

Title IX Team Training on the Non-Discrimination and Non-Harassment Policy

September 11, 2020

Purpose & Scope

- The purpose of this training is to familiarize the Title IX Team at Elmhurst University with the elements of the Non-Discrimination and Non-Harassment Policy (“the Policy”) for which they are responsible to implement in some capacity given their various roles.
- Changes to the Policy went into effect on August 14, 2020.
- This presentation is an overview of the Policy and all Title IX Team members were expected to read the Policy in full. Information in this presentation is not intended to substitute the full Non-Discrimination and Non-Harassment Policy.
- Any questions regarding these training materials can be directed to Jenn Duffield, Assistant Dean of Students & Title IX Coordinator, at jenn.duffield@elmhurst.edu.

Section 1: Definition of Terms

- Defines prominent terms included in the Policy
- Specific points to highlight...
 - **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
 - **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.

Section 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
- **Harassment** includes unwelcome conduct, whether verbal, physical, written, or graphic, that is based on any protected status outlined above

Section 2: Statement Against Discrimination & Harassment

- The University does not discriminate and will not tolerate discrimination against any member of its community that is based on protected status
- It will not tolerate harassing conduct that:
 - Affects tangible job or educational benefits;
 - Interferes unreasonably with an individual's work or academic performance; or
 - Creates an intimidating, hostile, or offensive working, educational, or learning environment
- This applies to students, faculty, staff, and third-party vendors
- Complaints of discrimination or harassment should be made to the Title IX Coordinator and will be resolved through Process B if they are not sex-based and do not meet Title IX requirements

Section 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 the Policy
- Complaints of retaliation should be made to the Title IX Coordinator

Section 4: Prohibition of Sexual Harassment

- Sexual harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking
- **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

Section 4: Prohibition of Sexual Harassment

- **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.*

Section 4: Prohibition of Sexual Harassment

- **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.
- **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
- **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Illinois law
- **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent of 17

Section 4: Prohibition of Sexual Harassment

- **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.

Section 4: Prohibition of Sexual Harassment

- **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

Section 4: Prohibition of Sexual Harassment

- **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

Section 4: Prohibition of Sexual Harassment

- These definitions are written and interpreted broadly to also include online manifestations of any of the behaviors previously defined in Section 4. This can include:
 - 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

Section 4: Prohibition of Sexual Harassment

- **Force:** 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.
- **Coercion:** 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.

Section 4: Prohibition of Sexual Harassment

- **Consent:** Clear, unambiguous, voluntary, positive agreement by word or action between the participants, to engage in specific sexual activity
- 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
- The use of alcohol or drugs may seriously interfere with the participants' judgment about whether consent has been sought and given

Section 4: Prohibition of Sexual Harassment

- **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
- 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)
- Determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk

Section 5: Consensual Amorous Relationships

- The University strongly discourages all employees from participating in consensual amorous relationships with students or other employees whenever a professional relationship between the parties exists
- *Professional relationship* is defined as a relationship that involves the exercise of supervisory, evaluative, or advisory authority
- If a consensual amorous relationship exists, 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

Section 6: Resources for Complainants of Sexual Harassment

- Elmhurst University Resources
- External Resources—Local/State/National
 - YWCA Patterson and McDaniel Family Center (Confidential Advisor services)
- Medical Support via Elmhurst Hospital
 - Elmhurst Hospital has Sexual Assault Nurse Examiners (SANEs) available at the Emergency Room and are on call 24/7 to provide free forensic examinations and comprehensive care to sexual assault patients

Section 7: The Role of the Title IX Coordinator & Deputy Coordinators

- Responsible for implementing discrimination and harassment resolution procedures and monitoring Title IX and other related state and federal law compliance
- Have authority to institute corrective measures on behalf of Elmhurst University related to sexual harassment and retaliation complaints
- Jenn Duffield—Assistant Dean of Students & Title IX Coordinator
 - Can receive any sexual harassment report and will primarily oversee investigations with student Respondents or reports from a student with a non-EU affiliated Respondent
- David Cronan—Director of Human Resources & Deputy Coordinator for Staff
 - Will primarily oversee investigations with staff Respondents or reports from a staff member with a non-EU affiliated Respondent
- Dean Pribbenow—Vice President for Academic Affairs/Dean of the Faculty & Deputy Coordinator for Faculty
 - Will primarily oversee investigations with faculty Respondents or reports from a faculty member with a non-EU affiliated Respondent

Section 8: Amnesty Policy

- 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

Section 9: Reporting Complaints of Sexual Harassment/Retaliation

- Reporting to the Title IX Coordinator/Deputy Coordinator, a Mandated Reporter, or Online
 - Initiates outreach to the Complainant from the Title IX Coordinator or Deputy Coordinator
- Reporting to a Confidential Advisor or a Confidential Resource
 - Keeps reports confidential and only shares aggregate statistics with the Title IX Coordinator on an annual basis
- Reporting to the Police
 - Initiates the criminal reporting process and is only done by the Complainant and not by the University

Section 9: Reporting Complaints of Sexual Harassment/Retaliation

- **Mandated Reporters:** All University employees (hourly and full-time faculty, staff, contract vendor employees, and Public Safety staff and student workers), Head Residents, Resident Advisers, ELSA Community Advisors, Orientation Student Leaders, Orientation Transfer Leads who are required to report sexual harassment to the Title IX Coordinator or Deputy Coordinator
- **Confidential Advisors:** YWCA staff who work solely on the Complainant's behalf and are trained to specifically support survivors of sexual and interpersonal violence by providing empathetic guidance and educating them on their various rights and options
- **Confidential Resources:** University staff bound by HIPAA who can serve as confidential support to a Complainant, Respondent, or witness

Section 10: Privacy

- Every effort is made to preserve the privacy of reports
- Names associated with a report or investigation will not be publicly shared by the University
- Some University officials may have a legitimate educational interest in being informed about incidents; these officials can include relevant members of the President's Cabinet, Public Safety, the University Registrar, or members of the Threat Assessment Team
- Information is shared as necessary with Investigators, Decision-Makers, witnesses, and the parties

Section 11: Jurisdiction of the University

- The 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 Policy can apply to off-campus misconduct that deprives someone of access to Elmhurst's educational program or activities
- Respondent must be a member of the University community for formal/informal resolution to take place
- Supportive measures are available to the Complainant regardless of where the incident occurred or who the Respondent is

Section 12: Report Response & Assessment

- Title IX Coordinator/Deputy Coordinator requests a meeting with the Complainant
 - **Meeting Purpose:** Review the Complainant's rights, additional reporting options, privacy rights, access to on and off-campus resources, available supportive measures, how to file a formal complaint, and a summary of the Informal Resolution and Formal Grievance Processes
 - Resources regarding this information is attached to the outreach email the Complainant receives
- Complainant is not required to meet with the Title IX Coordinator/Deputy Coordinator, or can choose to do so at a later date

Section 12: Report Response & Assessment

- The Complainant has the option to request the following:
 - Receive supportive measures
 - Request not to 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)
- The Title IX Coordinator conducts a violence risk assessment in conjunction with appropriate University officials to determine if:
 - Emergency removal of a Respondent is necessary
 - Whether the Title IX Coordinator should pursue a formal complaint absent a willing/able Complainant
 - Whether a Clery Act timely warning/trespass order/PNG is needed

Section 13: Supportive Measures

- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed
- Designed to restore or preserve equal access to the University's education program and activities without unreasonably burdening the other party
- Privacy regarding supportive measures is maintained to the extent possible in order to enact the supportive measure

Section 13: Supportive Measures

- Supportive Measures can include:
 - 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

Section 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 Complainant may also change their decision and decide to file a formal complaint at a later date

Section 15: Filing a Formal Complaint

- 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)

Section 15: 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.

Section 15: Dismissing a Formal Complaint

- 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
- 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

Section 16: Emergency Removal

- When a violence risk assessment determines that an immediate threat to the health or safety of any student or employee arising from the allegations justifies removal, the Title IX Coordinator may remove a Respondent from the University on an emergency basis. This can include:
 - Interim suspension or administrative leave
 - Restriction/loss of privileges during an investigation/grievance process
 - Temporary removal from on-campus housing
 - Temporary reassignment
 - Suspending participation in campus activities, leadership, or work
 - Alternative coursework arrangements
- The Title IX Coordinator will notify the Respondent via email and they will have 24 hours to contest the decision in writing and can request to meet with the Title IX Coordinator to discuss the emergency removal

Section 17: Federal Statistical Reporting & Timely Warning Obligations

- The Clery Act requires that the University report aggregate data of sexual assault, dating violence, domestic violence, and stalking offenses that have occurred on the Clery geography of the University on an annual basis in the University's Annual Security and Fire Safety Report
- The Clery Act requires that the University send a Crime Alert to the University community in the event that an incident poses a serious, ongoing threat to members of the University community

Section 18: Overview of Formal Grievance Processes & Informal Resolution

- Formal complaint that meets Title IX requirements = Complainant has the option to pursue Informal Resolution or Formal Grievance Process A (investigation that leads to a live hearing led by a Decision-Maker who makes a determination regarding possible Policy violations)
- Formal complaint that does not meet Title IX requirements and is dismissed but is still a potential violation of Section 4 of the Policy = Complainant has the option to pursue Informal Resolution or Formal Grievance Process B (investigation that leads to a determination made by the Investigators regarding possible Policy violations)

Section 19: Counterclaims

- The University is obligated to ensure that the grievance process is not abused for retaliatory purposes
- Counterclaims will undergo an initial assessment as described in Section 12
- Counterclaims made in good faith will be processed using the appropriate Informal Resolution or Formal Grievance Process
- Counterclaims may be resolved through the same investigation as the initial allegation at the discretion of the Title IX Coordinator

Section 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 30 business days
- The Complainant or Respondent may request a temporary delay or extension no less than 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.

Section 21: Rights of the Parties

- Please see the Policy for the full list of rights. Some of the rights related to an investigation include the following:
 - 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 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 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 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 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

Section 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
- A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout
- 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 Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses
- 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

Section 22: Right to an Advisor

- The role of the Advisor during meetings prior to and during the investigation phase of Process A or Process B is for emotional support and private consultation; their participation will be limited to consulting privately with their advisee
- 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 of the other party and witnesses.
- Advisors are expected to maintain the privacy of records shared with them

Section 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 which include Alternate Resolution Mechanisms like mediation, restorative justice, or other negotiated resolution practices
- To initiate Informal Resolution, a Complainant needs to submit a formal complaint
- 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
- 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
- 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

Section 24: Formal Grievance Process Pool

- Title IX Coordinator and Deputy Coordinators
- 6-8 trained Investigators/Advisors
- Decision-Maker provided through Title IX Solutions, LLC
- 2 Appellate Officers, one for students and one for employees
- 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

Section 25: Appointment of Investigators

- Typically within 2 business days after the decision to commence a Formal Grievance Process 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

Section 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 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 and will have the opportunity to express concerns with a bias or conflict of interest to the Title IX Coordinator
- 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 a preponderance of the evidence

Section 27: Notice of Investigation

- Title IX Coordinator/Deputy Coordinator meets with the Complainant and Respondent individually to provide an overview of the process and to inform them of their rights
- A Notice of Investigation (NOI) is sent via email to both parties
- The NOI contains several elements (see the Policy for the full list), some of which include:
 - A summary of the allegations, the alleged violations of the Policy, and details regarding the alleged violations
 - A description of the Formal Grievance Process and possible sanctions that could result
 - The right to have an Advisor
 - The names of the Investigators
 - Instructions to preserve evidence

Section 28: Standard of Evidence

- The preponderance of the evidence standard
 - 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

Section 29: Steps in the Investigation Process

- 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
- 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

Section 29: Steps in the Investigation Process

- 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

Section 29: Steps in the Investigation Process

- 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

Section 29: Steps in the Investigation Process

- 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 10 business day review and comment period so that each party may meaningfully respond to the evidence

Section 29: Steps in the Investigation Process

- 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

Section 29: Steps in the Investigation Process

- The Investigative Report minimally contains 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

Section 30: Expectations Regarding Evidence

- The University will take appropriate measures to preserve any evidence, and the parties are expected to do the same
- 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
- The investigation does not consider:
 - Incidents not directly related to the reported violation, unless they evidence a pattern;
 - The character of the parties; or
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence 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

Section 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
- 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

Section 32: Resolution Through Process A

- Investigators incorporate feedback from the Title IX Coordinator into the Investigative Report, making it the Final Investigative Report
- If no Informal Resolution is sought, the case is referred to a live hearing and a Decision-Maker is appointed
- Title IX Coordinator shares the Notice of Hearing (NOH) and the Final Investigative Report with the parties no less than 10 business days before a scheduled hearing
- The NOH contains a variety of information including, but not limited to:
 - A description of the alleged violations, policies allegedly violated, a description of hearing procedures, and a statement of potential sanctions
 - Date, time, and location of the hearing
 - The option for the live hearing to occur with parties located in separate rooms through the use of technology
 - The requirement to have an Advisor present to conduct questioning on their behalf
 - The opportunity to submit an impact statement to the Decision-Maker to be used for review during any sanction determination

Section 32: Resolution Through Process A

- If a party or witness prefers not to attend or cannot attend the hearing in person, the individual should request alternative arrangements from the Title IX Coordinator at least 5 business days prior to the hearing
 - Currently, all hearings will be held virtually due to the COVID-19 pandemic
- The Title IX Coordinator will give the Decision-Maker a list of the names of all parties, witnesses, and Advisors at least 5 business days in advance of the hearing
- Prior to the hearing, parties can 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.

Section 32: Resolution Through Process A

- 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
- 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.

Section 32: Resolution Through Process A

- At the hearing, the Decision-Maker has the authority to hear and make determinations on all allegations of sexual harassment, retaliation, or other relevant policy violations
- Participants at the hearing will include:
 - Decision-Maker
 - Investigators
 - Complainant and Respondent
 - Advisors to the parties
 - Any called witnesses
 - The Title IX Coordinator (who may or may not serve as a hearing facilitator)
 - Anyone providing authorized accommodations or assistive services

Section 32: Resolution Through Process A

- 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
- During cross-examination, all questions are subject to a relevance determination by the Decision-Maker. The Advisor will pose the proposed question, the proceeding will pause to allow the Decision-Maker to consider it, and the Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased.
- The Decision-Maker will explain any decision to exclude a question as not relevant or to reframe it for relevance. They will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.

Section 32: Resolution Through Process A

- 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
- 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

Section 32: Resolution Through Process A

- Hearings are recorded by the University for purposes of review in the event of an appeal
- 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
- 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
- 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). Each party will have the right to review an impact statement made by the other party.
- The Decision-Maker will 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

Section 32: Resolution Through Process A

- Title IX Coordinator works with the Decision-Maker to prepare a Notice of Outcome, which is shared with the parties and their Advisors within 5 business days after the deliberation statement is written
- The Notice of Outcome includes:
 - Specific policies reported to have been violated
 - Summary of procedural steps from the receipt of the report to the determination
 - Findings on each policy violation
 - Findings of fact that support the determination
 - Sanctions issued
 - Remedies assigned to the Complainant to ensure access to the University's educational or employment program or activity
 - Appeal procedures

Section 33: Resolution Through Process B

- When the Respondent is a student:
 - Investigators 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
 - Within 5 business days, the Final Investigative Report is given to the Assistant Dean of Students to assign sanctions if there are findings of responsibility
 - The Assistant Dean of Students assigns sanctions within 3 business days
 - The Investigators notify the Complainant and Respondent of the outcome via the Notice of Outcome letter

Section 33: Resolution Through Process B

- When the Respondent is a faculty member:
 - The Title IX Deputy Coordinator for Faculty and the second Investigator 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
 - Within 5 business days of determining findings, the Deputy Coordinator assigns sanctions
 - The Deputy notifies the Complainant and Respondent of the outcome via the Notice of Outcome letter

Section 33: Resolution Through Process B

- When the Respondent is a staff member:
 - The Title IX Deputy Coordinator for Staff and the second Investigator 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
 - Within 5 business days of determining findings, the Deputy Coordinator assigns sanctions
 - The Deputy notifies the Complainant and Respondent of the outcome via the Notice of Outcome letter

Section 34: Sanctions & Remedies

- 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
- 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

Section 34: Sanctions & Remedies

- Sanctions for students include:
 - Written Warning
 - Educational Assignments or Training
 - Meeting with a University Administrator
 - AOD Care Meeting
 - Loss of Privileges
 - Fines
 - Restitution
 - Housing Probation
 - Removal from Housing
 - Student Organization Sanctions
 - University Probation
 - Suspension
 - Expulsion/Dismissal
- Sanctions for faculty/staff 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

Section 35: Withdrawal or Resignation During a Formal Grievance Process

- Should a Respondent permanently withdraw or resign from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student or resigned employee. The student who withdraws or leaves while the process is pending may not return to the University. The employee who resigns with unresolved allegations pending is not eligible for rehire with the University.
- 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

Section 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 5 business days of the delivery of the Notice of Outcome
- Student Respondent = Appellate Officer is the Vice President for Student Affairs
- Employee Respondent = Appellate Officer is the Vice President for Business and Finance
- Any sanctions imposed as a result of the hearing are placed on hold during the appeal 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.

Section 36: Appeal Process

- 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

Section 36: Appeal Process

- If any of the grounds in the Request for Appeal meet the grounds in this Policy, 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 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 3 business days, which will be circulated for review and comment by all parties.

Section 36: Appeal Process

- 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 3 business days, barring other circumstances.
- A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will include:
 - The finding on each ground for appeal
 - Any specific instructions for remand or reconsideration
 - Any sanctions that may result
 - The rationale supporting the essential findings

Section 36: Appeal Process

- 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
- 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
- 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).

Section 37: Recordkeeping

- The University will maintain for a period of at least 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

Section 38: Disabilities Accommodations

- 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

Section 39: Training, Prevention, and Education

- The University provides educational programming and training designed to promote the prevention and awareness of sexual harassment and retaliation
- Training, prevention, and education includes:
 - Notification of the Policy via Elmhurst University email at the start of each academic year
 - An online training course for sexual harassment prevention
 - First-year students participating 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 occurring throughout the year
 - Periodically conducting campus climate surveys
 - The University's Coordinated Community Response Team (CCRT) supporting continued improvement to training, prevention, and education within the campus community



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