

## **I. POLICY**

EVMS does not discriminate in its education programs or activities, employment, or admissions. Further, EVMS is committed to fostering a culture for its faculty, residents, fellows, staff, students, patients and visitors that is free from harassment and mistreatment.

Sexual harassment is prohibited conduct at EVMS and certain types of sexual harassment (including sexual assault) can also be a form of discrimination on the basis of sex that is prohibited by the Title IX of the Education Amendments of 1972 (“Title IX”) and the EVMS Non-Discrimination and Anti-Harassment Policy (the “Non-Discrimination Policy”). It is the policy of EVMS that all allegations of sexual harassment must be reported and resolved as outlined in this Policy on Resolution of Allegations of Sexual Harassment.

This policy is intended to apply to conduct which occurs on or after August 14, 2020. For conduct that occurred before August 14, 2020, EVMS’ previous policies on sexual harassment shall apply. Because guidance in this area is evolving, EVMS reserves the right to modify or deviate from this policy as it deems appropriate under the circumstances, and in compliance with then applicable law or guidance.

Nothing in this policy is meant to unlawfully impinge on the rights of any of the parties involved including under the Constitution of the United States (including but not limited to the First, Fifth, or Fourteenth Amendment), other Federal Laws, or the laws of the Commonwealth of Virginia. In the event of a conflict between this policy and applicable law, EVMS intends to follow applicable law.

## **II. COMPLAINANT AND RESPONDENT**

A. Complainant. The individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a complaint of sexual harassment. The term Complainant is used both when a Notice or Complaint of Policy Violation or a Formal Complaint has been filed. See Section V.

B. Respondent. The individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation against an individual who has engaged in a complaint of sexual harassment.

## **III. TITLE IX COORDINATORS**

The following persons have been designated and authorized by EVMS to coordinate EVMS’ response under Title IX including taking any appropriate disciplinary action:

A. Institutional Title IX Coordinator. The Executive Director of Compliance serves as the Institutional Title IX Coordinator and has primary responsibility for coordinating EVMS' overall efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy. The Institutional Title IX Coordinator also tracks reports of sex discrimination and sexual harassment to ensure that EVMS investigates and responds promptly to such complaints.

B. Senior Deputy Title IX Coordinator for Employees. The Executive Director of Human Resources serves as the Senior Deputy Title IX Coordinator for Employees and oversees the implementation of EVMS' Affirmative Action plan, and the Equal Opportunity Policy and Diversity Statement for employees. The Senior Deputy Title IX Coordinator for Employees coordinates EVMS' efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation by or against EVMS employees.

C. Senior Deputy Title IX Coordinator for Students. The Assistant Dean for Student Affairs serves as the Senior Deputy Title IX Coordinator for Students and oversees the implementation of nondiscrimination and anti-harassment efforts for students. The Senior Deputy Title IX Coordinator for Students coordinates EVMS' efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation by or against EVMS students.

#### **IV. SEXUAL HARASSMENT**

EVMS prohibits all forms of unlawful discrimination and harassment, including sexual harassment.

A. Sexual Harassment Generally. Sexual Harassment is an umbrella category of unwelcome and prohibited harassing behavior on the basis of sex, including gender identity and sexual orientation. Some sexual harassment will fall into the category of "Title IX Sexual Harassment" as defined below. Sexual harassment that does not fall within that category may still be a violation of EVMS policy and thus, punishable up to and including termination or expulsion. Where alleged sexual harassment is determined to not be within the jurisdiction of Title IX, EVMS will generally apply definitions, rules and procedures under separate policies. However, EVMS reserves the right to use the Title IX procedures found herein for non-Title IX harassment, and its decision to use these procedures (in whole or in part) does not mean that Title IX applies.

B. Title IX Sexual Harassment. Sexual harassment becomes Title IX Sexual Harassment when the unwelcome and prohibited behavior occurs within the context of an education program or activity and interferes with an individual's right to participate in such EVMS education program or activity and is considered discriminatory under Title IX. To qualify as Title IX sexual harassment the conduct must meet one or more of the following criteria:

1. Quid Pro Quo Harassment. This form of harassment generally occurs when an employee conditions the provision of an aid, benefit, service, or advancement on a Complainant's participation in unwelcome sexual conduct; or

2. It is conduct that a reasonable person would determine is so severe, pervasive, *and* objectively offensive, that it effectively denies a person equal access to EVMS education programs or activities; or

3. It is sexual assault, dating violence, domestic violence, or stalking as outlined below.

C. Sexual Assault. Defined as:

1. *Sex Offenses, Forcible*: Any sexual act directed against a Complainant, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

2. *Forcible Rape*: 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 Complainant.

3. *Forcible Sodomy*: Oral or anal sexual intercourse with another person:

a. Forcibly, and/or against that person's will (non-consensually); or

b. Not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4. *Sexual Assault with an Object*: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person:

a. Forcibly, and/or against that person's will (non-consensually); or

b. Not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

5. *Forcible Fondling*: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification,

a. Forcibly, and/or against that person's will (non-consensually); or

- b. Not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

6. *Sex Offenses, Non-forcible:*

- a. Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Virginia law.
- b. Statutory Rape: Non-forcible sexual intercourse, with a person who is thirteen years of age or older, but under fifteen years of age (see § 18.2-63 of the Code of Virginia) or anyone over the age of 18 years of age engaging in consensual sexual intercourse with someone 15, 16, or 17 years of age (see § 18.2-371 of the Code of Virginia).

D. Dating Violence. Defined as 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 Complainant. The existence of such a relationship shall be determined based on the Complainant'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:

1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
2. Dating violence does not include acts covered under the definition of domestic violence.

E. Domestic Violence.\* Defined as violence, on the basis of sex, committed by a:

1. Current or former spouse or intimate partner of the Complainant;
2. Person with whom the Complainant shares a child in common;
3. Person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
4. Person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the Commonwealth of Virginia; or
5. Any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Virginia.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

F. Stalking.

1. Defined as engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to:

- a. Fear for their safety or the safety of others;
- b. Suffer substantial emotional distress.

2. For the purposes of this definition:

- a. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- b. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

G. Force, Coercion, Consent, and Incapacitation. As used in the offenses above, the following definitions and understandings apply:

1. *Force*. Force is the use of physical violence and/or physical imposition to gain sexual access. Force also generally includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, resistance is a clear demonstration of non-consent.

2. *Coercion*. Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual

activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

3. *Consent.* Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity.

- a. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- b. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
- c. For consent to be valid there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can generally kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.
- d. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
- e. Consent to some sexual contact (such as kissing or fondling) generally cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is also generally not sufficient to constitute consent.
- f. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on EVMS to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

4. *Incapacitation:*

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

- b. Incapacitation generally 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).
- c. It is generally a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard, which assumes that a reasonable person is both sober and exercising sound judgment.
- d. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- e. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

#### H. Online Harassment and Misconduct

1. This policy broadly includes online and cyber manifestations of any of the behaviors prohibited above, when those behaviors occur in, have an effect on EVMS’ education program and activities, or use EVMS networks, technology, or equipment.

2. Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of EVMS community.

3. EVMS may not control websites, social media, and other venues in which harassing communications are made. However, when such communications are reported to EVMS, it will take appropriate action to address and mitigate the effects.

4. Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of EVMS’ control (e.g., not on EVMS networks, websites, or between EVMS email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption. Otherwise, such communications may be considered speech protected by the First Amendment. Supportive measures for Complainants may be provided, but protected speech generally cannot be subjected to discipline.

## V. REPORTING

A. Generally. This Policy on Resolution of Allegations of sexual harassment governs all reports of sexual harassment by all members of the EVMS community. Any report made under any other policy, will first be evaluated in accordance with this policy. There may be circumstances in which EVMS determines that the conduct falls within the definition of Title IX Sexual Harassment (as defined in Section IV), but there may also be instances in which EVMS determines the conduct does not meet the definition of Title IX Sexual Harassment and will be addressed by other applicable EVMS policies, including, but not limited to the EVMS Code of Conduct, Student Code of Conduct, the Compact between Teachers and Learners of Medicine and Health Professions, Human Resources Anti-Harassment Policy and/or the Human Resources Disciplinary Action Policy.

B. Notice or Complaint of Policy Violation. A Notice or Complaint of Policy Violation is not a Formal Complaint as explained in Section C below, but instead notifies EVMS of conduct that may be sexual harassment (whether alleging Title IX sexual harassment or otherwise). A notice of complaint will not typically allow for the informal resolution process described below, and may not trigger all of the same steps as a Formal Complaint. To file a Notice or Complaint of Policy Violation:

1. Send a written notice, or give verbal notice to one of the following:
  - a. For allegations of sexual harassment by or against students:

Melissa Scott, M.Ed.  
Senior Deputy Title IX Coordinator for Students  
Lewis Hall  
700 W. Olney Rd. Room 1172  
Norfolk, VA 23507  
757.446.8927  
[scottmj@evms.edu](mailto:scottmj@evms.edu)

- b. For allegations of sexual harassment by or against employed faculty, residents/fellows, staff or volunteers:

Matthew Schenk, PHR  
Senior Deputy Title IX Coordinator for Employees  
735 Fairfax Ave., Suite 972  
Norfolk, VA 23507  
757.446.6043  
[schenkmr@evms.edu](mailto:schenkmr@evms.edu)



- c. For allegations by or against any individual, including patients, visitors or vendors:

Josephine Wiley, CCEP  
Institutional Title IX Coordinator  
735 Fairfax Ave., Suite 1174  
Norfolk, VA 23507  
757.446.6008  
[wileyjp@evms.edu](mailto:wileyjp@evms.edu)

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

2. Report online, using the online [Sex Based Discrimination and sexual harassment Reporting Form](#).

3. Report using the [EVMS Ethics and Compliance Hotline](#), or 1.800.461.9330, 24 hours a day, 7 days a week. Anonymous reports are accepted but can make it both difficult to investigate a report and to provide supporting measures to the Complainant. Thus, while we encourage reporting in any form, providing your identity will generally allow EVMS to more fully address your concerns. To the extent practicable, we will respect desire for confidentiality.

C. Formal Complaint of sexual harassment. A “Formal Complaint” means a document filed/signed by the Complainant or signed by the Institutional Title IX Coordinator alleging sexual harassment by a Respondent and requesting that EVMS investigate the allegation as an incident of sexual harassment. A Formal Complaint is generally required in order to initiate the informal resolution process or the investigation and hearing process. In order to be Formal Complaint the document must:

1. Be filed with a Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator in person or by mail at the address provided in Section V(A)(1) above, or electronically by using the [Sex Based Discrimination and Sexual Harassment Reporting Form](#).

2. Contain the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. Formal Complaints cannot be made anonymously.

3. Allege sexual harassment outlined in Section IV.

4. Be filed by or on behalf of a complainant who is participating in or attempting to participate in the educational program or activity of the school with which the formal complaint is filed.

If notice is submitted in a form that does not meet this standard, the appropriate Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator will contact the Complainant to ensure that it is filed correctly or that the Complainant understands his or her right to file a Formal Complaint.

In certain instances, such as when there are allegation of violence, threats, use of weapons or serial predation, the Institutional Title IX Coordinator may sign the Formal Complaint. In such event, however, the Institutional Title IX Coordinator does not become the Complainant or a party to the process.

**D. Mandatory Reporters.**

1. The individuals below have been deemed mandatory reporters who must report to a Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator immediately if a Complainant makes them aware of an allegation of sexual harassment:

- a. The President of EVMS
- b. Any Vice Dean, Vice President or Vice Provost (with the exception of General Counsel)

2. Anonymous Notice to Mandatory Reporters

- a. At the request of a Complainant, notice may be given by a Mandatory Reporter to the appropriate Deputy Title IX Coordinator or the Institutional Title IX Coordinator anonymously, without identification of the Complainant. The Mandatory Reporter, however, cannot remain anonymous and must identify themselves to such Title IX Coordinator.
- b. If a Complainant has requested that a Mandatory Reporter maintain the Complainant's anonymity, the Mandatory Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandatory Reporter can consult with the Institutional Title IX Coordinator on that assessment without revealing personally identifiable information.
- c. Anonymous notice will limit EVMS' ability to investigate, respond, and provide supportive or other remedies and EVMS will investigate to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

- d. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandatory Reporter, but all other details must be shared with the Institutional Title IX Coordinator.
- e. Mandatory reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.
- f. Where a Complainant wishes to remain anonymous, or does not want to participate in the investigation process, EVMS may determine that it is necessary to initiate an investigation and adjudication process with the information provided but without the involvement of the Complainant in order to protect the educational community or to ensure that EVMS is not being deliberately indifferent to sexual misconduct of which it has actual knowledge. However, under some circumstances, EVMS may determine that the investigation and procedures that typically apply in response to a formal complaint are not appropriate or possible under the circumstances.

**E. Time Limits on Reporting.**

1. EVMS encourages the prompt reporting of sexual harassment. However, there is no time limitation on reporting to the Institutional Title IX Coordinator. However, if the Respondent is no longer subject to EVMS' jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

2. Acting on Notice or Complaint of Policy Violation/Formal Complaint significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Institutional Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage informal or formal action, as appropriate.

3. When Notice or Complaint of Policy Violation/Formal Complaint is affected by significant time delay, EVMS will apply the policy in place at the time of the alleged misconduct.

**F. False Allegations and Evidence.** Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under EVMS policy.

G. Retaliation. EVMS will not retaliate against, or permit any retaliation against any parties for their involvement in an investigation pursuant to this policy so long as the participation is done in good faith. Complaints alleging retaliation may be filed using the same reporting procedures described herein.

H. Nothing in this policy is intended to prohibit EVMS from disclosing certain information as required by law, or where deemed necessary to investigate a formal complaint.

## **VI. EVMS RESPONSE**

### **A. If Notice or Complaint of Policy Violation was Received.**

1. Notice received by the Institutional Title IX Coordinator will be assigned to Senior Deputy Title IX Coordinator for Employees or the Senior Deputy Title IX Coordinator for Students, as applicable, unless the Institutional Title IX Coordinator has reason to believe that such Senior Deputy Title IX Coordinator has a conflict of interest. Under appropriate circumstances, the Institutional Title IX Coordinator may assign the matter to another person (whether employed by EVMS or not) who has received adequate Title IX training. The Complainant will be notified of this assignment.
2. The Complainant will meet with the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator to discuss the overall process and any supportive measures deemed necessary, appropriate and/or proper.
3. If the matter involves allegations of sexual assault, the Complainant will be advised that the preservation of evidence of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. During the initial meeting between the Complainant and the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator the importance of taking these actions will be reiterated, where timely and appropriate.
4. The Senior Deputy Title IX Coordinator will conduct an initial assessment, typically one to five business days, to determine the next steps:
  - a. The Complainant will be asked whether Complainant wishes to make a formal complaint.
    - i. If so, the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator will assist the Complainant in doing so.

- ii. If not, the Complainant will be advised of the right to file a Formal Complaint at a later time and the Senior Deputy Title IX Coordinator will consult with the Institutional Title IX Coordinator to determine whether to initiate a complaint. If not, the applicable Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator will generally (where deemed appropriate) refer the matter (if outside the scope of Title IX) to the appropriate individual to address the allegations in accordance with the applicable Code of Conduct or professional behavior/professionalism policies (outside of Title IX) and the Complainant will be notified accordingly.

**B. If a Formal Complaint of Sexual Harassment was Received.**

1. Notice received by the Institutional Title IX Coordinator will be assigned to Senior Deputy Title IX Coordinator for Employees or the Senior Deputy Title IX Coordinator for Students, as appropriate, unless the Institutional Title IX Coordinator has reason to believe that such Senior Deputy Title IX Coordinator has a conflict of interest. Under appropriate circumstances, the Institutional Title IX Coordinator may assign the matter to another person (whether employed by EVMS or not) who has received adequate Title IX training. The Complainant will be notified of this assignment.
2. The Complainant will meet with the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator to discuss the overall process and any supportive measures deemed necessary, appropriate, and/or reasonable.
3. If the matter involves allegations of sexual assault, the Complainant will be advised that the preservation of evidence of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. During the initial meeting between the Complainant and the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator the importance of taking these actions will be reiterated, where timely and appropriate.
4. The Senior Deputy Title IX Coordinator will assess the Formal Complaint for sufficiency and, if not sufficient, the Complainant will be contacted to make sure it is completed correctly. In some instances where the Formal Complaint is not clear, the Senior Deputy Title IX Coordinator may assign an investigator.
5. The Complainant will be notified of the right to have an Advisor.
6. The Complainant will be advised of their right to have one of the following:

- a. A supportive and remedial response. If a supportive and remedial response is preferred in lieu of a formal investigation (and where EVMS determines there is no safety risk to other students), the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator will work with the Complainant to identify their wishes, assess the request, and respond accordingly. Generally, no Formal Grievance Process will be initiated, though the Complainant can elect to initiate one later, if desired.
- b. Informal Resolution. If informal resolution is selected by the Complainant, the Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator will assess whether the allegations are suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution. Generally, both parties must give voluntary, informed written consent to attempt informal resolution. The process for Informal Resolution is outlined in Appendix A.
- c. Formal Grievance Process. EVMS uses the Formal Grievance Process to determine whether or not the allegations of sexual harassment have more likely than not occurred and what action against the Respondent should be taken. If a Formal Grievance Process is elected the Senior Deputy Title IX Coordinator will consult with the Institutional Title IX Coordinator to conduct an initial assessment to determine if the allegations of sexual harassment constitute Title IX Sexual Harassment which fall within the scope of the Formal Grievance Process:
  - i. If it does, or if there is not enough evidence from the facts presented to determine jurisdiction, the Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator will initiate the “Formal Grievance Process” set forth on Appendix A. The Formal Grievance Process applies only to qualifying allegations of Title IX sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as defined above, involving EVMS faculty, residents/fellows employed by EVMS and students in an EVMS educational program.
  - ii. If it does not, the Senior Deputy Title IX Coordinator will dismiss any aspect of the complaint that does not fall within the scope of Title IX sexual harassment and assess which other policies, if any, may apply. Where appropriate, EVMS will refer the matter for resolution under different policies or procedures. Dismissing a Formal Complaint for Title IX sexual harassment is solely a procedural requirement under Title IX, and does not limit EVMS’ authority to address the allegations contained in the Formal Complaint with an appropriate process and remedies under another policy.

C. Safety and Risk Analysis. In many cases, the Senior Deputy Title IX Coordinator in consultation with the Institutional Title IX Coordinator may need to conduct a safety and risk analysis upon initial receipt of a Notice or Complaint of Policy Violation or Formal Complaint and throughout any resolution process. In such event, the safety and risk analysis shall be conducted by the EVMS Safety Management and Response Team (SMART) to determine potential violence or danger, including but not limited to:

1. Whether emergency removal of a Respondent on the basis of immediate threat to physical health/safety is warranted;
2. If the Institutional Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
3. If past history with SMART or potential predatory conduct exists;
4. Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
5. Assessment of appropriate sanctions/remedies (if there is a finding of responsibility); and/or
6. Whether a Clery Act Timely Warning, Trespass or other order or letter is needed. Nothing in this section shall limit the ability of EVMS Police from taking action deemed appropriate to protect the EVMS Campus, prior to any review or determination by SMART.

D. Sexual Violence Review Committee.

1. In accordance with Virginia law, whenever the Institutional Title IX Coordinator receives a report by a Senior Deputy Title IX Coordinator or any Mandatory Reporter of an actual or alleged act of sexual violence against an EVMS student (regardless of whether it occurs on or off the EVMS campus or whether the Complainant files a Formal Complaint), the Institutional Title IX Coordinator will convene the Sexual Violence Review Committee, which consists of the EVMS Institutional Title IX Coordinator, the Senior Deputy Title IX Coordinator for Students or designee, and EVMS Chief of Police. (Note that a Mandatory Reporter does not need to make a report to the Institutional Title IX Coordinator if the alleged incident occurred off the EVMS campus, and not as part of an EVMS activity, and the Mandatory Reporter has actual knowledge that that incident has already been reported to the Institutional Title IX Coordinator, or to the Commonwealth's Attorney or to the law-enforcement agency responsible for investigating the allegations. Actual knowledge may be obtained by the student providing the Mandatory Reporter with a copy of the police report, email to the Institutional Title IX Coordinator or Commonwealth's Attorney, etc.).

2. The Sexual Violence Review Committee will, within 72 hours of notice by the Institutional Title IX Coordinator, convene to discuss the particulars of the sexual violence report, and assess the risk to the victim (and/or others on the EVMS Campus). The Sexual Violence Review Committee shall be part and have all the powers of, SMART as set forth in the Code of Virginia, and may obtain a criminal history and health record information as necessary in order to make a determination about the risk to the EVMS Community.

3. If the risk rises to the level of being a health or safety emergency, as defined by the Family Educational Rights and Privacy Act (FERPA), or if the Sexual Violence Review Committee, cannot reach an agreement about the level of risk, the allegations will be disclosed to the law enforcement agency that would be responsible for investigation of the allegations (unless such agency is located outside of the United States). Upon such disclosure, the Institutional Title IX Coordinator, or designee, shall notify the victim that the disclosure was made.

4. In cases in which the alleged act of sexual violence would constitute a felony violation of Virginia Code Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, the EVMS Chief of Police or designee shall inform the other members of the review committee and shall within 24 hours endeavor to consult with the attorney for the Commonwealth or other prosecutor responsible for prosecuting the alleged act of sexual violence and provide to such person the information received by the review committee without disclosing personally identifiable information, unless such information was disclosed to law enforcement as above. In the event that personally identifiable information is disclosed to the Commonwealth's Attorney or another prosecutor, the Institutional Title IX Coordinator, or designee, shall notify the victim that the disclosure was made.

5. In addition to the procedures listed above, SMART, EVMS Police and Public Safety and Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator will continue to investigate to take action on the matter as it relates to their responsibilities under this Policy on Resolution of Allegations of sexual harassment or other EVMS Policy, Title IX, and/or any other state or federal law.

E. Disabilities Accommodations in the Resolution Process. EVMS is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to EVMS' resolution process. Anyone needing such accommodations or support should contact the appropriate individual below who will review the request and, in consultation with the person requesting the accommodation and the applicable Senior Deputy Title IX Coordinator or Institutional Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process:

1. *Student:*

[StudentDisability@EVMS.EDU](mailto:StudentDisability@EVMS.EDU)



2. *Employed Faculty, Residents, or Staff:*

Matthew R. Schenk, PHR  
Associate Vice President of Human Resources  
735 Fairfax Ave., Suite 972  
Norfolk, VA 23507  
757.446.6043  
[schenkmr@evms.edu](mailto:schenkmr@evms.edu)

**VII. CONFIDENTIALITY**

A. Confidential Resources. If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with those individuals that EVMS has designated as a Confidential Resource. All Confidential Resources will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediate threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

B. Federal Timely Warning Obligations.

1. Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, EVMS must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

2. EVMS will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

C. Federal Statistical Reporting Obligations. Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes under the Clery Act:

1. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

2. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

3. VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and

4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with EVMS Police regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

## **VIII. RECORDKEEPING**

A. EVMS will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and transcripts of recordings required under federal regulation;

2. Any disciplinary sanctions imposed on the Respondent;

3. Any remedies provided to the Complainant designed to restore or preserve equal access to EVMS' education program or activity;

4. Any appeal and the result therefrom;

5. Any Informal Resolution and the result therefrom;

6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution or participates in the Formal Grievance Process. EVMS will make these training materials publicly available on our Title IX website; and

7. Any actions, including any supportive measures, taken in response to a Notice or Complaint of Policy Violation or Formal Complaint, including:

a. The basis for all conclusions that the response was not deliberately indifferent;

b. Any measures designed to restore or preserve equal access to EVMS' education program or activity; and

c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

B. EVMS will also maintain any and all records in accordance with state and federal laws.

## **IX. REVISIONS**

A. This Policy and procedures supersede any previous policy (ies) addressing sexual harassment, sexual misconduct, discrimination, and/or retaliation including Title IX Sexual Harassment and will be reviewed annually by the Institutional Title IX Coordinator in conjunction with the Senior Deputy Title IX Coordinators.

B. EVMS reserves the right to make changes to this policy as necessary, and once those changes are posted online, they are in effect.

C. During the Informal Resolution or Formal Grievance Process, the Institutional Title IX Coordinator may make or approve minor modifications to procedures that do not materially jeopardize the fairness owed to any party at her/his discretion, such as to accommodate summer schedules. The Institutional Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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

E. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally. Nothing in this policy should be deemed as an admission that any particular law or legal obligation applies.

## **APPENDIX A - FORMAL GRIEVANCE PROCESS**

### **I. INTRODUCTION**

The process outlined in this Formal Grievance Process apply only to qualifying allegations of Title IX Sexual Harassment (including sexual assault, dating violence, domestic violence and stalking) as defined in the Policy on Resolution of Allegations of Sexual Harassment (the “Policy”) and involving faculty, residents/fellows, staff employed by EVMS or students currently participating in an EVMS educational program or activity.

Conduct that does not meet the definition of Title IX Sexual Harassment as set forth in the Policy, or that falls outside of EVMS’ jurisdiction, or when the Complainant does not wish to pursue a Formal Complaint, may be addressed through procedures described in the applicable Code of Conduct or the applicable Human Resources, Graduate Medical Education, Faculty Affairs or Student Affairs policies<sup>1</sup>.

### **II. DEFINITIONS**

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

B. Complainant. Means an individual who is alleged to be the victim of conduct that could constitute harassment, discrimination, or retaliation governed by this Formal Grievance Process.

C. Formal Complaint. Means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment based on sex, or retaliation for filing a Title IX Sexual Harassment complaint against a Respondent and requesting that EVMS investigate the allegation.

D. Day. Means a business day when EVMS is in normal operation.

E. Education Program or Activity. Means locations, events, or circumstances where EVMS exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs.

F. Final Determination. Means a conclusion by the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.

G. Finding. Means a conclusion by the standard of proof that the conduct did or did not occur as alleged.

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<sup>1</sup> In addition, this process shall only apply to alleged conduct that occurred on or after August 14, 2020. Conduct that occurred prior to this date would be governed by prior EVMS policy and procedure, although EVMS reserves the right to utilize some or all of this procedure as deemed necessary and appropriate under the circumstances.

H. Grievance Process Pool. Means any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though generally not at the same time or with respect to the same case).

I. Hearing Decision-maker or Panel. Means those who have decision-making and sanctioning authority within the Formal Grievance Process. EVMS will appoint either (1) a single decision maker from the Grievance Process Pool, (2) a three-person panel from the Grievance Process Pool<sup>2</sup>, or (3) a sole External Hearing Decision-maker to adjudicate Hearings under the Procedures. EVMS retains the sole discretion in determining if a Panel or Sole External Hearing Decision-maker will be utilized. EVMS will ensure that the Panel or Sole Hearing Decision-maker have had the requisite training and relevant experience.

J. Investigator. Means the person or persons charged by EVMS with gathering facts about allegations of sexual harassment, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence. The Title IX Coordinator or designee will assign an internal and/or external (third party) Investigator to conduct a prompt, thorough, fair, and impartial investigation. EVMS retains the authority and has the sole discretion in determining when to assign an internal and/or external (third party) Investigator. The assigned Investigator will have training and experience investigating allegations of Prohibited Conduct.

K. Jurisdiction. EVMS has jurisdiction over sexual harassment that occurred in EVMS employment or educational activities; on the EVMS Campus or property owned or controlled by EVMS; or during an EVMS sponsored event as more fully described in Section III(B) below.

L. Parties. Means the Complainant(s) and Respondent(s), collectively.

M. Policy. Means Policy on Resolution of Allegations of Sexual Harassment.

N. Remedies. Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to EVMS' educational program.

O. Respondent. Means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

P. Resolution. Means the result of either an Informal Resolution or Formal Grievance Process.

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<sup>2</sup> EVMS reserves the right to have the three-person panel include one external decision maker where necessary and/or appropriate.

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Q. Sanction. Means a consequence imposed by EVMS on a Respondent who is found to have violated this policy.

R. Sexual Harassment. Means Title IX Sexual Harassment as outlined in the Policy.

S. Supportive Measures. Refers to individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure educational access, protect safety, or deter sexual harassment.

T. Title IX Coordinator. References to Title IX Coordinator throughout this Formal Grievance Process means the Senior Deputy Title IX Coordinator of Students, the Senior Deputy Title IX Coordinator of Employees and/or the Institutional Title IX Coordinator, as applicable. It may also encompass a designee(s) of the Title IX Coordinator for specific tasks.

U. Title IX Team. Means the Title IX Coordinator, an Investigator, and/or any member of the Grievance Process Pool. In certain circumstances, this may include an appropriately trained third party.

### **III. ADMINISTRATIVE MATTERS**

A. Formal Complaint and Initial Assessment. In order for this Formal Grievance Process to apply, all of the following must be met:

1. The Complainant must have filed a Formal Complaint as outlined in the Policy on Resolution of Sexual Harassment.

2. The Title IX Coordinator must have, at the conclusion of an initial assessment of the facts, determined that:

- a. This is an allegation of Title IX Sexual Harassment; and
- b. EVMS has jurisdiction as outlined below.

B. Jurisdiction.

1. The Formal Grievance Process applies to conduct alleged in a Formal Complaint that takes place:

- a. In the employment or education program and activities of EVMS;
- b. On the EVMS campus or on property owned or controlled by EVMS;
- c. At EVMS sponsored events; and

d. Within the United States.

2. Further, the Respondent must be a member of the EVMS community in order for EVMS policies to apply. EVMS reserves the right to apply the Formal Grievance Process to the effects of off-campus misconduct when, in the sole discretion of EVMS it is determined that the conduct affects a substantial EVMS interest.

3. Regardless of where the conduct occurred, EVMS will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

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

5. Supportive measures, remedies, and resources may be accessible to the Complainant by contacting the applicable Senior Deputy Title IX Coordinator or the Institutional Title IX Coordinator.

6. In addition, EVMS may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from EVMS property and/or events.

7. Certain complaints that meet some or all of the factors described above may nevertheless be determined to not be covered by Title IX. In such cases, the matter will generally be referred for handling under other policies and procedures. EVMS will endeavor to follow then current guidance when determining whether Title IX applies to a complaint or Formal Grievance.

C. Resolution Timeline. EVMS will make a good faith effort to complete the Formal Grievance Process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Institutional Title IX Coordinator, who will generally provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

#### **IV. FORMAL GRIEVANCE PROCESS POOL**

A. Members. The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool may be selected from individuals inside or outside of EVMS and will be announced in an annual distribution of this policy to all current and prospective members of the EVMS community. EVMS reserves the right to replace Pool members

who may be unable or unwilling to serve and current members of the Pool will be listed on the EVMS Title IX webpages.

B. Pool Roles. With the exception of the Title IX Coordinator role, members of the Pool can serve in one or more of the following roles, at the direction of the Institutional Title IX Coordinator and provided that they do not act in a conflicting role during the Formal Grievance Process. The description of duties is not meant to be all encompassing.

1. *Title IX Coordinators*. To provide appropriate intake of and initial guidance pertaining to complaints and to perform or assist with initial assessment as well as to coordinate the overall process for each Formal Complaint.

2. *Advisor*. To act as an Advisor to a party.

3. *Mediator*. To serve in a facilitation role in Informal Resolution or other appropriate resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices).

4. *Investigator*. To investigate Formal Complaints.

5. *Hearing Facilitator*. To serve as a hearing facilitator, assist with process administration, but with no decision-making role.

6. *Decision Maker*. To serve as a Decision-maker regarding the complaint.

7. *Appeal Decision Maker*. To serve as an Appeal Decision-maker

C. Pool Member Training. Internal Pool members will receive annual training on their respective role(s) which may include, but is not limited to:

1. The scope of EVMS' policies, including the scope of EVMS' education programs and activities;

2. How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability;

3. Implicit bias;

4. Disparate treatment and impact;

5. Reporting, confidentiality, and privacy requirements;

6. Applicable laws, regulations, and federal regulatory guidance;



7. How to implement appropriate and situation-specific remedies;
8. How to investigate in a thorough, reliable, and impartial manner;
9. How to uphold fairness, equity, and due process;
10. How to weigh evidence;
11. How to conduct questioning;
12. How to assess credibility;
13. Impartiality and objectivity;
14. How to render findings and generate clear, concise, evidence-based rationales;
15. The definitions of all offenses;
16. How to apply definitions used by EVMS with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with EVMS policies;
17. How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes;
18. How to serve impartially by avoiding prejudice of the facts at issue, conflicts of interest, and bias;
19. Any technology to be used at a live hearing;
20. Issues of relevance of questions and evidence including the application of rape shield protections;
21. Issues of relevance to create an investigation report that fairly summarizes relevant evidence;
22. How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations; and
23. Recordkeeping. Materials used to train all members of the Pool will also be posted on the EVMS Title IX website. EVMS shall also ensure that all external pool members have training appropriate to their role.

**D. Ensuring Impartiality.**

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

2. The Institutional Title IX Coordinator manages the Pool and acts with independence and authority free from bias and conflicts of interest. The Institutional Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Pool are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

3. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Institutional Title IX Coordinator (or the EVMS General Counsel, when applicable) will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with: EVMS General Counsel, [purcelsr@evms.edu](mailto:purcelsr@evms.edu), 446-7250. Concerns of bias or a potential conflict of interest with any member of the Pool should be raised with the Institutional Title IX Coordinator.

**E. Allegations of Misconduct or Discrimination by a Member of the Title IX Team.**

1. Reports of misconduct or discrimination committed by the Institutional Title IX Coordinator should be reported to EVMS General Counsel, [purcelsr@evms.edu](mailto:purcelsr@evms.edu), 446-7250.

2. Reports of misconduct or discrimination committed by a Senior Deputy Title IX Coordinator or any member of the Pool reported to the Institutional Title IX Coordinator, [TIX@evms.edu](mailto:TIX@evms.edu), 446-6008.

**V. NOTICE OF INVESTIGATION AND ALLEGATIONS**

A. Assignment of Investigators. Generally, within five (5) business days of determining that an investigation should proceed, the Title IX Coordinator shall appoint one or more Pool members (typically a team of two Investigators) to conduct the investigation with one Investigator to be designated as the lead (“Lead Investigator”).

B. The NOIA. Generally, the Lead Investigator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to

identify and choose an Advisor as outlined below. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

C. Contents. The NOIA will generally include (but will not necessarily be limited to):

1. A meaningful summary of all of allegations,
2. The identity of the involved parties (if known),
3. The precise misconduct being alleged,
4. The date and location of the alleged incident(s) (if known),
5. The specific policies implicated,
6. The right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party.
7. A description of the applicable procedures,
8. A statement of the potential sanctions/responsive actions that could result,
9. A statement that EVMS presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
10. A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
11. A statement about EVMS' policy on retaliation,
12. Information about the privacy of the process,
13. Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
14. A statement informing the parties that EVMS' Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
15. Detail on how the party may request disability accommodations during the interview process,
16. A link to EVMS' VAWA Brochure,

17. The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and

18. An instruction to preserve any evidence that is directly related to the allegations.

D. Amendments and Updates. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

E. Delivery. Generally, all NOIAs will be made in writing and may be delivered by one or more of the following methods: hand delivery in person or emailed to the parties' EVMS-issued email or designated accounts. Once emailed, and/or received in-person, notice will be presumptively delivered.

F. Counterclaims.

1. EVMS is obligated to ensure that the Formal Grievance Process is not abused for retaliatory purposes. EVMS permits the filing of counterclaims but uses an initial assessment as described in Section III(A) of this Formal Grievance Process to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead.

2. Counterclaims determined to have been reported in good faith will be processed using the Formal Grievance Procedures outlined herein. Investigation of such claims may take place after resolution of the underlying initial allegation at the discretion of the Title IX Coordinator, in which case a delay may occur.

3. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

4. Counterclaims made with retaliatory intent will not be permitted and will be considered retaliatory and may constitute a violation of the Policy.

5. Where a counterclaim involves alleged conduct that falls outside the scope of Title IX, EVMS may refer the counterclaim for handling under other policies and procedures.

## **VI. ADVISORS**

A. Right to an Advisor. The Complainant and the Respondent may each have one Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

**B. Who can Serve as an Advisor.**

1. The Advisor can be a friend, mentor, family member, attorney, advocate, support person or anyone else that a party desires to serve as their Advisor as long as the Advisor does not have an institutionally conflicting role (such as a Title IX Coordinator with a role in the matter or an individual who will implement sanctions), and so long as the Advisor is available (able to dedicate appropriate time to the matter). While the parties may choose an advisor who is also a witness, they should be aware that doing so will create potential for bias and conflict of interest, which will be considered by the hearing Decision-maker(s).

2. The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from EVMS, the Advisor will be trained by EVMS and be familiar with EVMS' resolution process. If the parties choose an Advisor from outside the pool of those identified by EVMS, the Advisor may not have been trained by EVMS and may not be familiar with EVMS policies and procedures. EVMS cannot, however, guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, EVMS is not obligated to provide an attorney.

C. Expectations of an Advisor. EVMS generally expects an Advisor to adjust their schedule to allow them to attend EVMS meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. EVMS may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

D. Expectations of the Parties with Respect to Advisors. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). In addition, the parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time and must inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

**E. Advisor's Role in Meetings and Interviews.**

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

interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and EVMS' policies and procedures.

2. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except to conduct cross-examination during a hearing proceeding.

3. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. However, the Advisor should not direct the witness how to answer or otherwise improperly interfere with the party providing accurate responses.

F. Advisors in Hearings/EVMS-Appointed Advisor.

1. Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses.

2. If a party does not have an Advisor for a hearing, EVMS will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor.

3. If the party's Advisor will not conduct questioning, EVMS will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

G. Sharing Information with the Advisor.

1. Parties may share information directly with their Advisor if they wish. Doing so may help the parties participate more meaningfully in the resolution process. The parties may also wish to have EVMS share documentation and evidence related to the allegations with their Advisors.

2. To do so the party must complete and sign a consent form that authorizes EVMS to release information to the Advisor before EVMS will share records. If a party changes Advisors, it is assumed that consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured.

3. If a party requests that all communication be made through their attorney Advisor, EVMS generally will not comply with that request during the investigation phase.

H. Privacy of Records. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by EVMS. EVMS may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by EVMS' privacy requirements.

I. Advisor Violations of EVMS Policy.

1. All Advisors are subject to EVMS policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address EVMS officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding (other than a hearing) and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during cross examination in a hearing proceeding.

2. Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role, if any.

## **VII. INFORMAL RESOLUTION**

A. Informal Resolution. Informal Resolution can take place after the delivery of the NOIA and can consist of (without limitation) one of the following approaches:

1. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

2. When the parties agree to resolve the matter through an alternate resolution mechanism (such as restorative mechanisms), usually before the Investigation begins.

3. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-Investigation).

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

5. The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the parties:

1. The parties' amenability to Informal Resolution;
2. Likelihood of potential resolution, taking into account any power dynamics between the parties;
3. The parties' motivation to participate;
4. Civility of the parties;
5. Results of a violence risk assessment/ongoing risk analysis;
6. Disciplinary history;
7. Whether an emergency removal is needed;
8. Skill of the Informal Resolution facilitator with this type of allegation;
9. Complaint complexity;
10. Emotional investment/capability of the parties;
11. Rationality of the parties;
12. Goals of the parties;
13. Adequate resources to invest in Informal Resolution (time, staff, etc.).

6. The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Coordinator and EVMS will generally 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.

B. Privacy. Informal Resolution proceedings are private. All persons present at any time during the Informal Resolution process are expected to maintain the privacy of the proceedings in accordance with EVMS policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. EVMS encourages parties to discuss any sharing of information with their Advisors before doing so, and must avoid any sharing of information that is retaliatory or independently violates EVMS policy.

C. Resolution Decisions. The Title IX Coordinator will maintain records of any resolution that is reached under Informal Resolution and shall provide a copy of the Informal Resolution parties. Failure to abide by the resolution may result in appropriate responsive/disciplinary actions. Results of Formal Complaints resolved by Informal Resolution are not appealable.

## **VIII. INVESTIGATION**

### **A. Timeline**



1. Investigations are generally completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. EVMS will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

2. The start of any Informal Resolution shall generally stop the clock for the Investigation.

3. EVMS action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced. However, EVMS may undertake a short delay in its investigation (typically several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions and or other reasons deemed necessary by the Title IX Coordinator. In such event, EVMS will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. EVMS will promptly resume its investigation and resolution process as soon as feasible. During such a delay, EVMS will implement supportive measures as deemed appropriate.

**B. Investigative Steps.**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations typically involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

1. Determine the identity and contact information of the Complainant;
2. In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures;
3. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated;
4. Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;

5. 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;
6. Meet with the Complainant to finalize their interview/statement, if necessary
7. Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations;
8. Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
9. Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible;
10. 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;
11. Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
12. Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) 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;
13. Complete the investigation promptly and without unreasonable deviation from the intended timeline;
14. Provide regular status updates to the parties throughout the investigation;
15. 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;
16. Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included. The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;
17. 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 draft investigation

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 EVMS does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked or otherwise notated on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor). The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;

18. The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should generally document all rationales for any changes made after the review and comment period;

19. The Investigator(s) shares the report with the Title IX Coordinator and (where deemed appropriate) legal counsel for their review and feedback; and

20. The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

C. Witnesses.

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

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

3. Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s).

D. Recordings. Investigators may record Investigation interview in lieu of taking hand written notes. No other audio or video recording of any kind will be permitted during

Investigation meetings. In such events, the recording will be transcribed and provided to the parties for review.

E. Evidentiary Considerations in the Investigation. The investigation generally does not consider incidents not directly related to the possible violation, unless they evidence:

1. A pattern;
2. The character of the parties; or
3. Proof 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.

## **IX. PRE-HEARING PROCEDURES**

A. Referral for Hearing. Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

B. Appointment of Decision Maker.

1. The Title IX Coordinator will select an appropriate Decision-maker(s) from the Pool.
2. EVMS may designate (1) a single internal Decision-maker from the pool, (2) a single external Decision-maker, or (3) a panel of three Decision-makers from the pool (one Decision-maker may be external). EVMS reserves the right and discretion to determine who the Decision-maker or Decision-makers will be. The single Decision-maker will also chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.
3. The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.
4. Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.
5. The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

C. Scheduling.

1. The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline. During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

2. Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Formal Grievance Process) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by EVMS and remain within the 60-90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student with matters pending under the Formal Grievance Process is not in good standing to graduate.

D. Joint Hearings. In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

E. Notice. No less than ten (10) business days prior to the hearing, the Chair, or designee, will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:

1. A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

2. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.

3. A description of any technology that will be used to facilitate the hearing.

4. Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a

party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

5. A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

6. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

7. A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.

8. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, so that EVMS can appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.

9. A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.

10. An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.

11. An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

12. That parties cannot bring mobile phones/devices into the hearing.

F. Alternative Hearing Participation Options. If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made. In such instance, or if circumstances beyond the control of parties should make an in person hearing impractical, the Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

G. Pre-Hearing Preparation.

1. The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

2. Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or provided a written statement as approved by the Investigator, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

3. The parties will be given a list of the names of the Decision-maker(s) generally at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one Day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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

#### H. Pre-Hearing Meetings.

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

2. The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

3. At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

4. Pre-hearing meeting(s) will not be recorded.

## **X. HEARING PROCEDURES**

A. Hearing Participants. Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

### **B. Introductions and Explanation of Procedure**

1. The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

2. The Chair or hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

C. The Chair will answer all questions of procedure.

D. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

### **E. Investigator Presents the Final Investigation Report**



1. The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

2. Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

F. Testimony and Questioning.

1. Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and Advisors will have an opportunity to ask questions of the other parties and/or witnesses (“cross-examination”).

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

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

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

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

G. Refusal to Submit to Cross-Examination and Inferences. Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

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

## **XI. EVIDENCE**

A. Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. However, the hearing generally does not consider:

1. Incidents not directly related to the possible violation, unless they evidence a pattern;
2. The general character of the parties; or
3. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
4. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming EVMS uses a progressive discipline system. This information is generally only considered at the sanction stage of the process, and is not shared until then.
5. The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.
6. The Decision-maker(s) also has the authority to hear and make determinations on all allegations of any additional alleged policy violations that have occurred in

concert with sexual harassment, even though those collateral allegations may not specifically fall within the Policy on Resolution of Allegations of sexual harassment.

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

C.

## **XII. POST-HEARING DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF**

A. The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

B. When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may, at their discretion, consider the statements, but they are not binding.

C. The Decision-maker(s) will review the statements and any pertinent conduct history provided by an appropriate administrator and will recommend the appropriate sanction(s)(in consultation with other appropriate administrators, as required).

D. The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any recommended sanctions. This statement is typically three (3) to five (5) pages in length and will generally be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

E. Recordings. Hearings (but not deliberations) are recorded by EVMS for purposes of review in the event of an appeal. The parties may not record the proceedings and no other

unauthorized recordings are permitted. The Decision-maker(s), the parties, their Advisors, and appropriate administrators of EVMS will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **XIII. MANDATORY AND DISCRETIONARY DISMISSAL**

A. Mandatory Dismissal. EVMS must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by EVMS (including buildings or property controlled by recognized student organizations), and/or EVMS does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. 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 EVMS.

B. Discretionary Dismissal. EVMS may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by EVMS; or
3. Specific circumstances prevent EVMS from gathering evidence sufficient to reach a determination as to the Formal complaint or allegations therein.

C. Notice of Dismissal and Appeal. Upon any dismissal, EVMS will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal outlined below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

D. Withdrawal or Resignation While Charges Pending.

1. *Students*.

- a. Should a student Respondent decide to not participate in the Formal Grievance Process, the process generally proceeds absent their participation to a reasonable resolution.
- b. Should a student Respondent permanently withdraw from EVMS, the resolution process ends, as EVMS no longer has disciplinary jurisdiction over the withdrawn student. The student who withdraws or leaves while the process is pending generally may not return to EVMS. Such exclusion applies to all campuses of EVMS. A hold will be placed on their ability to be readmitted. They may also be barred from EVMS property and/or events.
- c. If a student has an allegation pending under the Policy on Resolution of Allegations of sexual harassment, EVMS may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.
- d. EVMS 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 harassment, discrimination, and/or retaliation.
- e. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and the student Respondent will generally not be permitted to return to EVMS until such time as the Formal Grievance Process is complete.

2. *Employees.*

- a. Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as EVMS no longer has disciplinary jurisdiction over the resigned employee.
- b. The employee who resigns with unresolved allegations pending is generally not eligible for rehire with EVMS, and the records retained by the Senior Deputy Title IX Coordinator for Employees and the Institutional Title IX Coordinator will reflect that status. Employee's personnel file will generally be notated that the employee resigned while a disciplinary proceeding was pending.
- c. EVMS will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

#### **XIV. SANCTIONS**

A. Factors. Factors considered when determining a sanction/responsive action may include, but are not limited to:

1. The nature, severity of, and circumstances surrounding the violation(s)
2. The Respondent's disciplinary history
3. Previous allegations or allegations involving similar conduct
4. The need for sanctions/responsive actions to bring an end to the sexual harassment
5. The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment
6. The need to remedy the effects of the sexual harassment on the Complainant and the community
7. The impact on the parties
8. Any other information deemed relevant by the Decision-maker(s)

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

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

D. Long-Term Remedies/Other Actions.

1. Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Institutional Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- a. Referral to counseling and health services
- b. Referral to the Employee or Student Assistance Program
- c. Education to the individual and/or the community
- d. Permanent alteration of housing assignments

- e. Permanent alteration of work arrangements for employees
- f. Provision of campus safety escorts
- g. Climate surveys
- h. Policy modification and/or training
- i. Provision of transportation accommodations
- j. Implementation of long-term contact limitations between the parties
- k. Implementation of adjustments to academic deadlines, course schedules, etc.

2. At the discretion of the Institutional Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Institutional Title IX Coordinator will address any remedies owed by EVMS to the Respondent to ensure no effective denial of educational access.

3. EVMS will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair EVMS' ability to provide these services.

**E. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions.**

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

2. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including but not limited to suspension, expulsion, and/or termination from EVMS and may be noted on a student's official transcript.

3. A suspension in this case will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

**XV. OUTCOME**

**A. Notice.**

1. The Title IX Coordinator will work with the Decision-Maker/Chair to prepare a Notice of Outcome. The Notice of Outcome will generally:

- a. Articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by EVMS from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held;
- b. Specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent EVMS is permitted to share such information under state or federal law; any sanctions issued which EVMS is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to EVMS' educational or employment program or activity, to the extent EVMS is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).
- c. The Notice of Outcome will also include information on when the results are considered by EVMS to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

2. The draft notice may be reviewed by EVMS legal counsel. Once final, then the Title IX Coordinator will provide the Notice of Outcome to the parties and their Advisors within 7 business days of receiving the Decision-maker(s)' deliberation statement. The Notice of Outcome may be delivered by one or more of the following methods:

- a. In person;
- b. Mailed to the local or permanent address of the parties as indicated in official EVMS records; or
- c. Emailed to the parties' EVMS-issued email or otherwise approved account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **XVI. APPEALS**

A. Request for Appeal. Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Institutional Title IX Coordinator or Senior Deputy Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.



B. Appeal Chair/Panel. An Appeal Panel or single Appeal Chair will Chair the appeal. EVMS retains the sole discretion in determining if an Appeal Panel or single Appeal Chair will be utilized. EVMS will ensure that the Appeal Panel or single Appeal Chair have had the requisite training and relevant experience.

C. Review for Standing. The Request for Appeal will be forwarded to the Appeal Panel or Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the appeal was timely filed and whether it meets the grounds for appeal.

D. Grounds for Appeal. Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. 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
3. The Institutional 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 Formal Grievance Process, that request will be denied by the Appeal Panel or Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

E. Appeal Acceptance.

1. If any of the grounds in the Request for Appeal meet the grounds as outlined above, then the Appeal Panel or Chair will notify the other party(ies) and their Advisors, the Institutional Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

2. The other party(ies) and their Advisors, the Institutional Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 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 Chair to all parties for review and comment.

3. 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 Appeal Panel or Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 7 business days, which will be circulated for review and comment by all parties.

F. Appeal Consideration.

1. Neither party may submit any new requests for appeal after this time period. The Appeal Panel or Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Chair will render a decision generally in no more than 7 business days, barring exigent circumstances. Decisions by the Chair will be made by applying the preponderance of the evidence standard. 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 sanction(s)/responsive action(s) only if there is a compelling justification to do so.

2. Appeals are not intended to provide for a full re-hearing of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal. Further, an appeal is not an opportunity for the Appeal Panel or Chair to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

3. The Appeal Panel or Chair may consult with the Institutional Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

4. Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

5. Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final.

6. In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Panel or Chair may order a new hearing with a new Decision-maker(s).

7. The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.

8. In cases in which the appeal results in reinstatement to EVMS or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

G. Appeal Outcome. Notice of Appeal Outcome will:

1. Be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision.

2. Specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which EVMS is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent EVMS is permitted to share under state or federal law.

3. Be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' EVMS-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

**H. Sanction Status During Appeal.**

1. Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

2. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures as outlined in the Policy on Resolution of Allegations of Sexual Harassment for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

3. EVMS may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

SUBSTANTIAL PORTIONS OF THIS POLICY AND THE FORMAL COMPLIANT PROCESS  
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