurst.edu

The Title IX Coordinator also appoints two Title IX Deputy Coordinators who are members of the Title IX Team and also have authority to institute corrective measures on behalf of Elmhurst University based upon the status of the Respondent. The Title IX Deputy Coordinator for Staff is responsible for matters in which the Respondent is a staff member. The Title IX Deputy Coordinator for Faculty is responsible for matters in which the Respondent is a faculty member.

The Title IX Deputy Coordinators for the University are:

David Cronan
Director of Human Resources/Title IX Deputy Coordinator for Staff
Human Resources
Lehmann Hall 222
Elmhurst University
190 Prospect Avenue
Elmhurst, IL 60126
(630) 617-3020
david.cronan@elmhurst.edu

Dr. Dean Pribbenow

Vice President for Academic Affairs and Dean of the Faculty/Title IX Deputy Coordinator for Faculty

Office of Academic Affairs

Goebel Hall 104B

Elmhurst University

190 Prospect Avenue

Elmhurst, IL 60126

(630) 617-3063

dpribbenow@elmhurst.edu

Concerns about the enforcement of Title IX and other relevant laws may be made externally to:

Office for Civil Rights

U.S. Department of Education

400 Maryland Avenue, SW

Washington, D.C. 20202-1100

Customer Service Hotline: (800) 421-3481

Fax: (202) 453-6012

TDD: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

Office for Civil Rights

Chicago Office

U.S. Department of Education

John C. Kluczynski Federal Building

230 S. Dearborn Street, 37th Floor

Chicago, IL 60604

Phone: (312) 730-1560

Fax: (312) 730-1576

Email: OCR.Chicago@ed.gov

Equal Opportunity Employment Commission

Chicago District Office

JCK Federal Building

230 S Dearborn Street

Chicago, IL 60604

Phone: (312) 872-9744

Fax: (312) 588-1260

TTY: (866) 740-3953

ASL Video Phone: (844) 234-5122

If you have a concern that your rights are being violated (whether student, faculty, or staff), you should follow the procedures set forth in this Policy. If you are not sure who to go to or are unsure if you have a complaint that falls under Title IX, you may reach out directly to the Title IX Coordinator. If the complaint relates to the Title IX Coordinator, you may contact the Vice President for Student Affairs. In addition to contacting the Title IX Coordinator, in instances of alleged or suspected sexual harassment or other potentially criminal conduct, you may contact Public Safety at (630) 617-3000 or the local police by calling 911.

8) AMNESTY POLICY

Elmhurst University values the health and safety of students who attend the University. Each member of the campus plays a vital role in ensuring the safety of community members and students, as well as their physical health and educational success while at Elmhurst University.

In certain cases, these situations may require immediate emergency medical assistance or seeking other campus resources. Understanding that these decisions can be complicated by the fear of subsequent disciplinary action, Elmhurst University has developed this policy in an effort to provide an additional layer of protection and encouragement to involved individuals so that they can prioritize the health and safety of our campus community members over the concerns of disciplinary action.

Amnesty for Alcohol or Other Drug Consumption

Elmhurst University encourages students to seek medical assistance for themselves or others whenever there is a concern for a person's health or well-being, especially in cases of alcohol intoxication or other drug-related situations.

If an individual actively seeks medical assistance as outlined below, Elmhurst University will not pursue the conduct process against the following individuals for violations of the University's Code of Conduct or Housing and Residence Life Policies:

- Any student(s) actively assisting the intoxicated/drug altered student; and/or
- The intoxicated/drug altered student

Actively assisting requires that an individual:

- Call police/fire/medical assistance at 911 or Public Safety at (630) 617-3000 (x3000), or seek out another qualified person to help assist the student, such as a Resident Adviser for on-campus students or another Elmhurst University faculty or staff member; and
- Actively monitor the intoxicated/drug altered student until assistance arrives

Amnesty for Reporters of Sexual Harassment

Amnesty also applies to students who report or seek assistance after experiencing an incident of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) where alcohol or other drug use occurred.

Amnesty for Reporters of Policy Violations

Students are encouraged to report misconduct and crimes. Sometimes, reporting parties or witnesses are hesitant to report to University officials or participate in resolution procedures because they fear that they may be accused of policy violations. It is in the best interest of the University community that reporting parties choose to report to University officials, and that witnesses come forward to share what they know about specific incidents. To encourage reporting, reporting parties and witnesses are offered amnesty from minor drug or alcohol policy violations related to incidents that they report. While some policy violations cannot be completely overlooked, educational options will be provided to those who offer assistance to others in need. Amnesty may be granted on a case-by-case basis for other policy violations and will be evaluated by the Assistant Dean of Students.

The following are NOT covered by the Amnesty Policy:

- Committing violations of the Code of Conduct or Housing and Residence Life Policies other than alcohol and drug policies, and committing violations of the Non-Discrimination and Non-Harassment Policy
- Students who wait for Public Safety, the Elmhurst Police Department, or Housing and Residence Life Staff to arrive before seeking assistance
- Possession of drugs or alcohol with the intent to distribute
- Actions taken by Elmhurst Police Department or other law enforcement personnel

This policy is also included in full in the 2020-2021 Student Handbook.

9) REPORTING COMPLAINTS OF SEXUAL HARASSMENT/RETALIATION

There are several methods individuals can use to report violations of this Policy, regardless of where the incident occurred.

The University encourages Complainants to disclose a report of sexual harassment as soon as reasonably possible, but there is no time limit on reporting these incidents. However, if the Respondent is no longer a member of the University community, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on reports significantly impacted by the passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

The University supports a Complainant's right to privacy in cases involving sexual harassment or retaliation. To the extent possible, the University will only disclose information regarding such alleged incidents to individuals who are responsible for handling the University's response.

Anyone who believes they have experienced sexual harassment or retaliation is encouraged to report the incident by using one or more of the procedures described below.

a) [Reporting to the Title IX Coordinator or a Deputy Coordinator](#)

Reports may be made in person, by mail, by telephone, or by email to the Title IX Coordinator or Deputy Coordinators listed below. The Title IX Coordinator and Deputy Coordinators have authority to institute corrective measures on behalf of Elmhurst University.

Jennifer K. Duffield

Assistant Dean of Students & Title IX Coordinator
Office of Student Affairs
Frick Center 240A
Elmhurst University
190 Prospect Avenue
Elmhurst, IL 60126
(630) 617-5199
jenn.duffield@elmhurst.edu

David Cronan

Director of Human Resources/Title IX Deputy Coordinator for Staff
Human Resources
Lehmann Hall 222
Elmhurst University
190 Prospect Avenue
Elmhurst, IL 60126
(630) 617-3020
david.cronan@elmhurst.edu

Dr. Dean Pribbenow

Vice President for Academic Affairs and Dean of the Faculty/Title IX Deputy Coordinator for Faculty
Office of Academic Affairs
Goebel Hall 104B
Elmhurst University
190 Prospect Avenue
Elmhurst, IL 60126

(630) 617-3063

dpribbenow@elmhurst.edu

b) Reporting to a Mandated Reporter

Mandated Reporters are required to report any alleged incidents of sexual harassment or retaliation they have witnessed or been made aware of to the Title IX Coordinator. All University employees, including all hourly and full-time faculty, staff (other than those in Student Health Services and Counseling Services), and contract vendor employees are considered Mandated Reporters. Students identified as Head Residents, Resident Advisers, ELSA Community Advisors, Orientation Student Leaders, and Orientation Transfer Leads are also considered Mandated Reporters. All Public Safety employees, including student workers, are Mandated Reporters. Mandated Reporters are expected to report to the Title IX Coordinator as much detailed information as was made available to them, including the Complainant's name, the Respondent's name, or any other relevant details.

Therefore, if a student or employee reports an incident to any Mandated Reporter, that person is obligated to ensure privacy, meaning that information about the incident will only be shared with those who "need to know" in order to effectively respond to the incident. To the extent possible, those who "need to know" should be limited to an immediate supervisor, the Title IX Coordinator, and/or a Deputy Coordinator. If a Mandated Reporter shares information regarding possible sexual harassment or retaliation with their supervisor, the supervisor is obligated to report to the Title IX Coordinator if the Mandated Reporter did not already do so. Mandated Reporters do not have authority to institute corrective measures on behalf of Elmhurst University.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience as a Complainant, though they are encouraged to do so.

c) Reporting Online

In addition to reporting directly to the Title IX Coordinator, a Deputy Coordinator, or a Mandated Reporter, Elmhurst University faculty, staff, and students can submit a report electronically. The form, available at the link below, allows for anonymous, third party, and bystander reports. The Title IX Coordinator receives reports submitted through this form and directs them to the appropriate Deputy Coordinator for response. The more information a reporter provides, the more readily a Deputy Coordinator can respond to the concern and offer supportive measures to the Complainant.

[File a Report of Sexual Harassment or Retaliation](#)

d) **Reporting to a Confidential Advisor**

Under Illinois law, Complainants must be afforded the opportunity to speak with a Confidential Advisor about sexual misconduct for both emergency and ongoing support. A Confidential Advisor is unique in that they cannot disclose any identifying information with the institution or its officials without the Complainant's permission, working solely on the Complainant's behalf to provide empathetic guidance and educate them on their various rights and options. Areas covered include, but are not limited to, discussing choices regarding both accommodations and investigations, medical advocacy, crisis intervention, assistance with reporting to police, navigating the court system, protective order petitions, and employment and housing advocacy. Further, the Confidential Advisor is able to participate as a support person in any meeting related to an institutional investigation or grievance process, though they cannot serve as an advisor for cross examination purposes in a live hearing. At a minimum, they have received at least 40 hours of training on sexual violence, accumulate 6 hours of ongoing education training annually, and have intensive training on the University's administrative process, supportive measures, and grievance processes with the intent of assisting students to navigate the systems and processes. Finally, Confidential Advisors are versed in different free resources and referrals available to Complainants, including counseling. Complainants wishing to work with a Confidential Advisor should contact the University's designated 24/7 Confidential Advisor listed below.

YWCA Metropolitan Chicago

Rape Crisis Center for DuPage County

(630) 971-3927

dupageadvocacy@ywcachicago.org

e) **Reporting to a Confidential Resource**

The only staff who are *not* considered Mandated Reporters are those in the Wellness Center who work in Student Health Services and Counseling Services. These staff members serve as a confidential resource to faculty, staff, and students on campus, meaning that disclosures of sexual harassment or retaliation to Wellness Center staff from a patient would not be shared with the Title IX Coordinator and would be kept confidential per patient privacy rights.

The Wellness Center (Student Health Services & Counseling Services)

Niebuhr Hall 010

Elmhurst University

190 Prospect Avenue

Elmhurst, IL 60126

(630) 617-3565

studenthealth@elmhurst.edu

f) Reporting to the Police

Complainants can contact the local police to initiate the criminal reporting process, which is separate from the campus reporting process. Elmhurst University Public Safety will support students and employees who wish for assistance working through the criminal reporting process. Conversely, students and employees may seek an investigation through the University and choose not to involve local police. Additional information and resources regarding these issues are available below and on the Public Safety website.

[Elmhurst Police Department](#)

125 E. First Street, Elmhurst, Illinois 60126

Emergency Number: 911

Non-Emergency Number: (630) 530-3050

The Rights of Crime Victims and Witnesses Act is an Illinois Law (Illinois Compiled Statutes, Chapter 725, paragraph 120/1 et seq.4) intended to ensure that crime victims are treated with fairness and respect for their dignity and privacy throughout the criminal justice system. This law affords crime victims certain rights in connection with the criminal justice system.

Any criminal or other investigation conducted by law enforcement authorities is separate from an investigation that the University conducts under this Policy and does not relieve the University of its obligations under Title IX, the Preventing Sexual Violence in Higher Education Act, or other applicable law. If law enforcement so requests, the University may decide to delay its investigation for a brief period of time, but will take any corrective measures it deems necessary to address the issue before the investigation. If requested to provide information to law enforcement, the University will cooperate with such a request consistent with its privacy obligations under FERPA and other applicable laws.

To clarify, making a report as outlined in Sections 9.a., 9.b., and 9.c. will generate a notification of a report to the Title IX Coordinator or a Deputy Coordinator, who will then proceed as outlined in Section 12. These initial reports are **not** considered formal complaints, which are described in Section 15. Making a report as outlined in Sections 9.d. and 9.e. will not generate a notification of a report to the Title IX Coordinator or a Deputy Coordinator and will remain confidential. Making a report as outlined in Section 9.f. will not generate a notification of a report to the Title IX Coordinator or a Deputy Coordinator but will prompt a criminal investigation.

Deliberately false or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

10) PRIVACY

Every effort is made by the University to preserve the privacy of reports. Elmhurst University will not share the identity of any individual who has made a report of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance process arising under these policies and procedures.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know may typically be told about the report, including, but not limited to, relevant members of the President's Cabinet, Public Safety, the University Registrar, or members the Threat Assessment Team. Disclosure to these individuals is often necessary in order to provide effective supportive measures, and details of the report are not shared with them.

Information will be shared as necessary with Investigators, Decision-Makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy. The University may contact 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 first before doing so.

11) JURISDICTION OF THE UNIVERSITY

This Policy applies to the education program and activities of Elmhurst University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the Elmhurst University community in order for its policies to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Elmhurst's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address reports to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the Elmhurst University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or the Confidential Advisor. In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the University where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Complainant.

12) REPORT RESPONSE & ASSESSMENT

Upon receiving a report of sexual harassment or retaliation, the Title IX Coordinator or designated Deputy Coordinator will promptly request a meeting with the Complainant who made the report or about whom the report was made. The meeting's purpose is to review the Complainant's rights and options, including but not limited to additional reporting options, privacy rights, contact information for on and off-campus resources, receiving supportive measures, the process for filing a formal complaint, and a summary of the University's Informal Resolution and Formal Grievance Processes. The Complainant has the right to have an Advisor accompany them to this meeting.

If a Complainant does not wish to meet with the Title IX Coordinator or Deputy Coordinator, these rights and options will be emailed to the Complainant and are available in an electronic format on the [University's Title IX webpage](#). If a Complainant chooses to not initially meet with the Title IX Coordinator or Deputy Coordinator, they are still permitted to request to meet with the Title IX Coordinator or Deputy Coordinator at any future time.

Before, during, after, or without a meeting with the Title IX Coordinator or Deputy Coordinator, a Complainant has the option to request the following after submitting a report of sexual harassment or retaliation:

- Receive supportive measures
- Request to not proceed with a report
- File a formal complaint
- Participate in an Informal Resolution (upon submission of a formal complaint)
- Pursue a Formal Grievance Process (upon submission of a formal complaint)

If the Complainant requests supportive measures, the Title IX Coordinator or Deputy Coordinator will work with the Complainant to assess the request, identify the measures most suitable for their wishes, and implement supportive measures accordingly. Additional information regarding supportive measures is outlined in Section 13.

If the Complainant requests not to proceed with a report, the Title IX Coordinator or Deputy Coordinator will need to conduct a violence risk assessment to determine if the University can respect the Complainant's request without jeopardizing the safety of the parties involved or the campus community. Additional information regarding not proceeding with a report is outlined in Section 14.

If the Complainant requests to participate in Informal Resolution, the Title IX Coordinator or Deputy Coordinator will assess whether the complaint is suitable for Informal Resolution, which Informal Resolution mechanism may best serve the situation, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

If the Complainant requests to pursue the Formal Grievance Process, the Title IX Coordinator or Deputy Coordinator determines if the reported misconduct falls within the scope of Title IX. If it does, the Title IX Coordinator or Deputy Coordinator will initiate Process A, outlined beginning in Section 18. If it does not, the Title IX Coordinator or Deputy Coordinator will initiate Process B, outlined beginning in Section 18.

The University uses the Formal Grievance Processes to determine whether or not the Policy has been violated. If initiated, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects. Dismissing a complaint under Title IX is solely a procedural requirement and does not limit the University's authority to address a report with an appropriate process and remedies.

a) [Violence Risk Assessment](#)

After receiving an initial report of sexual harassment or retaliation, the Title IX Coordinator must also assess the nature of the allegations, the safety of the involved individuals and the

greater University community, and the need for any emergency measures to maintain the safety of the involved individuals or the University community.

This violence risk assessment is performed by the Title IX Coordinator and may be done in conjunction with the Threat Assessment Team using its standard objective violence risk assessment procedures.

A violence risk assessment can aid in making critical determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- 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 what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/trespass order/persona-non-grata is needed.

13) SUPPORTIVE MEASURES

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment or retaliation. Supportive measures are available regardless of whether a Formal Grievance Process is sought by the Complainant.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. These measures are designed to restore or preserve equal access to Elmhurst University's education program and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Elmhurst's educational environment, or to deter sexual harassment or retaliation. Such supportive measures can include, but are not limited to, the following:

- Referral to Counseling Services or Student Health Services on campus
- Referral to counseling, medical, or other healthcare service off campus
- Connections to community-based service providers
- Connection to the Employee Assistance Program
- Visa and immigration assistance
- Student financial aid counseling
- Academic support, extensions of deadlines, or other course-related adjustments

- Modifications of work or class schedules
- Changes in work or housing locations
- Class schedule modifications, withdrawals, or leaves of absence
- Mutual restrictions on contact between the parties (a no contact order) or campus trespass orders
- Campus escort services through Public Safety
- Increased security and monitoring of certain areas of the campus

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving a report of sexual harassment or retaliation. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the institution either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The institution will maintain privacy regarding any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such privacy will not impair the ability of the institution to provide the supportive measures. The Title IX Coordinator or Deputy Coordinator is responsible for coordinating the effective implementation of supportive measures.

Violations of directives and/or protective measures, such as no contact orders or other restrictions of campus privileges, as part of a supportive or emergency measure, may result in disciplinary action separate from any sanctions issued for a finding of responsibility in violating the Non-Discrimination and Non-Harassment Policy.

14) REQUESTING NOT TO PROCEED WITH A REPORT

If a Complainant does not wish for an investigation to take place or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a Formal Grievance Process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. 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. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a grievance process fairly and effectively.

The University's ability to remedy and respond to reports may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality or no formal action and the circumstances allow the University to honor that request, the University will offer Informal Resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through the processes outlined in this Policy. Delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

15) FILING OR DISMISSING A FORMAL COMPLAINT

a) Filing a Formal Complaint

Should the Complainant wish to pursue the University's grievance process, a formal complaint must be filed. A formal complaint must be a document or email submitted to the Title IX Coordinator and signed physically or electronically by the Complainant alleging sexual harassment against a Respondent and requesting that Elmhurst University investigate the allegation of sexual harassment. At the time of filing a formal complaint, the Complainant must be participating in or attempting to participate in an education program or activity of the University (i.e., must be a student or employee of the University). If a formal complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

If the Complainant requests not to proceed with a report, the Title IX Coordinator has the authority to document and sign a formal complaint based on the completed violence risk assessment. When the Title IX Coordinator initiates the formal complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when

the Complainant chooses not to participate, an Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

If more than one formal complaint is filed in relation to allegations of sexual harassment against more than one Respondent, by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances, the formal complaints can be consolidated into one Formal Grievance Process.

b) Dismissing a Formal Complaint

Under Title IX, the University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined in Section 4 of this Policy, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the University.

Additionally, the University may dismiss a formal complaint if, at any time during the investigation or hearing, one or more of the following occurs:

- The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint; or
- The Respondent is no longer enrolled at or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint.

Upon dismissing a formal complaint related to one of the reasons described above, the Title IX Coordinator or Deputy Coordinator will promptly send written notice of the dismissal and the reasons for it simultaneously to both the Complainant and Respondent via their Elmhurst University email address.

The dismissal or non-dismissal decision is appealable by any party under the procedures outlined in Section 36.

If a formal complaint is dismissed under Title IX, it may still be able to be resolved using one of the Informal Resolution options in Section 23 or Process B as defined in Section 33 detailed below.

16) EMERGENCY REMOVAL

In cases where the Title IX Coordinator undertakes an individualized safety and risk analysis and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, the Title IX Coordinator may remove a respondent from Elmhurst University on an emergency basis. The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. This emergency removal can include, but is not limited to, an interim suspension or restriction/loss of other campus privileges during the process of an investigation and/or grievance process, such as temporary removal from on-campus housing; restricted access to campus facilities; suspending participation in leadership opportunities, extracurricular activities, student employment, or athletics. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

In cases where the Respondent is an employee and is determined to be a threat to others or campus property, the Title IX Coordinator may impose emergency measures such as an administrative leave (with or without pay), temporary reassignment, or restriction/loss of other campus privileges during the process of an investigation and/or grievance process.

If an emergency removal is initiated, the Respondent will receive written notice via Elmhurst University email and will have 24 hours from the time the notice was sent to contest the decision in writing to the Title IX Coordinator via Elmhurst University email. In the written message, the Respondent may request a meeting with the Title IX Coordinator to discuss the emergency removal. If held, this meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process to determine whether the emergency removal is appropriate. After receipt of the written challenge or the meeting, the Title IX Coordinator will have 24 hours to modify or uphold the original decision and reply to the Respondent in a written notice via Elmhurst University email.

The Title IX Coordinator has sole discretion under this Policy to implement or enforce an emergency removal and to determine the conditions and duration. Emergency removals will be kept private to the extent that it does not limit the ability of the University to provide the measure. Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion. If a Respondent does not contest the emergency removal, it will remain in effect. There is no appeal process for emergency removal decisions.

17) FEDERAL STATISTICAL REPORTING & TIMELY WARNING OBLIGATIONS

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act for short) requires that all Violence Against Women Act (VAWA)-based offenses—including sexual assault, dating violence, domestic violence, and stalking—be made known to the campus community through the Annual Security and Fire Safety Report published each year by October 1, which reports statistics from the prior calendar year.

In addition, where it is determined that the incident may pose a serious, ongoing threat to members of the University community, the Clery Act requires the University to provide a timely warning so that members of the University community are informed and may take steps to protect themselves from harm, if necessary. In the event a timely warning is deemed necessary, a mass notification email, referred to as a Crime Alert, is sent to all students and employees on campus and is posted on the University's website. Crime Alerts may also be posted in the residence halls and various other buildings on campus, and are typically posted in the lobby/entrance area of the building(s) for several days. Updates to the University community about any particular case resulting in a Crime Alert may be distributed via email.

In both Clery statistics and timely warning notices, the University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

18) OVERVIEW OF FORMAL GRIEVANCE PROCESSES & INFORMAL RESOLUTION

Elmhurst University will act on any formal or informal complaint related to a reported violation of Sections 2-4 of this Policy that is received by the Title IX Coordinator or Deputy Coordinator by applying the appropriate grievance process. If a formal complaint of sexual harassment is filed and is not dismissed as described in Section 15.b., it can be resolved using one of the Informal Resolution options in Section 23 or Process A as defined in Section 32 detailed below. If a formal complaint of sexual harassment is filed as is dismissed as described in Section 15.b., it can be resolved using one of the Informal Resolution options in Section 23 or Process B as defined in Section 33 detailed below. In addition to Process B being utilized for sexual harassment allegations that are dismissed under Title IX, Process B is also the grievance process used for any report of discrimination, harassment, or retaliation that is not based on sex but is based on another protected status.

Sections 19-31 apply to the resolution of formal complaints through both Process A and Process B, unless otherwise noted.

The procedures below may be used to address misconduct arising from the investigation of or occurring in conjunction with reported harassment or discrimination. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the Student Handbook, Faculty Manual, or Human Resources Policies.

19) COUNTERCLAIMS

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, as described in Section 12, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the appropriate grievance process detailed below. Investigation of such claims may take place after resolution of the initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the initial allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

20) RESOLUTION TIMELINE

All allegations are acted upon promptly by the University once it has received a report or a formal complaint. Complaints can take 60-90 business days to resolve, typically. Investigations are completed promptly and thoroughly and the University strives to conclude the investigation phase of a Formal Grievance Process within thirty (30) business days.

A short delay in an investigation (several days to a few weeks) may occur due to University closure for a break period, request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

The Complainant or Respondent may request a temporary delay or extension no less than two (2) business days before a scheduled meeting or deadline is to occur by submitting the request in writing via Elmhurst University email to the Title IX Coordinator or Deputy Coordinator. It is at the discretion of the Title IX Coordinator or Deputy Coordinator to determine if the request is reasonable.

Anytime the general timeframes for resolution outlined in this Policy will be delayed, the Title IX Coordinator or Deputy Coordinator will provide written notice to the parties via their Elmhurst University email of the delay, the cause of the delay, and the new timeline related to the next step in the procedure or process.

University 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.

21) RIGHTS OF THE PARTIES

The Complainant and Respondent retain the following rights related to this Policy and the procedures set forth therein.

- The right to be treated with respect by University officials.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to have University policies and procedures followed without material deviation.
- The right to have alleged violations of this Policy responded to promptly and with sensitivity by University Public Safety and/or other University officials.
- The right not to be discouraged by University officials from reporting sexual harassment or retaliation to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of sexual harassment and/or retaliation, if such changes are reasonably available.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to a University-implemented no contact order or a 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.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right to have reports of alleged policy violations addressed by Investigators, the Title IX Coordinator or Deputy Coordinators, and Decision-Maker who have received at least eight hours of relevant annual training.
- The right to an equitable and fundamentally fair investigation and resolution of all credible allegations of prohibited harassment or retaliation made in good faith to University officials.
- The right to petition that any University representative in the process be excused on the basis of disqualifying bias and/or conflict of interest.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the relevant policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any related adjustments needed to clarify potentially relevant policy violations.

- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with an Informal Resolution or Formal Grievance Process.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to fair opportunity to provide the Investigators with their account of the alleged misconduct and have that account be on the record.
- The right to ask the Investigators/Decision-Maker to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigators/Decision-Maker with a list of questions that, if deemed relevant by the Investigators/Decision-Maker, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained in the investigation and to respond to that evidence.
- The right to receive a copy of the Investigative Report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the Report, subject to the privacy limitations imposed by state and federal law.
- The right to have at least ten (10) business days to review the Final Investigative Report prior to the hearing. [Process A]
- The right to respond to the Report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing. [Process A]
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to have an impact statement considered by the Decision-Maker following a determination of responsibility/non-responsibility for any allegation, but prior to sanctioning. [Process A]
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the grievance process and a detailed rationale of the decision, delivered simultaneously and without undue delay to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.

- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.

22) RIGHT TO AN ADVISOR

The Complainant and Respondent may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the grievance process, if they so choose. The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

The parties must provide the name of their chosen Advisor to the Title IX Coordinator or Deputy Coordinator via email at the appropriate individual's University email address at least two (2) business days prior to any meeting, interview, proceeding, or hearing in which they desire the Advisor to be present.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to provide timely notice to the Title IX Coordinator or Deputy Coordinator if they change Advisors at any time.

a) Who Can Serve as an Advisor

The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. Anyone who does not have a designated or assigned role in the grievance process at hand is eligible to serve as an Advisor. Chosen Advisors must have reasonable inclination, time, and availability to serve in the role.

The Advisor may be a friend, mentor, family member, professor, staff member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's grievance processes.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the grievance process, prior to a hearing in Process A, and have the right to choose not to have an Advisor at any stage of the grievance process in Process B.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-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 hearing Decision-Maker in Process A or the Investigators determining findings in Process B.

b) The Advisor's Role

The Complainant and Respondent may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and investigation interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University 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 University is not obligated to provide an attorney.

During any meetings and interviews that occur in Process A or Process B, the role of the Advisor is for emotional support and private consultation; their participation will be limited to consulting privately with their advisee. An advisor may speak privately to their advisee, but an advisor may not participate directly in the meeting, interview, or proceeding. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Under Title IX, a form of indirect questioning is required in Process A during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning (cross-examination) of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed in a hearing under Process A without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-Maker during the hearing.

Advisors may request to meet with the Title IX Coordinator or Deputy Coordinator in advance of any interview or meeting. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

All Advisors are subject to the expectations outlined in this Policy, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures will be implemented. Subsequently, the Title IX Coordinator or Deputy Coordinator will determine how to address the Advisor's non-compliance and future role.

The University generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

c) [Sharing Information and Privacy of Records with an Advisor](#)

The University expects that the parties may wish to have the institution share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the grievance process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or Deputy Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties or disclosed publicly. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by these privacy expectations.

23) INFORMAL RESOLUTION OPTIONS

In place of or prior to an investigation under Process A or Process B, a Complainant can request to utilize one of the Informal Resolution options included below. Informal Resolution proceedings are private. All persons present at any time during any of these processes are expected to maintain the privacy of the proceedings in accordance with this Policy. However, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

Informal Resolution is *not* an option in circumstances where a University faculty or staff member serves as a Respondent in a complaint made by a student.

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation (as described in Section 13);
- When the parties agree to resolve the matter through an alternate resolution mechanism;
- When the Respondent accepts responsibility for violating policy and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation)

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined in Section 15. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process (Process A or Process B), and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the Title IX Coordinator or Deputy Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University 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.

a) Alternate Resolution Mechanisms

Alternate Resolution is an informal mechanism that can include mediation, restorative justice practices, or other negotiated resolution options by which the parties reach a mutually agreed upon resolution related to a report of sexual harassment or retaliation. All

parties must consent to the use of an Alternate Resolution Mechanism.

The ultimate determination of whether Alternate Resolution is available or successful is made by the Title IX Coordinator or Deputy Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

b) Respondent Acceptance of Responsibility

The Respondent may accept responsibility for all or part of the reported policy violations at any point during a Formal Grievance Process or Informal Resolution process. If the Respondent indicates an intent to accept responsibility for **all** of the reported misconduct, the Formal Grievance Process can be paused and the Title IX Coordinator or Deputy Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator or Deputy Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator or Deputy Coordinator will implement the accepted finding that the Respondent is in violation of University policy and will implement agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written consent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions will be promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

24) FORMAL GRIEVANCE PROCESS POOL

The Formal Grievance Processes (Process A and Process B) rely on a pool of trained administrators and experienced external constituents to carry out the processes. Members are appointed by the Title IX Coordinator and membership is renewed on an annual basis.

Beyond the Title IX Coordinator and Deputy Coordinators who oversee and coordinate the Formal Grievance Processes (and, in the case of the Deputy Coordinators, can serve as Investigators), 6-8 staff within the Division of Student Affairs are trained to serve as Investigators and may also serve as an Advisor to a Complainant or Respondent in a Formal Grievance Process to which they are not assigned as an Investigator. An external agency focused on Title IX work provides trained

professionals to serve as a Decision-Maker presiding over a hearing as required in Process A. The Vice President for Student Affairs serves as the Appellate Officer for all cases that involve a student as the Respondent, and the Vice President for Business and Finance serves as the Appellate Officer for all cases that involve an employee as the Respondent.

All members of the Pool are trained annually on how to interpret and implement this Policy; related laws, regulations, and regulatory guidance; how to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes (as applicable); and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigators also receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Training occurs at various points throughout the academic year and includes training offered by internal administrators and external organizations or community partners. All training materials are available on the [University's Title IX webpage](#).

25) APPOINTMENT OF INVESTIGATORS

Typically within two (2) business days after the decision to commence a Formal Grievance Procedure is made, the Title IX Coordinator or Deputy Coordinator will appoint Pool members to conduct the investigation.

When the Respondent is a student, two Investigators will be appointed from the Pool of trained Investigators by the Title IX Coordinator. When the Respondent is a faculty member, the Title IX Deputy Coordinator for Faculty will serve as an Investigator with a second Investigator from the Pool. When the Respondent is a staff member, the Title IX Deputy Coordinator for Staff will serve as an Investigator with a second Investigator from the Pool.

26) CONFLICT OF INTEREST

The University requires any individual participating in the investigation, decision-making, sanctioning, appeal, or other resolution of complaints under this Policy to disclose any potential or actual conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator or Deputy Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases.

The Complainant and Respondent will both receive notice of the individuals assigned as Investigators, Decision-Makers, or other individuals with authority to determine a finding or impose a sanction before those individuals initiate contact with either party. If either the Complainant or Respondent believes anyone involved in the investigation, sanctioning, appeal, or resolution process has a bias or conflict of interest, the party should notify the Title IX Coordinator within three (3) business days of receiving notice of the name of the individual participating in the process and request a substitution of that individual. Additionally, the parties may, at any time during the Formal Grievance Process, raise a concern regarding bias or conflict of interest and

provide notice to the Title IX Coordinator or Deputy Coordinator. This notice to the Title IX Coordinator must include a description of the conflict. If it is determined that a conflict of interest does exist, the University will take steps to address the conflict as appropriate to maintain an impartial process.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, 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.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

27) NOTICE OF INVESTIGATION

When a Formal Grievance Process is initiated, the Title IX Coordinator or Deputy Coordinator will meet with the Complainant and Respondent individually to provide an overview of the process and inform them of their rights, and a Notice of Investigation (NOI) will be sent in writing to both parties via their Elmhurst University email addresses and may be delivered via printed copy in person. Once emailed and/or received in-person, notice will be presumptively delivered.

In the NOI, the Complainant and Respondent shall receive notice of the following:

- A summary of the allegations, the alleged violations of sexual harassment as defined in Section 4 or other relevant University policies, and sufficient details regarding the alleged violations (parties involved, specific conduct, and date and location of incident, if known)
- A description of the University's Formal Grievance Process
- A statement of the potential sanctions or outcomes that could result from the process
- A statement that the University presumes the Respondent is not responsible for the reported misconduct until a determination regarding responsibility is made at the conclusion of the Formal Grievance Process
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the investigation
- The Prohibition of Retaliation Policy
- Information about the privacy of the process
- The right to have an Advisor of their choice who may act in accordance with the description provided in Section 22
- For students, the prohibition of submitting false, misleading, or incomplete information to the University as defined under Code of Conduct 9. Fraud and Dishonesty a. in the 2020-2021 Student Handbook

- Information on how the party may request disability accommodations during the interview process
- An attachment of the University's Non-Discrimination and Non-Harassment resource documents
- The names of the Investigators and how to share, in advance of the interview process, to the Title IX Coordinator or Deputy Coordinator any conflict of interest that the Investigators may have
- Instructions to preserve any evidence that is directly related to the allegations

No disciplinary sanctions or other actions that are not supportive or emergency measures will be taken against the Respondent prior to the determination of any finding of responsibility of a violation of the Prohibition of Sexual Harassment.

Amendments and updates to the NOI may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various reported policy violations.

28) STANDARD OF EVIDENCE

The standard used to determine whether the Non-Discrimination and Non-Harassment Policy has been violated is the preponderance of the evidence standard, meaning whether it is more likely than not that the Respondent has violated the Policy based on all relevant information collected during the Formal Grievance Process. This standard applies to faculty, staff, and students who participate in a Formal Grievance Process (Process A or Process B).

29) STEPS IN THE INVESTIGATION PROCESS

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The University will maintain documentation of the investigation and reserves the right to record any interviews or meetings that occur as part of an investigation, but the participating parties are not permitted to record such interviews or meetings. Parties will be made aware of and have the opportunity to consent to audio and/or video recording prior to it occurring.

The Investigators typically take the following steps (not necessarily in this order):

- 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 all witnesses and the parties.

- Interview the Complainant, Respondent, and any witnesses. Interviews will generally take place in person, but arrangements can be made with the Title IX Coordinator or Deputy Coordinator's approval for interviews to occur by phone, video conferencing, or other electronic means.
- Complete an objective evaluation of all relevant evidence, including both inculpatory (used to prove responsibility for a policy violation) and exculpatory (used to prove non-responsibility for a policy violation) evidence.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's interview summary of the relevant evidence/testimony from their respective interviews and meetings. If a party fails to attend their scheduled review meeting with the Investigators, the Investigators will finalize the summary of each party's interview for the Investigative Report.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party in advance, when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose, via their Elmhurst University email address.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigators to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive Investigative Report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence; appendices including relevant physical or documentary evidence will be included.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the Investigative Report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- The Investigators may elect to respond in writing in the Investigative Report to the parties' submitted responses and/or to share the responses between the parties for additional responses.

- The Investigators will incorporate relevant elements of the parties' written responses into the Investigative Report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigators should document all rationales for any changes made after the review and comment period.
- The Investigators may share the report with the Title IX Coordinator for their review and feedback.

The Investigative Report outlining the information discovered in the investigation will minimally containing the following:

- A list of all parties who were interviewed and submitted evidence
- A timeline of the investigation process
- The alleged policy violations within the Non-Discrimination and Non-Harassment Policy and/or other University policy (which may be amended from the alleged violations in the NOI to include any new policy violations discovered in the course of the investigation)
- Summaries of interviews with the Complainant, Respondent, and Witnesses
- A presentation of facts and analysis of consistencies and inconsistencies in the information collected
- An appendix containing relevant information collected, including any evidence obtained or submitted as part of the investigation, electronic records, written statements, photographs, or other documentation

30) EXPECTATIONS REGARDING EVIDENCE

The University will take appropriate measures to preserve any evidence, and the parties are expected to do the same. All parties are expected to provide as much information as possible in connection with the investigation.

The investigation will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. This can include, but is not limited to, information that is held between an attorney and their client or a party's medical records held by a physician, psychiatrist, psychologist, or other health or medical professional. Should a party wish to allow such information to be made available during an investigation, the party must provide voluntary, written consent to the Title IX Coordinator or Deputy Coordinator for the release of such records.

The investigation does not consider: 1) incidents not directly related to the reported violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and

evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

31) WITNESS PARTICIPATION

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of University policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, or similar technologies may be used for interviews if the Investigators determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

32) RESOLUTION THROUGH PROCESS A

After the Investigators have shared the Investigative Report with the Title IX Coordinator, the Investigators will incorporate any relevant feedback, and the Final Investigative Report is completed and returned to the Title IX Coordinator to be shared with the parties for their review no less than ten (10) business days before a scheduled hearing.

Provided that the formal complaint is not resolved through Informal Resolution, once the Final Investigative Report is shared with the parties, the Title IX Coordinator or Deputy Coordinator will refer the matter for a hearing. The Title IX Coordinator will designate a single Decision-Maker from the Pool to chair the hearing. The Decision-Maker will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-Makers. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter. The Title IX Coordinator or Deputy Coordinator may not serve as a Decision-Maker or chair the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Decision-Maker or designee.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the Final Investigative Report is transmitted to the parties and the Decision-Maker–unless all parties **and** the Decision-Maker agree to an expedited timeline.

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

a) Evidentiary Considerations in the Hearing

Any evidence that the Decision-Maker determines is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility/non-responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-Maker at the sanction stage of the process when a determination of responsibility/non-responsibility is reached.

After post-hearing deliberation, the Decision-Maker renders a determination based on the preponderance of the evidence. Each alleged policy violation will result in a finding of “responsible” (it is more likely than not that the Respondent did violate the Policy) or “not responsible” (it is more likely than not that the Respondent did not violate the Policy).

b) Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send a Notice of Hearing (NOH) to the Complainant and Respondent. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The NOH will contain:

- 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 sanctions/responsive actions that could result.
- The date, time, and location of the hearing and a reminder that attendance is mandatory, superseding all other University activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-Maker and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing (including those in the Final Investigative Report) will not be considered by the Decision-Maker. For compelling reasons, the Title IX Coordinator or Decision-Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask the other party. The party must notify the Title IX Coordinator at least two (2) business days prior to the hearing if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-Maker about the matter, unless they have been provided already, including the Final Investigative Report.
- An invitation to each party to submit to the Decision-Maker an impact statement pre-hearing that the Decision-Maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing allegations under this Policy is not considered to be in good standing to graduate.

c) **Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

d) **Pre-Hearing Preparation**

As outlined in Section 32.b., the Title IX Coordinator will provide the Notice of Hearing and the Final Investigative Report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigators, unless all parties and the Decision-Maker assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Decision-Maker do not agree to the admission of evidence newly offered at the hearing, the Decision-Maker may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Title IX Coordinator will give the Decision-maker a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-Maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-Maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the Final Investigative Report and available evidence. That review and comment can be shared with the Decision-Maker at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Decision-Maker.

e) Pre-Hearing Meetings

The Decision-Maker may convene an individual pre-hearing meeting with the Complainant and Respondent and their Advisors to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Decision-Maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Decision-Maker must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Decision-Maker, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigators in the Final Investigative Report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Decision-Maker will consider arguments that evidence identified in the Final Investigative Report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigators may be argued to be relevant.

The Decision-Maker may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Decision-Maker may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

f) Hearing Procedures

At the hearing, the Decision-Maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within this Policy.

Participants at the hearing will include the Decision-Maker, the Investigators who conducted the investigation, the Complainant and Respondent, Advisors to the parties, any called witnesses, the Title IX Coordinator (who may or may not serve as a hearing facilitator) and anyone providing authorized accommodations or assistive services. The hearing facilitator may attend to logistics of rooms for various parties/witnesses as they wait; the flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

The Decision-Maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-Maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-Maker and the parties and will then be excused.

The hearing will proceed with the following components:

- The Decision-Maker will provide an explanation of the procedures and introduction of participants.
- The Investigators will provide a summary of the Final Investigative Report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Maker and the parties (through their Advisors). The Investigators will be present during the entire hearing process, but not during deliberations.
- The Complainant and Respondent will each provide relevant information and submit to questioning by the Decision-Maker and the other party (through their Advisor), known as “cross-examination.”
- Invited witnesses will submit to questioning by the Decision-Maker and the parties (through their Advisors).
- The Decision-Maker may provide an opportunity for final statements by the Complainant and Respondent and will conclude the hearing.

g) Questioning and Testimony

With regard to questioning, neither the parties nor the Decision-Maker should ask the Investigators their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Decision-Maker will direct that it be disregarded.

If the parties raise an issue of bias or conflict of interest of an Investigator at the hearing, the Decision-Maker may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-Maker should not permit irrelevant questions that probe for bias.

All questions are subject to a relevance determination by the Decision-Maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision-Maker upon request if agreed to by all parties and the Decision-Maker), the proceeding will pause to allow the Decision-Maker to consider it (and state it if it has not been stated aloud), and the Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased.

The Decision-Maker may invite explanations or persuasive statements regarding relevance with the Advisors, if the Decision-Maker so chooses. The Decision-Maker will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Decision-Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-Maker will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Decision-Maker has final say on all questions and determinations of relevance and may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Decision-Maker has ruled on a question.

h) Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing or they attend but refuse to participate in questioning, then the Decision-Maker may not rely on any prior statement made by that party or witness at the hearing, including those contained in the Final Investigative Report, in the ultimate determinations of responsibility. The Decision-Maker must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-Maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If allegations of policy violations other than sexual harassment are considered at the same hearing, the Decision-Maker may consider all evidence they deem relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the Decision-Maker may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

i) **Recording of Hearings**

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-Maker, the Complainant and Respondent, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

j) **Deliberation and Decision-Making**

The Decision-Maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard is used to make determinations of responsibility, as outlined in Section 28.

When there is a finding of responsibility on one or more of the allegations, the Decision-Maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-Maker will ensure that each party has an opportunity to review any impact statement submitted by the other party. The Decision-Maker may, at their discretion, consider the statements, but they are not binding. The Decision-Maker will review the statements and any pertinent conduct history provided by the Assistant Dean of Students and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as necessary.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or other remedies.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties via their Elmhurst University email.

k) **Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-Maker to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter—including the final determination, rationale, and any applicable sanction(s)—with the parties and their Advisors simultaneously within five (5) business days of receiving the

Decision-Maker's deliberation statement. The Notice of Outcome will be shared via the parties' Elmhurst University email addresses and may also be shared in person in hard copy. Once emailed or received in person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policies reported to have been violated, including the relevant policy section, and will contain a summary of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options as outlined in Section 36.

33) RESOLUTION THROUGH PROCESS B

After the Investigators have shared the Investigative Report with the Title IX Coordinator, the Investigators will incorporate any relevant feedback.

When the **Respondent is a student**, the Investigators will amend the Investigative Report to become a Final Investigative Report that includes their findings, using the preponderance of the evidence standard, regarding outcomes related to each of the alleged violations of the Non-Discrimination and Non-Harassment Policy or the other University policy. Each alleged policy violation will result in an outcome of "responsible" (it is more likely than not that the Respondent *did* violate policy) or "not responsible" (it is more likely than not that the Respondent *did not* violate policy).

Within five (5) business days of the Investigators determining the findings, the Investigators will provide the Final Investigative Report to the Assistant Dean of Students to assign sanctions if there are findings of responsibility. The Assistant Dean of Students will take no more than three (3) business days to determine sanctions and may extend the time period for rendering a sanction, so long as both parties receive notice and a reason for the extension. The

Investigators will then notify the Complainant and Respondent, simultaneously and in writing via their Elmhurst University email addresses, of the outcome via the Notice of Outcome letter. The Title IX Coordinator will also receive a copy of the Notice of Outcome letter.

When the **Respondent is a faculty member**, the Title IX Deputy Coordinator for Faculty and the second Investigator will amend the Investigative Report to become a Final Investigative Report that includes their findings, using the preponderance of the evidence standard, regarding outcomes related to each of the alleged violations of the Non-Discrimination and Non-Harassment Policy or the other University policy. Each alleged policy violation will result in an outcome of “responsible” (it is more likely than not that the Respondent *did* violate policy) or “not responsible” (it is more likely than not that the Respondent *did not* violate policy).

Within five (5) business days of determining the findings, the Deputy Coordinator will determine sanctions for any findings of responsibility. They may extend the time period for rendering a sanction, so long as both parties receive notice and a reason for the extension. The Deputy Coordinator will then notify the Complainant and Respondent, simultaneously and in writing via their Elmhurst University email addresses, of the outcome via the Notice of Outcome letter. The Title IX Coordinator will also receive a copy of the Notice of Outcome letter.

When the **Respondent is a staff member**, the Title IX Deputy Coordinator for Staff and the second Investigator will amend the Investigative Report to become a Final Investigative Report that includes their findings, using the preponderance of the evidence standard, regarding outcomes related to each of the alleged violations of the Non-Discrimination and Non-Harassment Policy or the other University policy. Each alleged policy violation will result in an outcome of “responsible” (it is more likely than not that the Respondent *did* violate policy) or “not responsible” (it is more likely than not that the Respondent *did not* violate policy).

Within five (5) business days of determining the findings, the Deputy Coordinator will determine sanctions for any findings of responsibility. They may extend the time period for rendering a sanction, so long as both parties receive notice and a reason for the extension. The Deputy Coordinator will then notify the Complainant and Respondent, simultaneously and in writing via their Elmhurst University email addresses, of the outcome via the Notice of Outcome letter. The Title IX Coordinator will also receive a copy of the Notice of Outcome letter.

Regardless of the status of the Respondent, the Notice of Outcome will articulate the specific policies reported to have been violated, including the relevant policy section, and will contain a summary of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with

parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; a statement of, and rationale for, the result of each allegation; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant to the extent the University is permitted to share such information (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options as outlined in Section 36.

34) SANCTIONS & REMEDIES

Factors considered when determining a sanction/remedy may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct by the Respondent
- The need for sanctions/remedy to bring an end to the sexual harassment and/or retaliation
- The need for sanctions/remedy to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-Maker, Assistant Dean, or Deputy Coordinator determining sanctions/remedies

The sanctions/remedies 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.

All Respondents are expected to comply with the assigned sanctions/remedies within the timeframe specified by the Decision-Maker, Investigators, Deputy Coordinator, or Appellate Officer. Failure to abide by the sanctions imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions/actions, including new disciplinary proceedings, suspension, expulsion, and/or termination from the University.

The sanctions/remedies described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. Remedies can include supportive measures as defined in Section 13, or can include formal sanctions assigned to students or employees outlined below.

Remedies at the level of the University may include, but are not limited to, providing and/or requiring counseling and training, developing educational materials and other programming for the campus community, implementing revised policies and procedures, and undertaking climate surveys and other mechanisms to identify and address patterns of violations.

a) Student Sanctions

Sanctions assigned to students for violating the Non-Discrimination and Non-Harassment Policy include:

- *Written Warning*: An official notice to a student that their behavior was inappropriate and violated the Code of Conduct, Housing and Residence Life Policies, Non-Discrimination and Non-Harassment Policy, or another relevant University policy.
- *Educational Assignments or Training*: These are designed to encourage students to reflect upon their behavior; learn about specific topics that relate to their previous behavior; identify harm made to self, another person and/or the community; and explore how they could change their behavior in the future. Educational Assignments or Training may include completion of reflection assignments, educational papers, bulletin boards, workshops, online training courses, campus involvement challenges, counseling services or workshops, or other event attendance.
- *Meeting with a University Administrator*: Students may be asked to meet with a University administrator either one time or on a regular basis to establish constructive connections to the University and to identify academic, co-curricular, and personal goals to be a positive member of the campus community.
- *AOD Care Meeting*: In instances where a student is found responsible for severe alcohol intoxication or impairment from other drug use resulting in concern for a student's wellbeing that requires medical transport, students may be asked to attend an Alcohol and Other Drug (AOD) Care Meeting with a designated Staff Clinician in Counseling Services. The purpose of this meeting is for the student to reflect upon their prior alcohol or other drug use and identify strategies to modify future use.
- *Loss of Privileges*: Students who have been found responsible for a violation of University policy may temporarily or permanently lose certain privileges that are otherwise afforded to them. Examples include restrictions on guests in on-campus housing and on access to certain campus facilities, programs, or services (such as the shuttle, specific residence halls, fitness center, etc. or losing parking privileges, the ability to participate in or hold leadership positions in certain student organizations or activities, loss of student employment, etc.). In some cases, a student may be reassigned to a different housing assignment as part of this sanction or may not be permitted to represent the University in student leadership opportunities, athletic events, or other co-curricular involvement.
- *Fines*: Monetary costs intended to deter students from violating University policies and are charged to a student's account with the University.

- *Restitution*: Monetary compensation required of students who have damaged, destroyed, misused, or stolen University, public or private property. The amount charged to a student's University account is commensurate to the cost to repair, replace, clean, or otherwise account for the property affected.
- *Housing Probation*: Housing probation is a formal notice that a student's behavior or repeat behavior has been detrimental to themselves or the residential community. During the housing probation period, which is minimally one semester but can last up to two years, a student is expected to demonstrate behavior that aligns with the institution's mission and values and upholds community standards of the University. Continued misconduct during the probation period may result in removal from housing.
- *Removal from Housing*: Requires a student to vacate their assigned residence hall room, apartment, or house by a specified date and time and return all University-issued keys and access cards. Removal from housing can be for a specified length of time or may be a permanent removal, and can include revocation of access to all University residential facilities.
- *Student Organization Sanctions*: Any sanction may be modified and applied to recognized student organizations and certain sanctions may only apply to student organizations. For example, an organization's national representatives, officers, and/or advisors may be notified of the incident. Serious, repeat misconduct by a student organization may result in the organization being suspended or terminated. Either of these sanctions prohibit the organization from recruiting new members, organizing current members, or acting in any organized manner aligned with the organization's mission.
- *University Probation*: Probation is a formal notice that a student's behavior or repeat behavior has been detrimental to themselves or the University community. During the probation period, which is minimally one semester but can last until graduation, a student is expected to demonstrate behavior that aligns with the institution's mission and values and upholds community standards of the University. Continued misconduct during the probation period may result in suspension or expulsion from the institution. Students on probation may not study away during their probation period.
- *Suspension*: University suspension involves the temporary separation of a student from the University for a specified period of time not to exceed two years, with the understanding that the student may return to the University in good standing at the completion of the suspension period after meeting any other conditions of the suspension. A suspended student may not participate in courses, activities, campus employment, or any other privileges typically afforded to an enrolled student. A suspended student may be expected to meet with the Assistant Dean of Students or their designee to request reinstatement and have holds removed on their student account to re-enroll for courses.
- *Expulsion/Dismissal*: Dismissal from the institution, commonly known as expulsion, means permanent termination of student status at the University. Expulsion may

include forfeiture of all rights and degrees not actually conferred at the time of dismissal; permanent notation of the dismissal on the student's disciplinary record; withdrawal from all courses; and forfeiture of tuition and fees. An expelled student may not access any University property without express permission obtained in advance from the Assistant Dean of Students or the Executive Director of Public Safety and Emergency Management.

b) Sanctions for Faculty and Staff

Sanctions/remedies assigned to faculty or staff for violating the Non-Discrimination and Non-Harassment Policy include:

- Verbal or written warning
- Performance improvement plan/Management process
- Required counseling, training, or education
- Denial of pay increase/pay grade
- Loss of oversight or supervisory responsibility
- Transfer or reassignment
- Restriction of stipends, research, and/or professional development resources
- Restrictions on accessing certain buildings or areas of campus
- Suspension, with or without pay
- Termination of employment with the University

In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate. Sanctions/remedies for faculty and staff are carried out in accordance with Human Resources Policy 2.61.

35) WITHDRAWAL OR RESIGNATION DURING A FORMAL GRIEVANCE PROCESS

If a student has an allegation pending for violation of this Policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. A hold will be placed on their ability to be readmitted. They may also be issued a trespass order from the University.

If the student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

36) APPEAL PROCESS

Both the Complainant and Respondent may file a Request for Appeal, but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

When the Respondent is a student, the Appellate Officer is the Vice President for Student Affairs. *When the Respondent is a faculty or staff member*, the Appellate Officer is the Vice President for Business and Finance. The Appellate Officer will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. Should the designated Appellate Officer have been involved in a dismissal appeal earlier in the process, the other Appellate Officer will receive the appeal at the conclusion of a Formal Grievance Process.

The Request for Appeal will be forwarded to the Appellate Officer for consideration to determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a) Grounds for Appeal and Appeal Procedures

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

- 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 affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appellate Officer and the parties and their Advisors will be notified in writing via email of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appellate Officer will notify the other party and their Advisor, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Maker.

The other party and their Advisor, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Maker will be emailed and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appellate Officer to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appellate Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, the Investigators and/or original Decision-Maker as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appellate Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses. The Appellate Officer will render a decision in three (3) business days, barring other circumstances.

A Notice of Appeal Outcome will be sent to all parties simultaneously via their Elmhurst University email addresses and may be delivered in person including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. Once emailed and/or received in-person, notice will be presumptively delivered.

b) Sanction Status During the Appeal

Any sanctions imposed as a result of the hearing are placed on hold during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures outlined in Section 13.

If any of the sanctions are to be implemented immediately after the Notice of Outcome is delivered but pre-appeal, then emergency removal procedures outlined in Section 16 must be permitted within 48 hours of implementation. The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation from the institution.

c) Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanctions/remedies only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-investigation or re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appellate Officers to substitute their judgment for that of the original Decision-Maker merely because they disagree with the finding(s) and/or sanction(s).
- The Appellate Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigators and/or Decision-Maker for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final. Further appeals are not permitted, even if a decision or sanction is changed (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be addressed by the original Decision-Maker (as in cases of bias), the appeal may order a new investigation with new Investigators or a new hearing with a new Decision-Maker.
- The results of a new hearing can be appealed **once** on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

37) RECORDKEEPING

The University will maintain for a period of at least seven (7) years records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any Informal Resolution and the result therefrom;
- All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution process, which are also publicly available on the [University's Title IX webpage](#);
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

38) DISABILITIES ACCOMMODATIONS IN THE RESOLUTION PROCESS

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process. Anyone needing such accommodations or support should contact the Access and Disability Services Coordinator who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

39) TRAINING, PREVENTION, AND EDUCATION

The University provides educational programming and training designed to promote the prevention and awareness of sexual harassment and retaliation.

This Policy serves as the University's primary prohibition of sexual harassment and retaliation. The Policy outlines definitions of consent and prohibited behaviors, procedures to report sexual harassment, on- and off-campus resources for Complainants, supportive measures, Informal Resolution and Formal Grievance Processes, possible sanctions that may be issued as a result of a violation of the Policy, and other relevant information.

At the start of each academic year, all students and employees are notified of this Policy via their

Elmhurst University email. Additionally, all students and employees are issued an online training course for sexual harassment prevention that focuses on the definition of consent; the definition of sexual assault, dating violence, domestic violence, and stalking; safe options for bystander intervention; information on risk reduction and warning signs of abusive behavior; reporting obligations and options; privacy of Complainant reporting; and other relevant information.

All first-year students participate in an in-person presentation through their First Year Seminar covering prohibited behaviors, bystander intervention, and reporting processes at the institution. Workshops, trainings, and other prevention and awareness campaigns occur throughout the year at the request of students, student organizations, employees, or specific offices on campus. The institution periodically conducts campus climate surveys to assess student perceptions of the institution's work related to sexual harassment prevention and response. The University's Coordinated Community Response Team (CCRT) also supports continued improvement to training, prevention, and education within the campus community.

40) PROHIBITION AGAINST DISABILITY DISCRIMINATION/REASONABLE ACCOMMODATIONS POLICY

As noted in the general Statement Against Discrimination and Harassment set forth in Section 2, the University does not discriminate against individuals on the basis of physical or mental disability. To ensure equal access to its programs and activities, the University is committed to providing reasonable accommodations, including appropriate auxiliary aids and services, academic adjustments (inside or outside the classroom), and/or modification to the University's policies and procedures, to qualified individuals with disabilities, unless providing such accommodations would result in an undue burden or fundamentally alter the nature of the relevant program or activity. The University's Access and Disability Services Coordinator is responsible for determining appropriate accommodations in conjunction with the student and other University representatives, as appropriate.

Dr. Linda Harrell

Access and Disability Services Coordinator

Learning Center, A.C. Buehler Library, 135

Elmhurst University

190 Prospect Avenue

Elmhurst, IL 60126

Phone: (630) 617-6448

Fax: (630) 617-3387

disability.services@elmhurst.edu

Applicants for admission to the University or current students requesting an accommodation should do so in writing. The University may also ask for documentation from a professional regarding a student's condition, the impact the condition has on the student's ability to participate in the University's educational or other programs, and any suggested accommodations. The

University may request only information that is relevant and reasonably necessary to determine whether an individual has a disability, the nature and extent of the disability, and appropriate reasonable accommodations.

All completed forms and supporting documentation must be submitted to the Access and Disability Services Coordinator. To enable the University to evaluate an individual's needs, engage in an interactive process with them, and provide appropriate reasonable accommodations in a timely fashion, the University requests that individuals complete and submit the required forms and supporting documentation as far in advance as possible before the first day of classes or as soon as practicable under the circumstances. At Elmhurst University, students must request accommodations each semester.

The University will make its determination on an individualized, case-by-case basis with input from the individual requesting accommodation, the Coordinator, faculty, and administrators, as necessary. Except in unusual cases, the University will reach a determination regarding an individual's request for accommodation and notify the individual in writing of the determination within three (3) weeks of their properly submitted request. In the event that requested accommodations have been denied, the University's determination letter will inform the individual of the reason(s) and of their right to appeal the University's determination. The Coordinator will maintain a confidential file regarding all requests for accommodation containing the forms and supporting documentation submitted by the applicant or student, any relevant communications (including notes of oral communications) between the individual and the University, the determination letter from the University to the individual, and the reason(s) for any denials.

Any disagreements between an individual requesting accommodation and the Access and Disability Services Coordinator regarding appropriate accommodations and/or any allegations of violations of this policy may be raised to the Vice President for Academic Affairs & Dean of the Faculty.

41) RESOURCES FOR PREGNANT & PARENTING STUDENTS

As included in the Statement Against Discrimination and Harassment set forth in Section 2, pregnant students are afforded equal opportunity and protection against discrimination and harassment. Title IX also prohibits discrimination on the basis of sex, which extends to pregnancy and parental status in educational programs and activities. Under Title IX, pregnant students are permitted to continue participating in classes and co-curricular activities and can request reasonable adjustments or accommodations to continue class or co-curricular participation.

Students who are pregnant are treated as students who have temporary medical conditions. Pregnancy, childbirth, false pregnancy, termination or loss of pregnancy, and recovery from birth are viewed as justification for excused absences or a leave of absence deemed medically necessary by the student's physician. Pregnant and parenting students with medically necessary absences

will be granted reasonable accommodations to make up missed work, attendance, or graded class participation (e.g. assignments, projects, papers, quizzes, tests, and presentations) wherever possible. Reasonable accommodations may include, but are not limited to, excused absences, extended deadlines, make-up test dates, other projects or assignments to replace in-class participation, independent study, online course completion options, or incomplete grades. In addition, pregnant students may have access to accommodations typically provided through the Access and Disability Services Coordinator. The University also offers Lactation Rooms in the following locations for students to utilize if needed:

- A.C. Buehler Library 015
- Circle Hall 207
- Frick Center 136
- Hammerschmidt Chapel 020
- Memorial Hall 016

To receive approval for a leave of absence, a student is expected to follow the Voluntary Leave of Absence Policy as outlined in the Student Handbook and notify the Title IX Coordinator of their desire to take a leave of absence. Upon the students' return to the University, reasonable steps will be taken to ensure the student returns to the same academic and co-curricular status as before the leave of absence began. The Title IX Coordinator will work with a student and the appropriate faculty and advisors to devise an alternative path to completion, if possible, for programs that include clinical rotations, performances, labs, and group work.

Pregnant and parenting students should contact the Title IX Coordinator to request accommodations, to receive assistance with informing faculty of the need to adjust course expectations, to prepare for a leave of absence, and to plan for a smooth return to the University after a leave ends.

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42) REVISION OF THIS POLICY

This Policy and procedures supersede any previous policies addressing harassment, discrimination, sexual harassment, and retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to

this document as necessary, and once those changes are posted online, they are in effect. If government 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 government regulations or holdings. This Policy is effective August 14, 2020.

Last updated August 26, 2020

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES
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