

3358-3-07 Anti-discrimination and Harassment Procedures

(A) Edison State Community College (the College) strongly opposes and will not tolerate harassment or related behavior of any kind. It is the policy of the College to maintain a working and learning environment free from any sexual harassment, or discrimination against employees, applicants, and students on the basis of age, color, disability, national origin, race, religion, sex, sexual orientation, gender identity, military status, or veteran status as stated in the *College's Anti-discrimination and Harassment Policy 3358-3-07*.

(B) Scope. The prohibitions set forth in the *College's Anti-discrimination and Harassment Policy 3358-3-07* apply to all students, employees, and third-party vendors on campus including visitors or guests on campus to the extent that there is an allegation of "Prohibited Conduct," as defined by the policy, made by them against the College's students and employees.

- Such prohibition extends to off campus conduct or the online/virtual environment if the conduct occurs in the school's education program or activity, against a person in the United States, or where the conduct is reported to have a continuing adverse effect on an educational program or activity of the College, regardless of where the conduct is reported to have occurred.. An education program or activity includes locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs.
- If a Formal Complaint is brought against a respondent that is not subject to substantial control by the College, such as where the respondent is not an employee or student, the Title IX Coordinator may, in their sole discretion, issue a "no trespass" order or take other steps to protect the safety of the campus in lieu of any further investigation or decision-making. In such situations, the complainant shall be notified in writing that the Formal Complaint has been dismissed and what steps were taken to address the situation. The respondent may or may not be notified of the Formal Complaint under these circumstances, depending on the Title IX Coordinator's assessment of the situation and the relationship of the respondent to the College. The Title IX Coordinator shall still offer appropriate supportive measures to the complainant pursuant to this Policy.

(C) Title IX Notice of Non-Discrimination and Designation of Title IX Coordinator.

In addition the College's prohibition of discrimination and harassment based on the protected categories identified above, the College also provides the following specific notice of its policies and procedures related to Title IX. The College does not discriminate in its educational programs and activities, admissions, or employment on the basis of sex, gender, gender identity, gender expression, sexual orientation, marital or parental status, or pregnancy. Such discrimination is prohibited by Title IX of the Education Amendments of 1972 and its implementing regulations (34 C.F.R. Part 106, as amended by 85 FR 30026 (May 19, 2020)).

This procedure sets forth the manner in which individuals can report or file a formal complaint of Prohibited Conduct, as well as the grievance procedure that will be used to provide for the prompt and equitable resolution of such reports or formal complaints. Any person may report Prohibited Conduct, whether or not the person reporting is the person alleged to have experienced the Prohibited Conduct.

Questions or concerns about the application of Title IX in the College's policies or procedures may be referred to the Title IX Coordinator or Deputy Title IX Coordinator (listed below) or to the U.S. Department of Education's Office for Civil Rights, which may be reached at [ocr@ed.gov](mailto:ocr@ed.gov) or (800) 421-3481.

(D) Title IX Coordinator:

- (1) The College has a **Title IX Coordinator** who is responsible for: the prompt and impartial investigation of reports and allegations of Prohibited Conduct, as defined in College's Anti-discrimination and Harassment Policy 3358-3-07. The Title IX Coordinator will oversee a fact-finding process and effectuate steps to reasonably end any sexual harassment or discrimination in accordance with the procedure and the College's Anti-Discrimination and Harassment Policy: 3358-3-07.

Title IX Coordinator, Director of Human Resources  
Kara Myers  
Room 136, West Hall  
937-778-7802  
[kmyers1841@edisonohio.edu](mailto:kmyers1841@edisonohio.edu)

- (2) The **Deputy Title IX Coordinator**

Deputy Title IX Coordinator  
Dr. Jessica Chambers  
Suite 160, West Hall 937-778-7849  
[jchambers2@edisonohio.edu](mailto:jchambers2@edisonohio.edu)

(E) Employee Expectations – Ohio law requires all employees with knowledge of a felony to report it to law enforcement. Except for confidential personnel identified herein, all College personnel shall report conduct prohibited by the College's Anti-discrimination and Harassment Policy: 3358-3-07 and this Anti-discrimination and Harassment Procedure to the Title IX Coordinator or the Deputy Title IX Coordinator. Any responsible employee who knew about the incident and took no action to stop it or failed to report the prohibited act may be subject to disciplinary action.

(F) Confidentiality, Privacy, and Amnesty.

Confidentiality and privacy are two distinct concepts under these procedures.

Privacy means that information will be protected except to the extent it is necessary to disclose information in order to respond to a report, effectuate supportive measures, facilitate an informal resolution, administer a formal complaint under these procedures, provide remedies to those who experience Prohibited Conduct, and ensure the safety of individuals and the College community. The Title IX Coordinator and other College employees are expected to respect the privacy of the parties and witnesses to a report or formal complaint and share information only on a "need to know" basis. Personally identifiable information regarding students is further protected by the federal Family Educational Rights and Privacy Act, but sharing information as required by these procedures is permitted under that Act. To learn more about privacy and disclosures, see <https://www.edisonohio.edu/Privacy-Policy/>

Confidentiality means that information will not be shared by the individual who receives the information except in limited circumstances, such as where there is an imminent threat of harm to the individual or to others, or where there is knowledge or suspicion of child abuse or neglect. Confidential resources include licensed counselors, medical providers, attorneys, clergy, and certified rape crisis counselors that are identified below under Campus Resources.

**Amnesty** – The College grants amnesty to students who may have violated alcohol and/or drug provisions of the College’s Student Code of Conduct regarding personal use at the same time of the incident when he or she became a victim of sexual assault. Therefore, no alcohol or drug charges are applied to a student who reports that he or she was under the influence of alcohol or drugs at the time of the sexual assault. Amnesty will be extended to witnesses of the incident so that participation in the adjudication process can be encouraged without concern of conduct charges or sanctions.

(E) Emergency Removal.

The College retains the authority to remove a respondent from its program(s) or activity(ies) on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies a removal.

If the College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

(F) Administrative Leave.

The College retains the authority to place a non-student employee respondent on administrative leave during this procedure. Administrative leave is not subject to challenge under the emergency removal procedures.

(G) Assistance following an Incident of Sexual Harassment

(1) Immediate Danger – In the event a student or employee is in immediate danger, call:

- 9-1-1 or
- Campus Security: 937-778-7820
- Local police department: 937-778-2027

(2) Medical Treatment and Evidence Preservation – Students and employees seeking medical treatment should go to the nearest hospital. For the preservation of evidence in the event of a sexual assault, the following guidelines are recommended:

- Do not destroy the physical evidence that may be found in the vicinity of the crime. If the crime occurred in the complainant’s home, the complainant should not clean until the police have had an opportunity to collect evidence.
- Tell someone all details remembered about the assault. Write down all details remembered as soon as possible.
- Do not bathe or douche. Do not urinate, if possible.
- Do not eat, drink liquids, smoke, or brush teeth if oral contact took place.

- Keep clothes worn during the offense. If clothes are changed, place clothes in a paper bag (evidence deteriorates in plastic).
- Get prompt medical attention at a local hospital.

(3) Campus Resource:

The College does not offer on-campus counseling services to its students. Those students needing counseling can contact Ashley Homan in the Advising Office at 937-778-7995. Additional counseling services are available through the Miami, Shelby, or Darke County Crime Victim Services. Students may also contact the Coordinator of Health and Wellness Services:

Darlene Francis  
 Room 060, North Hall 937-778-7840  
[dfrancis@edisonohio.edu](mailto:dfrancis@edisonohio.edu)

The Coordinator of Health and Wellness Services provides:

- *Confidential* student and employee consultation and education.
- Referrals to community agencies for support and guidance depending on the student/employee's desire for additional help.

(4) Employee Assistance Program (EAP) – services available to all employees:

Impact Solutions (EAP) 1-800-227-6007  
<http://www.edisonohio.edu/Human-Resources/>

The EAP provides:

- Confidential online resources.
- Confidential online and in-person counseling sessions.
- Advice and counseling from nurses and other medical professionals.

(5) Links to other resources:

Community Crisis Resources:

- <http://www.oaesv.org/resources/miami-county/>
- <http://www.oaesv.org/resources/darke-county/>
- <http://www.oaesv.org/resources/shelby-county/>

National Crisis Resources:

- [http://www.vawnet.org/applied-researchpapers/summary.php?doc\\_id=3486&find\\_type=web\\_desc](http://www.vawnet.org/applied-researchpapers/summary.php?doc_id=3486&find_type=web_desc)  
[AR](http://www.bestcolleges.com/resources/preventing-sexual-assault/) □ <http://www.bestcolleges.com/resources/preventing-sexual-assault/>
- National Sexual Assault Hotline – 1-800-656-HOPE (4763)
- National Domestic Violence Hotline – 1-800-799-SAFE (7233)

(6) Legal Assistance – Legal Aid of Western Ohio, Inc. provides legal services to those recovering from domestic violence, sexual assault, and stalking. Legal Aid of Western Ohio, Inc. can be reached at 1-866-837-8847.

(7) Protection Orders – 911 (emergency), Legal Aid of Western Ohio, Inc. 1-866-837-8847 and the Title IX Coordinator/Deputy Coordinator are all available to assist students or employees in obtaining a College no contact order, court issued restraining order or other lawful protection.

(8) Additional Resources:

*National*

- RAINN (Rape, Abuse and Incest National Network) <https://www.rainn.org/>
- National Sexual Violence Resource Center <http://www.nsvrc.org/>
- National Domestic Violence Hotline <http://www.thehotline.org/>
- Partnership Against Domestic Violence <http://padv.org/>
- Peer Advocates <http://www.loveisrespect.org/>
- Drugrehab.com <https://www.drugrehab.com/guides/domestic-abuse/>
- Drugrehab.com in Ohio <https://www.drugrehab.com/ohio>

*Local*

- Ohio Alliance to End Sexual Violence <http://oaesv.org/>
- [Ohio](#) Hopes 937-498-7400
- Ohio Domestic Violence Network Greenville 937-548-4679
- Ohio Domestic Violence Network Sidney 937-498-7261
- Ohio Domestic Violence Network Troy 1-800-351-7347
- Ohio Domestic Violence Network Eaton 937-222-7233

(H) Definitions. In addition to the definitions contained in Policy 3358-3-03, the following terms are defined for purposes of this Policy regarding complaints of Prohibited Conduct:

**Actual Knowledge** means notice of Sexual Harassment or allegations of Sexual Harassment to a recipient's Title IX Coordinator or to any College official who has authority to institute corrective measures on behalf of the College. A list of these officials is as follows

:

**Dr. Doreen Larson, President**

**Chris Spradlin, Provost**

**Dr. Jessica Chambers, Dean of Student Affairs and Deputy Title IX Coordinator**

**Nate Cole, Director of Athletics and Student Life**

**Kara Myers, Director of Human Resources**

**Complainant** is an individual who is alleged to have experienced conduct that could constitute Prohibited Conduct under this procedure.

**Education Program or Activity** includes all of the College's operations, including locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

**Force** is the use of physical violence and/or imposing on someone physically to engage in sexual activity and/or the use of threats, intimidation and coercion to overcome resistance to sexual activity.

**Preponderance of the Evidence** is the standard of evidence used to resolve disputed issue of fact and to make decisions as to whether Prohibited Conduct occurred. A preponderance of the evidence exists where the evidence establishes that the dispute fact is more likely than not to be true. A preponderance of the evidence also exists where the evidence establishes that the Prohibit Conduct is more likely than not to have been committed. In determining whether a preponderance of the evidence exist, the decision-maker relies on the quality and relative weight of the evidence rather than the quantity of evidence.

**Prohibited Conduct** is as defined in Policy 3358-3-03 to include the following:

- discrimination;
- harassment;
- sexual harassment ((a) an employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct; (b) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity; or (c) “sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30)) (referred to herein as Sexual Harassment—Title IX);
- hostile environment harassment;
- inducing incapacitation for sexual purposes;
- sexual exploitation
- disparate treatment; and
- retaliation

Stalking or Domestic Violence that is not based on sex, but otherwise meets the definition above and other forms of sex-based conduct may be prohibited under other policies, codes of conduct, or handbooks applicable to students or employees.

**Relevant evidence and questions-** Relevant evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. Relevant evidence and questions do not include the following types of evidence and questions, which are deemed irrelevant at all stages of this procedure:

- (a) Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - (i.) They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - (ii.) They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.
- (b) Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.
- (c) Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege, unless the individual has waived that privilege.

Respondent is an individual who is alleged to have committed conduct that could constitute Prohibited Conduct under this procedure.

(I) Reporting Prohibited Conduct– Any person who believes they have been a victim of Prohibited Conduct is strongly encouraged to seek relief by reporting the complaint through any of the following reporting or alternative options. Third party witnesses are also strongly encouraged to utilize any of the following options.

- a. Formal College Complaint– A document filed by the complainant or signed by the Title IX Coordinator against the respondent officially requests the College to initiate an investigation. At the time of the formal complaint, the complainant must be participating in or attempting to participate in an educational program or activity at the college. Actions reported through the College formal complaint process will be reviewed to identify violations of the College’s Anti-discrimination and Harassment Policy 3358-3-07 and this associated procedure as well as potential violations of other College policies and procedures (Student Code of Conduct, Employee Code of Conduct, Workplace Violence, etc.) The College will not delay its investigation pending the outcome of any criminal investigation. Students and employees may initiate a Formal College Complaint with or without pursuing criminal charges.

The Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures and consider the complainant’s wishes with regard to supportive measures.

**To initiate a formal College Complaint, report to:**

- Title IX Coordinator, Director of Human Resources  
Kara Myers  
Room 136, West Hall 937-778-7802  
[Kmyers1841@edisonohio.edu](mailto:Kmyers1841@edisonohio.edu)
- Deputy Title IX Coordinator, Dean of Student Affairs  
Dr. Jessica Chambers  
Suite 160, West Hall  
937-778-7849  
[Jchambers2@edisonohio.edu](mailto:Jchambers2@edisonohio.edu)

Such report may be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by sending mail to the office address listed above.

- (2) Criminal Complaint – Actions reported in a criminal complaint process will be reviewed to identify violations of the Ohio Revised Code and follow the process of the applicable jurisdiction with regard to determination and investigation of criminal charges. Note: Reporting to law enforcement does not require that criminal charges be pursued.

**To initiate a Criminal Complaint:**

- (a) Call 911, or
- (b) Report to Campus Security: 937-778-7820

Note: If incident did not occur on College-controlled property or at College sponsored event, report to local law enforcement in addition to the Title IX Coordinator.

(3) Confidential alternatives to Criminal or College Complaint – A confidential report will not result in a report to law enforcement or a College investigation. Information can be shared confidentially with:

(a) Coordinator of Health and Wellness Services  
Darlene Francis  
Room 060, North Hall 937-778-7840  
[dfrancis@edisonohio.edu](mailto:dfrancis@edisonohio.edu)

(b) Impact Solutions (EAP) 1-800-227-6007  
<http://www.edisonohio.edu/Human-Resources/>

(J) Instituting Supportive Measures:

“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. Such measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College’s educational environment, or deter sexual harassment. Supportive Measures include protective measures as that term is used in the Clery Act and its regulations.

Supportive measures must be offered to a complainant when the College has “actual knowledge” of allegations of sexual harassment.

Supportive measures, include, but are not limited to the following:

- a. Providing access to counseling services and assistance in setting up an initial appointment
- b. Issuing and enforcing No Contact Directives, which are usually mutual unless and until a finding of responsibility for a policy violation has been made
- c. Assisting with relocation of work space
- d. Providing an escort to ensure safe movement between classes and activities
- e. Making changes to behavior, movement on campus, access to buildings or spaces, and/or participation in campus activities
- f. Modifying academic and extracurricular activities, transportation, and dining arrangements
- g. Extending deadlines and assisting with other course-related adjustments
- h. Modifying work or class schedules
- i. Assisting with obtaining a leave of absence
- j. Providing alternative course completion options
- k. Providing academic support services
- l. Assisting in obtaining visa or immigration information
- m. Modifying transportation, parking, dining and working situations
- n. Imposing other protections or behavioral restrictions as necessary and appropriate

The College offers supportive measures to both complainants and respondents. Upon receipt of a report of an identifiable complainant, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant’s wishes with respect to supportive measures, and inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint if one is desired.

Upon giving notice to a respondent of a report raising potential Prohibited Conduct violations against the respondent, the Title IX Coordinator will notify the respondent of the availability of counseling

and may notify the respondent of the availability of other supportive measures, as the Title IX Coordinator deems appropriate.

Throughout any grievance process, the Title IX Coordinator will continually reassess and discuss appropriate supportive measures with the parties as the Coordinator deems appropriate. If the Title IX Coordinator does not offer supportive measures to the complainant, the Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The College will treat complainants and respondents equitably in the provision of supportive measures, and shall follow its Formal Complaint process prior to the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

The College will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

(K) Assessment/Investigation:

- a. The Title IX Coordinator or designee(s) or Deputy Title IX Coordinator is responsible for the prompt and impartial investigation of allegations of Prohibited Conduct. The Title IX Coordinator identifies and addresses any patterns or systemic problems that arise during the review of such complaints.
- b. The College will provide to a party written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate who will be identified and offered the opportunity for an interview.
- c. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College, not on the parties.
- d. The following steps will be taken in an investigation:
  - (a) Notice will be provided to the complainant and respondent that an investigation is in progress. This will include: notice of the grievance process; notice of the allegations of Prohibited Conduct, including identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known.

The notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The notice will also inform the parties of any provision in the College's Student Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the initial notice, the College will provide notice of the additional allegations to the parties whose identities are known.

- (b) Relevant witnesses, including the complainant, respondent, and all first-hand, fact and expert witnesses will be identified and separately interviewed. The parties

- (complainant or respondent) will have the opportunity to provide names of witnesses.
- (c) Parties will be permitted to present relevant inculpatory and exculpatory evidence to the Investigator. It is the expectation of the Investigator that parties are truthful or forthright with providing information and will not withhold or omit information. The College cannot access, consider, disclose, or otherwise use a party's medical records unless the College obtains the party's written consent
  - (d) Confidentiality concerns and the College's prohibition on retaliation will be discussed with the complainant, respondent, and all witnesses.
  - (e) The College will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
  - (f) The complainant, the respondent, and all witnesses will be asked to put their statements in writing.
- e. Prior to completion of the investigative report, the College will send to each party and the party's advisor, if any, the evidence subject to inspection and review, including evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, in an electronic format or a hard copy, and the parties will have 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The investigator will create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.
- f. In preparing the investigative report, the investigator will consider whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute Sexual Harassment – Title IX as defined by Policy 3358-3-03 and these procedures in light of the evidence gathered during the investigation, and make a recommendation to the Title IX Coordinator regarding the same. If Sexual Harassment – Title IX is properly alleged, the investigators will further determine whether those allegations meet all three of the following jurisdictional requirements such that it is eligible for a hearing:
- i. The Formal Complaint was filed with the complainant was participating in or attempting to participate in the education program or activity of the College;
  - ii. The reported Sexual Harassment – Title IX occurred against a person in the United States; and
  - iii. The reported Sexual Harassment – Title IX occurred in the College's education program or activity.
- g. All evidence subject to inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- (4) Upon a complaint being filed, the College will work to complete its investigation in a timely matter, within a reasonable timeframe. A reasonable amount of time will be determined on a case-by-case basis, depending on factors such as the number of parties to be interviewed and their immediate availability to meet. In the event that the investigation is to exceed sixty (60) days, the Investigator will contact the parties to inform them of the delay. The process may be extended for good cause, including but not limited to the unavoidable absence of a party, a party's advisor, or a witness; the complexity and scope of the allegations; the number of witnesses involved; concurrent law enforcement activity; intervening College breaks or vacations; or the need for language assistance or accommodation of disabilities. In the event that an extension is

granted by a Title IX Coordinator, both parties will be notified in writing of the reason(s) for the delay and the expected adjustment in timeframes.

Parties may request the extension of deadlines within this process for good cause provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties. The Title IX Coordinator or designee shall have sole discretion to such extensions, which if granted shall be provided to both parties to the extent applicable.

- h. For the purposes of review, evidence provided (i.e. copies of e-mails, social media printouts, audio recordings, video recordings, etc., if supplied) will remain with the working notes in the Office of Human Resources. The documents will be in a secure location and will be maintained as required by the Records Retention Procedures for at least 7 years.
- i. The Investigator(s) is a neutral party who examines the facts as presented as a part of the investigatory process. The Title IX Coordinator, Investigator, Hearing Committee, or Appeals Committee must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. All parties and witnesses are obligated to timely provide the Investigator(s) with all of the information and documentation available, to help the College in conducting the investigations. Failure to comply honestly when providing information or to omit information will be addressed through appropriate discipline. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute a prohibited retaliation, however, a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.
- j. A party's advisor is permitted to attend any meeting or proceeding relating to the Formal Complaint. However, the advisor is not permitted to speak on behalf of the party during the investigation stage. If an advisor refuses to comply with this restriction, the College may require the party to use a different advisor.

(L) Final Determination of Hearing Eligibility.

The investigative report will include an assessment as to whether the reported conduct is eligible for a hearing. The Title IX Coordinator will review the assessment and determine whether the Title IX Coordinator concurs with the assessment of the investigator and whether a hearing will be held.

If the Title IX Coordinator determines that none of the conduct, if proven, meets the requirements for a hearing, the Title IX Coordinator shall notify the parties that the case is subject to mandatory dismissal from the hearing process found in this procedure and the case shall proceed to a Non-Hearing Resolution.

If the Title IX Coordinator determines that the case is eligible for a hearing, the case shall proceed to a Hearing pursuant to Section O.

The Title IX Coordinator's decision regarding hearing eligibility may be appealed to the Provost within one business day of receipt of the decision. The Provost's decision is final.

- (M) Dismissal: A formal complaint must be dismissed from the formal hearing process if:
- a. The conduct does not meet the definition of sexual harassment –Title IX (even if proved)
  - b. The conduct did not occur in the College's educational program or activity
  - c. The conduct did not occur against a person in the U.S.

If the complaint is dismissed, such dismissal does not preclude the College from taking action under another provision of the student code of conduct, or other applicable College policy or procedure. The complaint can also be dismissed at the Title IX Coordinator's discretion, taking into account all relevant circumstances, if at any time during the investigation or hearing, the complainant notifies the Title IX Coordinator, in writing, that the complainant would like to withdraw the formal complaint or any allegations therein; if the respondent is no longer enrolled or employed by the College, or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(N) Non-hearing Resolution

Cases that do not proceed to hearing will be resolved through the Non-Hearing Resolution process. Such process is typically completed within thirty (30) calendar days of referral for decision, except where extensions are appropriate for good cause as determined by the Title IX Coordinator with written notice to both parties of the reason for the extension.

Upon conclusion of the investigation, where it is determined that there are no allegations of prohibited conduct under Sexual Harassment-Title IX, the investigator will be the decision maker. The investigator will review the responses to the investigative report and revise it as appropriate. The investigator will then analyze the evidence, including inculpatory and exculpatory evidence, using the concepts of credibility and relevance as described herein, and issue a written decision as to whether any policy violations have occurred by using a preponderance of the evidence standard.

(O) Grievance Hearing Process for Formal Complaints of Sexual Harassment—Title IX:

(1) There are six types of Prohibited Conduct that qualify as Sexual Harassment—Title IX: (1) *quid pro quo* sexual harassment, (2) unwelcome conduct sexual harassment, (3) sexual assault, (4) dating violence, (5) domestic violence on the basis of sex, and (6) stalking on the basis of sex. Each of these are defined in Policy 3358-3-03, and are subject to the following grievance hearing procedures.

The Decision-Maker/Hearing Committee shall not consist of either the Title IX Coordinator or the Investigator. The Hearing Committee shall consist of three decision makers. The Title IX Coordinator has discretion to appoint a single decision-maker or a committee depending on the particular case.

(2) At least five business days prior to the hearing, a pre-hearing conference will be held with each party, the party's advisor, the Title IX Coordinator, and the Hearing Committee representative. At the pre-hearing conference, the party and advisor must disclose the witnesses that will be requested and the evidence that will be submitted for consideration. Evidence and witnesses may only be considered at hearing if they were submitted to the investigator, unless they were previously unknown or unavailable to the party during the investigation. The Hearing Committee representative will address any requests for new evidence and new witnesses at the pre-hearing conference. The Hearing committee representative will also discuss guidelines for appropriate behavior and decorum during the hearing. The party and advisor are encouraged to ask questions.

- (3) The College's grievance process will provide for a live hearing, during which: The Hearing Committee will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- (4) Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings. All questioning at the live hearing must be relevant, respectful, and non-abusive. No party will be "yelled" at or asked questions in an abusive or intimidating manner. If a party's advisor refuses to comply with restrictions set by the College, the College may remove that advisor from the hearing process and require that the party use a different Advisor.
- (5) At the request of either party, the College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Committee and parties to simultaneously see and hear the party or the witness answering questions.
- (6) Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Committee will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- (7) If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, to conduct cross-examination on behalf of that party.
- (8) If a party or witness does not submit to cross-examination at the live hearing, the Hearing Committee cannot rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Committee cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Further, a respondent's alleged verbal conduct, that itself constitutes the sexual harassment at issue, is not considered the respondent's statement, and constitutes part or all of the underlying allegation of sexual harassment itself.
- (9) The hearing may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (10) The College will create an audio or audiovisual recording or transcript, of any live hearing and make it available to the parties for inspection and review.
- (11) Relevant evidence is evidence that tends to make a fact that is important to the case either more probable or less probable. Relevant questions are those questions that are designed to elicit relevant evidence.

The following is considered irrelevant:

- a. Repetitive or duplicative questions or evidence;
- b. Information that is protected by a legally recognized privilege, such as attorney-client privilege, unless the privilege is waived in writing by the person holding the privilege;
- c. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless: (i) 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 (ii) 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; or
- d. Any party's medical, psychological, and similar records, unless the party has given voluntary, written consent for their use in the process.

The College will not exclude relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts (unless excluded above), or constitute character evidence. However, the Hearing Committee may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

(12) The Hearing Committee will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the Hearing Committee, after reviewing the case file and after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party at the hearing. Corroborating evidence is not required.

Credibility determinations are not based solely on observing demeanor, but also are based on other factors such as the level of specific details and consistency of each person's account, whether corroborative evidence is lacking where it should logically exist, and the inherent plausibility of the statement. Credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.

A party's answers to questions can and should be evaluated by decision-makers in context, including taking into account that a party may experience stress while trying to answer questions.

(P) Determination regarding responsibility – The Hearing Committee will issue a written determination regarding responsibility, based on the preponderance of the evidence. The written determination will include:

- Identification of the allegations potentially constituting sexual harassment as defined in the College's Anti-discrimination and Harassment Policy 3358-3-07 and this procedure;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination
- Conclusions regarding the application of the College's policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and
- The College's procedures and permissible bases for the complainant and respondent to appeal.

(Q) Notification:

The College must provide the written determination to the parties simultaneously.

Notification of a determination can be expected within sixty (60) calendar days of the report.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal,

if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(R) Sanctions:

The College recognizes that not every case of Prohibited Conduct is alike in severity. Therefore, the College reserves the right to consider a range of reasonable sanctions. This range includes a formal warning, receiving a reprimand in the course of employment, mandatory training, mandatory counseling, loss of privilege, disciplinary probation, removal from a course, restitution, facility suspension/expulsion, ban from College property, revocation of admission, revocation of degree, suspension, expulsion, and/or termination of employment.

A respondent's prior disciplinary record will be taken into consideration in assigning sanctions. More than one sanction may be imposed for any single violation. Any sanction imposed will be in effect at all campuses, on all College-owned or -controlled property, and at all events or functions sponsored by or under the supervision of the College, unless otherwise provided in the written decision.

(S) Remedies

Where a determination of responsibility for Prohibited Conduct is made, the College will provide remedies to a complainant designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. The Title IX Coordinator is responsible for effective implementation of remedies.

Where the final determination has indicated that remedies will be provided, the complainant can then communicate separately with the Title IX Coordinator or their designee to discuss what remedies are appropriately designed to preserve or restore the complainant's equal access to education. Remedies for a complainant which do not affect the respondent must not be disclosed to the respondent.

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

(T) Rights of Parties:

- a. Both the complainant and the respondent shall be afforded:
  - (a) The right to be provided with written notification as to the standard of evidence used during institutional conduct proceedings.
  - (b) The right to timely notification in writing, of the outcome of any administrative or student conduct board hearing decision and any finding(s) that may have been assigned.
  - (c) The right to be granted supportive measures as described above in Section J.
  - (d) The right to appeal the determination of responsibility of a hearing or conference.
- b. The complainant and respondent of a violation of the College's Anti-discrimination and Harassment Policy 3358-3-07 and this associated procedure shall be afforded:
  - (a) The right to decide whether or not to notify local law enforcement authorities and/or to file a report with the Office of Student Conduct.
  - (b) The right to answer questions posed by the respondent outside of the physical presence of the respondent. Such questions and answers will have to be facilitated

by video so that the respondent can still hear/participate in the cross-examination, but they don't have to be in the same room

- (c) The right to remain present throughout the entire hearing (except during deliberations).
- (d) The right to be granted a reasonable change in academic arrangement or other steps necessary to prevent unnecessary or unwanted conduct.
- (e) The right to be provided with written notification as to:
  - Any available assistance for changing academic and working situations, if requested by either party.
  - The rights of both parties and the College's responsibilities regarding protection orders, no contact orders, restraining orders, or similar lawful orders.
  - Written notification concerning student counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services available for parties, both within the institution and the community.
  - How to report retaliation or harassment as a result of reporting violations of the College's Anti-discrimination and Harassment Policy 3358-3-07 and this associated procedure.

(U) Appeal Procedures: The College offers both parties an appeal from a determination regarding responsibility and from the College's dismissal of a formal complaint or any allegations therein, on the following bases:

- a) Procedural irregularity that affected the outcome of the matter;
- b) 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
- c) 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 individual complainant or respondent that affected the outcome of the matter

An appeal must be submitted in writing within seven calendar (7) days after the notification of determination is received. When an appeal is received, the Title IX Coordinator will:

- 1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- 2) Ensure that the Appeals Committee is not composed of any of the same members as the Hearing Committee, and does not include the investigator(s) or the Title IX Coordinator
- 3) Ensure that the Appeals Committee does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and receives necessary training;
- 4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome
- 5) Issue the written decision of the Appeals Committee which shall describe the result of the appeal and the rationale for the result and
- 6) Provide the written decision to both parties simultaneously

(V) Informal Resolution.

The College's Informal Resolution process involves informal consultation to find an acceptable resolution for both parties without invoking the full investigation and adjudication process described

herein. The informal process may include counseling the Complainant on ways to address the Respondent directly regarding their behavior if the Complainant is comfortable doing so, counseling of the Respondent by the Title IX Coordinator on changing their behavior, a facilitated discussion between the Complainant and Respondent, a mediated agreement between the Complainant and Respondent, or any other informal process that is appropriate under the circumstances.

The informal resolution process is voluntary. The College will not require that a complainant and/or respondent participate in informal resolution and waive the right to a full investigation and adjudication of formal complaints of Title IX Sexual Harassment in order to enroll or continue to be enrolled, or be employed or continue to be employed, or enjoy any other right granted by the College. The parties may choose to pursue a formal resolution and end the informal resolution process at any time prior to reaching a determination of responsibility.

The College is responsible for taking the following steps prior to facilitating an informal resolution:

- (1) Providing written notice to the parties of:
  1. the allegations,
  2. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
  3. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (2) Obtaining the parties' voluntary, written consent to the informal resolution process.

The College will never offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Title IX Sexual Harassment of a student.

The Complainant and Respondent are permitted to bring an advisor of their choosing to any discussions as part of the informal resolution process. An advisor may offer their assistance to the Complainant or Respondent, but may not speak for them during the process.

#### (W) Retaliation

Retaliation means inappropriate action taken against an individual who has sought relief under policy 3358-3-03 when such action is motivated in whole or in part by the fact that the individual sought such relief. Examples include academic or employment reprisal against an individual who files a complaint or third-party report, or otherwise participates in the investigative and/or disciplinary process. The prohibition against retaliation extends to any person who opposes prohibited conduct, as defined by this policy, or who testifies, assists, or participates in any manner in investigation, proceeding, or hearing relative to prohibited conduct as defined by this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct 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 right or privilege secured by Title IX or its regulations, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

The Title IX Coordinator shall determine whether allegations of retaliation shall be included in the handling of a Formal Complaint, or whether they shall be referred to Student Services, Human Resources, or an appropriate Vice President for handling in accordance with procedures for addressing violations of College policies.

(X) Prevention and Education – The College provides educational programs to promote the awareness of sexual assault, domestic violence, dating violence, stalking, and bullying, which include primary prevention and awareness programs for incoming students and new employees, as well as ongoing prevention and awareness programs for students and employees. The programming will include information regarding the College’s prohibition of those offenses, its current policy and procedures, and a definition of the offenses as contained in Policy 3358-3-03 and these procedures. Safe and positive options for bystander intervention will also be presented as well as recognition of signs of abusive behavior and steps to minimize individual risk. The College will continue its prevention and awareness campaign by offering ongoing programs to students and employees regarding the above mentioned information. Student ongoing education will be offered at various times throughout the fall and spring semesters. All employees are required to participate in ongoing education during professional development programming. Ongoing education will also focus on Title IX obligations including reporting responsibility and procedures.

(Y) Compliance:

- a. Edison State will make a good faith effort to provide harassment free campus by establishing awareness programs that:
  1. Makes it a requirement that each employee and/or student annually be given a copy of the Anti-discrimination and Harassment Policy 3358-3-07. New students or employees who are hired after the initial distribution for the year will also receive a copy.
- b. Distribution of Materials:
  - Employees: The policy and procedure will be posted on Edison’s Human Resource web page. All new employees will be required to access the electronic copy during the orientation process. All current employees will be sent an electronic copy of the policy and procedure annually from the Human Resources Office at the beginning of the academic year. All employee unions shall also receive notification of the policy and procedures annually.
    1. Students: The policy and procedure will be distributed to all students electronically by the Department of Student Affairs at least twice a semester.
- c. The College will ensure that Title IX Coordinators, investigators, Hearing Committee, and Appeals Committee receive training on the following:
  - i. definition of sexual harassment as defined in College’s Anti-discrimination and Harassment Policy 3358-3-07
  - ii. the scope of the College’s education program or activity, how to conduct an investigation and grievance process including, hearings, appeals and information

resolution processes, as applicable, and how to serve impartially, including by avoiding pre-judgment of the facts at issue, conflicts of interest, and bias

- d. The College will ensure that Hearing Committee members receive training on:
  - i. any technology to be used at a live hearing, and
  - ii. issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- e. The College will ensure that Investigators receive training on:
  - i. issues of relevance to create an investigative report that fairly summarizes relevant evidence
- f. The College will ensure that all members of the Title IX team (Coordinator, decision-makers, investigators, appeals officers, and informal resolution facilitators) receive annual training on the issues related to dating violence, domestic violence, sexual assault and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability.
- g. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

#### (Z) Record-Keeping

The College will retain all records of each investigation into Sexual Harassment – Title IX instituted under this policy for seven (7) years. Records of Sexual Harassment – Title IX cases will include:

- Each investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient'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, appeals officers, and any person who facilitates an informal resolution process;
- Documentation of any supportive measures taken in response to a report or formal complaint of Sexual Harassment – Title IX, including documentation regarding the basis for any conclusion that the University's response was not deliberately indifferent;
- Documentation of why a complainant alleging Sexual Harassment – Title IX was not provided with supportive measures, including the reasons why such response was not clearly unreasonable in light of the known circumstances.

Revised: June 22, 2016, February 8, 2018, August 13, 2018 (Name change only for Deputy Title IX Coordinator) July 24, 2020 to comply with new policy and regulations (J. Chambers)