

Thomas Edison State University

Title IX and Grievance Procedures

Title IX of the Education Amendments of 1972, and its implementing regulations, prohibit discrimination on the basis of sex in education programs or activities at higher education institutions receiving federal financial assistance. Title IX, therefore, protects all students from sexual violence/misconduct, regardless of race, national origin, disability, part-time/full-time status, sexual orientation or gender identity. Anyone who has experienced, witnessed or knows about sexual violence/misconduct is encouraged to seek help and report the incident as soon as possible.

The University will ensure that the victim's personally identifying information will not be included in any public record keeping. Internal complaints should be made to the University's Title IX Coordinator:

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Title IX Coordinator

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The Title IX coordinator administers the complaint investigation and monitors the disposition of complaints.

The procedures set forth below afford a prompt response to reports of sexual misconduct, maintain confidentiality and fairness consistent with applicable legal requirements, and impose appropriate sanctions on violators of this Policy. The Title IX Coordinator, or her designee, conducts thorough and impartial investigations into the facts of a case including interviewing the Complainant, Respondent, witnesses or others who may have relevant information, and collecting any other evidence deemed relevant to a case.

I. Definitions of Sexual Misconduct

Dating Violence

Threatened or actual physical or sexual violence committed by a person,

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship will be determined based on a consideration of the following factors:
 - (i) the length of the relationship;
 - (ii) the type of relationship; and

- (iii) the frequency of interaction between the people involved in the relationship. Dating violence includes the use or threat of physical force or restraint carried out with the intent of causing pain or injury to another within a dating relationship.

Dating Partner

Any person involved in an intimate association with another individual that is primarily characterized by the expectation of affectionate involvement, whether casual, serious, or long-term.

Domestic Violence:

Threatened or actual physical or sexual violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person cohabitating with or having cohabitated with the victim as a spouse, or by any other person against a victim who is protected from that person's acts under the domestic or family violence laws.

Examples of behavior that may constitute domestic or dating violence include (but are not limited to) the following:

- Hitting, punching, pinching, slapping, or choking someone with whom the person is intimately involved.
- Violating a protective order.
- Touching an intimate partner sexually without the person's consent.

"Domestic violence" can include:

- Homicide
- Assault
- Terroristic threats
- Kidnapping
- Criminal restraint
- False imprisonment
- Sexual assault
- Criminal sexual contact
- Lewdness
- Criminal mischief
- Burglary
- Criminal trespass
- Harassment
- Stalking

Sexual Assault

Often referred to as rape, sexual assault is legally defined differently in each state. In New Jersey, the law defines sexual assault as "the penetration, no matter how slight, in which physical force or coercion is used or in which the victim is physically or mentally incapacitated".

- Non-Consensual Sexual Contact (or at empts to commit) defined as any intentional sexual touching with any object(s) or body part that is without consent and/or by force. Sexual contact is defined as kissing or touching others intimate parts. Intimate parts may include, but are not limited to, a person's groin, but ocks, mouth or breasts.
- Non-Consensual Sexual Intercourse (or at empts to commit) defined as penetration, no mat er how slight, of a person's vagina, anus or mouth with any object(s) or sex organ that is without consent and/or by force.

Consent

Age, physical impairment, and mental impairment all contribute to a person's ability to give consent. A person must be 16 years of age (in New Jersey) to legally consent to sexual activity. A person cannot give consent to sexual activity with someone who has "the duty to care" for them unless they are over the age of 18. Individuals that fall into "the duty to care" category would include parents or guardians, and those in any type of formal supervisory role. If individuals are at least 13 years old, but less than 16 years old they can legally consent to sexual activity with a partner who is not more than 4 years older than themselves. An individual who is physically or mentally impaired, generally, cannot give consent to sexual activity. Physical or mental impairment includes: visual, speech or hearing impaired, a person with a cognitive impairment; a person who is unconscious or sleeping; or a person who is voluntarily or involuntarily under the influence of alcohol or other substance(s).

Sexual Exploitation

Occurs when a person takes advantage of another without that individual's consent for the initiator's own advantage or benefit or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Sexual Harassment

Unwelcome conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment also may include inappropriate touching, suggestive comments, and public display of pornographic or suggestive calendars, posters, or signs where such images are not connected to any legitimate academic or workplace purpose. Sexual Harassment also exists when: (1) submission to conduct is made as express or implicit term or condition of an individual's employment, performance, appraisal, or evaluation of academic performance; or (2) un-lawful conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, humiliating, or offensive working or learning environment.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. Examples of behavior that would constitute stalking may include the following:

- Spreading lies about a person;
- Repeatedly communicating with a person who doesn't wish to be communicated with;
- Follow a person or lying in wait for another; or
- Sending unwanted gifts to another.

II. Interim and/or Protective Measures

The University is required to and will take interim and/or protective measures at any point during an investigation. These actions are designed to eliminate the harassment/sexual misconduct and prevent its recurrence. These measures may include, but are not limited to, no contact orders, academic accommodations, changes in supervisor or work location, social restrictions, changes in parking locations, increased security, and/or emotional and other support. An accused student may be issued an Interim Suspension (i.e. suspension from classes, and other privileges or activities or from the University until resolution of a case.

If the Respondent is a member of the University, a No Contact Order may be issued to all parties involved by the University. This will prohibit communication between the parties, both verbally and in writing. If a student has been the victim of domestic or dating violence, stalking or sexual abuse, they also should consider obtaining a restraining order from the New Jersey Superior Court.

The University has authority to issue an interim suspension to a Respondent from its program or activity on an emergency basis where the University determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered harassment justifies a removal.

interim suspension remains in effect until responsibility and sanctions have been determined and any appeals have been resolved.

Upon placing the student on interim suspension, the dean or designee must immediately forward a formal complaint to the Title IX Coordinator.

The Title IX Coordinator will then assemble a student conduct committee, not including the Coordinator, and the Committee will conduct a hearing within 15 calendar days of the notice to the student of the interim suspension.

A student placed on interim suspension may request reconsideration of the interim suspension in writing to the dean or his designee and must provide evidence that s/he is not a risk to safety and order. The dean or designee will review the request and any information contained therein. If the dean or his designee upholds the interim suspension after reviewing the student request, the student may appeal that decision, in writing, within five (5) days of receiving notice to the Office of the Provost explaining why the decision was incorrect.

Administrative Leave

TESU has the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Process, consistent with applicable collective bargaining agreements, employee handbooks and University policies and procedures.

Right to Pursue Criminal Charges

After receiving a report, the Title IX Coordinator will inform individuals of their right to file an incident report with law enforcement. Although the University strongly encourages all members of its community to report violations of this Policy to law enforcement, it is the Complainant's choice whether to make such a report and she or he has the right to decline involvement with the police.

The University's Title IX Coordinator (or designee) will assist any complainant with notifying local police or other law enforcement authorities, if they desire.

A complainant may choose NOT to have law enforcement contacted and no report filed BUT he or she may still have forensic evidence collected. (Note: The Complainant later may choose to file a police report and cooperate with a criminal investigation.) Victims of sexual assault are encouraged to request and cooperate fully with an investigation so the possibility of filing criminal charges remains an option if they later chose to do so.

There is no statute of limitations on reporting a sexual assault to the police department. A survivor can make a report at any time. The New Jersey State Police may be contacted for additional information concerning sexual assault reports.

A complainant may file a police incident report and ask that the investigation and charges be pursued immediately. While the prosecuting attorney is still the decision-maker in whether the perpetrator is charged criminally, the Complainant can cooperate and provide as much timely information as may be possible.

III. Informal Resolution

Informal resolution is a procedure that is designed to eliminate the conduct at issue in the Formal Complaint, prevent the conduct from reoccurring, and develop remedies in a manner that meets the expressed preference of the Complainant as well as the safety of the University community without the need for a full investigation or live hearing.

Informal Resolution may not be used; however, to resolve a complaint that an employee engaged in sexual misconduct against a student; or if a Respondent previously engaged in an Informal Resolution process.

If a Complainant requests informal resolution, and the Title IX Coordinator concludes that informal resolution is appropriate, the Title IX Coordinator will offer informal resolution as an option to the Respondent(s). The parties may or may not agree to participate in informal resolution and may change their minds regarding their willingness to participate at any time during the process until a resolution is reached.

The Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Prior to engaging in informal resolution, the Respondent must be made aware of the sanctions that could be employed during the **formal** resolution process. The time frame for completion of informal resolution may vary on a case-by-case basis; however, the University will seek to complete the process

within 60 days. The University can seek an extension of up to 30 days without consent of either party, or longer with the consent of both parties.

The Respondent will not be charged with a Policy violation as part of the informal resolution process and at the conclusion of the process there is no finding that the Respondent is “responsible” or “not responsible” of a Policy violation. An admission of responsibility made by the Respondent in an informal resolution is not an indication that the University would have found the Respondent “responsible” after investigation and hearing. Further, if the parties agree to an informal resolution process, sanctions will not be imposed on either party. Instead, the parties will explore and agree to appropriate remedies.

The University may not offer an informal resolution process unless a Formal Complaint is filed by the Complainant. Any final resolution pursuant to informal resolution will be documented and kept for seven (7) years. No recording of the informal resolution process will be made and all statements made during the informal resolution process cannot be used for or against either party. Should the parties begin (or resume) a formal grievance process, the Hearing Board and Appeals Officer cannot consider statements made by either party during informal resolution.

Notice

The Respondent has ten (10) calendar days from receiving an invitation from the Title IX Coordinator to participate in informal resolution to reply in writing as to whether he or she wishes to participate. The Title IX Coordinator’s written invitation to informal resolution, copied to the Complainant, will include:

- the allegations;
- an explanation of rights through the informal resolution process;
- the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations);
- any consequences resulting from participating in the informal resolution process (including the records that will be maintained or could be shared).

If a Respondent does not reply to the invitation or refuses to participate in informal resolution, the Title IX Coordinator will notify the Complainant, who will then be informed of other procedural options.

Both parties have the right to end the informal resolution process at any time prior to agreeing to a written Resolution Agreement. This would result in the University handling the matter under the Formal Grievance Process as described below. Similarly, the parties can request to end a formal investigation and pursue informal resolution at any time prior to the issuance of determination letters to the parties.

Resolution Agreement

The terms of the informal resolution will be set forth in a written Resolution Agreement. If both Complainant and Respondent are satisfied with the proposed resolution and the Title IX Coordinator believes the resolution satisfies the University's obligation to provide a safe and non-discriminatory environment, both parties will be provided with a written Resolution Agreement. After the parties agree to the Resolution Agreement it will be implemented, and the matter will be closed. Failure to comply with an agreed upon Resolution Agreement may result in disciplinary action under the Non-Academic Code of Conduct and or other applicable University policies.

IV. The Title IX Grievance Process (“Grievance Process” or “Process”)

Formal Complaints

Filing a Formal Complaint starts the formal Grievance Process. The Grievance Process will be concluded in no longer than ninety (90) business days, excluding University holidays and unforeseen closures beyond the control of the University, after the filing of the Formal Complaint. The Process, however, may be extended for a good reason, including but not limited to, the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator with a written, signed complaint describing the alleged facts at issue. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or at an attempt to participate in, the education programs or activities at the University, including as an employee. For complainants who do not meet these criteria, the University will use other conduct policies as applicable and appropriate.

If a situation arises whereby a complainant does not wish to file a Formal Complaint, the Title IX Coordinator has the discretion to file a Formal Complaint if she feels it necessary that one be filed. The Title IX Coordinator will inform the complainant, in writing, of her determination that a formal complaint is necessary, and the complainant will not be required to participate in the Process but will receive all notices issued under this Policy.

Please note that this Policy does not prevent a complainant from seeking the assistance of state or local law enforcement.

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the Informal Resolution Process as described above.

The University may consolidate multiple Formal Complaints alleging covered sexual harassment against more than one Respondent, by more than one Complainant against one or more Respondents, by one party against the other party, or where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Jurisdiction

Prior to taking any actions, there must be a determination that the Title IX Coordinator has no conflict or bias with regard to either the Complaint(s) or Respondent(s) or generally. If there appears to be a conflict of interest, the Title IX Coordinator must recuse him or herself, and the Deputy Coordinator will assume the role of the Title IX Coordinator for purposes of the Grievance Process.

The Process applies to a complaint when all the following are met, as reasonably determined by the Title IX Coordinator:

- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in the University’s education program or activity; and
- The alleged conduct, if true, would constitute covered sexual harassment as defined in this Policy.

If all the elements are met, as determined by the Title IX Coordinator, the University will follow the Grievance Process.

Required Dismissal of a Formal Complaint

If any one of these elements is not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

Discretionary Dismissal of a Formal Complaint

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

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

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

Notice of Dismissal

Upon dismissing a Formal Complaint or allegation contained therein, the University will send writ en notice , and the reason for the dismissal, to all parties at the same time via the email addresses on file with the University Student Information System, or if any employee, via the employee’s University email address. Once the email is sent, and if no notice is received by the University that the email was unable to be sent, that will conclude the University’s notice responsibilities regarding dismissal.

Conduct That May Fall Under Multiple Policies

The Process will only apply to conduct that would constitute covered sexual harassment conduct. Other conduct alleged will not be investigated or adjudicated under this Process. Notice will be sent to the parties.

Notice of Removal

If a Formal Complaint is dismissed in accordance with this Policy, the University has the discretion and authority to investigate the allegations under any other University policy in effect at the time of the dismissal. If the University does decide to investigate the allegations or some of allegations under a different policy, it will send writ en notice of the dismissal of the Formal Complaint under the Process and that the allegations, or specific allegations, will be investigated under a different identified policy.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur no more than 15 calendar days after the University receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by the email addresses on file in the Student Information System, or if an employee, via the employee's University email address. If a party is neither a student or University employee, he or she will be contacted via email if practicable or via other reasonable means.

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

The Notice of Allegations will include:

- Notice of the University's Title IX Policy, including the Grievance Policy, and a link to where the Process can be found on the University website.
- The allegations potentially constituting covered sexual harassment, and sufficient details that are known by the University at the time the Notice is issued, such as the identities of the parties involved in the incident, including the Complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident.
- A statement that the Respondent(s) is/are presumed not responsible for the alleged conduct and that such a determination is made at the conclusion of the Process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence the University does not intend to rely upon in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant(s) or Respondent(s) that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Grievance Policy, the University will notify the parties whose identities are known of the additional allegations by their email addresses listed in the Student Information System, if students, or via University email, if employees. If the parties are neither students nor University employees, they shall be notified via email if practicable or via other reasonable means.

The parties will be provided with a reasonable time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisors

The University will provide the parties with equal access to advisors and support persons. Should any restrictions be imposed on an advisor's participation in the Process, it will be applied to all parties equally.

Students participating as Complainant or Respondent in this process may be accompanied by an Advisor to any meeting or hearing to which they are required or are eligible to attend. The Advisor, however, is not an advocate and except where explicitly stated by this Policy, Advisors shall not participate directly in the process as per University policy and practice.

The University will not intentionally schedule meetings or hearing dates where the advisors for all parties are not available, provided that the advisors act reasonably in providing available dates and work to find dates and times that meet all schedules, however, it is understood that the University has the obligation to investigate and adjudicate in a prompt timeframe under Title IX and other applicable University policies and extended delays cannot occur to accommodate an Advisor of Choice's schedule. The University Title IX Coordinator or her designee shall have the discretion to determine what constitutes a reasonable delay. The University is not obligated to delay a meeting for more than five (5) business days due to an advisor's schedule and may offer the party an opportunity to have another advisor or use one provided by the University.

Notice of Meetings and Interviews

The University will provide written notice of the date, time, location, participants, purpose of hearings, investigative interviews, or other meetings with a party, to a party who is invited or expected to participate. Notices will be provided with reasonable time for the party to prepare.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) business days for good cause provided the request is with reasonable notice and is not unduly burdensome to other parties. Good cause will be determined at the sole discretion of the University Title IX Coordinator or her designee.

The Title IX Coordinator or their designee shall have the sole discretion and authority to grant further delays in the Process.

Confidentiality

The University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Grievance Policy.

Investigation

General Rules

The Title IX Coordinator will conduct the investigations when possible; however, she may designate another individual who has been appropriately trained in her place, if necessary. The investigator will

be unbiased and free from conflicts of interest and will objectively review the complaint, any evidence, and any information from witnesses, expert witnesses, and the parties.

The University has the burden of proof and the burden of gathering evidence. This burden does not rest with either party, and either party may decide not to participate in an investigation or hearing. A decision by a party not to participate does not indicate or provide a basis for a determination of responsibility.

At no time can the University access, consider, or disclose medical records without a waiver from the party to whom the records belong or of whom the records include information.

Inspection and Review of Evidence

The parties will have equal opportunities to present witnesses, including fact and expert witnesses, and to provide other evidence. The parties will have an equal opportunity to inspect and review the evidence obtained through the investigation prior to its completion. This shall provide each party equal opportunity to meaningfully respond to the evidence gathered prior to conclusion of the investigation.

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

- evidence determined to be relevant even if not ultimately used by the University in making its determination regarding responsibility; and
- inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The University is not under any obligation to use any specific medium, technology or device to provide evidence to the parties for inspection and review and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

Once the evidence is sent to the parties, each party will have ten (10) business days to inspect and review the evidence and submit a written response, via email, to the investigator. A party is not required to submit a response to the investigator should he or she choose not to do so. If a party is unable to use email to provide a response, the party should contact the investigator immediately so alternative arrangements can be made.

If a party cannot submit a response within the ten (10) business days, he or she must contact the investigator immediately, and it will be up to the investigator to determine whether or not to grant a one-time extension for the party to submit a response. If the investigator has not heard from a party about any need for reasonable delay, the investigator will not be required to accept a submission past ten (10) business days.

The University will provide copies of each party's written response to all other parties and their advisors. Should a party not provide a written response, or if the time frame has been delayed at the reasonable one-time request of a party, the other parties will be notified of such.

The investigator will consider the parties' written responses, if any, before completing the Investigation Report. The investigator has ten (10) business days to generate a report or, alternatively, may provide the parties with written notice extending the investigation for ten (10) additional business days and explaining the reason for the extension.

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

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained during the investigation that the investigator reasonably determined not to be directly related to the allegation(s) in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid unnecessary disclosure of a student's personally identifiable information. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

Investigation Report

The investigator will create an Investigation Report that fairly summarizes relevant evidence and provide that Report to the parties and advisors, if any, at least ten (10) business days prior the hearing in an electronic format for each party's review and written response. If the investigator is not the University Title IX Coordinator, the Title IX Coordinator may assist in creating and producing the Investigation Report unless otherwise conflicted from doing so.

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

Only relevant evidence (including both inculpatory and exculpatory) will be referenced in the Investigation Report.

The Investigator may redact *irrelevant* information from the Investigation Report when that information is contained in documents or evidence that is/are determined to be otherwise relevant.

Hearing

General Rules

The University will not issue a disciplinary sanction under the Grievance Process arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through software such as Microsoft Teams or Zoom. This technology must enable participants to simultaneously see and hear each other. At its discretion, the University may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording and/or audiovisual recording. That recording will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Grievance Process. Once signed, this Agreement may not be withdrawn.

Continuances and Extensions

The University may determine that more than one hearing session or a continuance of a hearing session (a pause on the hearing until a later date or time) is needed to complete a hearing. If so, the University will notify all participants and try to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Participants in the live hearing

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

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The University may still proceed with the live hearing in the absence of a party and may reach a determination of responsibility in that party's absence.
- The University will not threaten, coerce, intimidate, or discriminate against any party in an attempt to secure the party's participation.
- The Hearing Board members cannot draw a negative inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

The Hearing Board

- The Hearing Board will consist of a panel of three decision-makers .
- No member of the Hearing Board will also have served as the Title IX Coordinator, investigator, or advisor to any party in the case. The members of the hearing board will not be eligible to participate in any appeals on the case before them.
- The members of the Hearing Board shall not have a conflict of interest or bias in favor of or against the parties in any way.
- The Board members will be trained in relevant training including issues of relevance, impartiality, Title IX policies and rules and applicable technology. The Board members should also be familiar with other potentially applicable University policies such as the Non-Academic Code of Conduct.
- Any conflicts of interest and biases on the part of the Board members will be determined by the University prior to the commencement of the live hearing however, the parties will have and may raise objections regarding a Board member's actual or perceived conflicts of interest or bias at the beginning of the live hearing. Should a Board member be determined to have a conflict or

bias at that time, the University will delay the hearing for a reasonable amount of time to obtain a new Board member to replace the member who had been disqualified.

Advisor

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The parties are not permitted to conduct cross-examination; any cross examination that a party or witness submits to must be conducted by the advisor. As a result, if a party does not select an advisor, the University will select an advisor to serve in this role for the limited purpose of conducting such cross-examination at no cost to the party.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct any cross-examination that a party or witness submits to on their behalf.
- If neither a party nor his or her advisor appears at a hearing, the University will assign an advisor to appear on behalf of that party.
- Advisors shall be subject to the University's Non-Academic Code of Conduct, and hearing procedures, and may be removed from the hearing should he or she violate those rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing.
- Witnesses have the right not to participate in the hearing free from retaliation.
- Witnesses shall be subject to the University's conduct policies. [Thomas Edison State University Non-Academic Code of Conduct Policy and Procedures](#).
- Character witnesses are permitted to testify in hearings in this Grievance Process; however, the Hearing Board has the right to assign lower weight to their testimony than to other fact based witnesses.

Hearing Procedures

For all live hearings conducted under this Grievance Process, the procedure will be as follows:

- Hearing Board Chair will open the proceeding through introduction of the matter, and explain the rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements, though opening statements are not required by either party;
- The Hearing Board Chair may ask questions of the parties and witnesses at his or her discretion and after consultation with the other Board members;

- Parties, through their advisors, will be given the opportunity for live cross-examination of any Party or Witness who is willing to be cross-examined after the Hearing Board Chair conducts his or her initial round of questioning.
- The Hearing Board Chair will have the authority to pause cross-examination, if it occurs, at any time for the purposes of asking his/her own follow up questions; and any time necessary in order to enforce the established rules.
- Should a party, through his or her advisor, choose not to cross-examine a Party or Witness who would otherwise be willing to be cross-examined, the Party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Board Chair. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Board Chair to use statements made by the Party.
- If a party or witness chooses to subject themselves to cross-examination, each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time. As stated above, Complainant(s) and Respondent(s) may not personally conduct cross-examination of each other or witnesses.
- Before a witness or party answers cross-examination questions, if cross-examination occurs, the Hearing Chair will be required to determine whether the question is relevant to the proceedings. If a question is determined to be duplicative, that question will be deemed "asked and answered," and the witness/party will not be required to answer.

No New Evidence or Witnesses During Hearing

No new evidence or witnesses may be submitted during the live hearing with limited exceptions.

If a party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the live hearing. The Hearing Board Chair will consider this request and determine (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the new evidence or witness has the burden of proving the affirmative answers to these questions by a preponderance of the evidence.

If the Hearing Board Chair answers in the affirmative to both questions, then the parties will be granted a reasonable delay in the hearing to review the evidence or prepare for questioning of the witness. The Hearing Board Chair will have sole discretion to make this decision and determine how long the delay shall be.

Review of Recording

The recording of the hearing will be available for review by the parties within ten (10) business days unless there are any extenuating or unforeseen circumstances. The recording of the hearing will not be provided directly to parties or advisors and will remain the property of the University.

Determination Regarding Responsibility

Standard of Proof

The University will use a preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy.

General Considerations for Evaluating Testimony and Evidence

Credibility

- The Hearing Board may not draw inferences regarding a party or witness credibility based on the party or witness status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.
- Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the judgment of the Hearing Board. Generally, credibility determinations should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability considering corroborating or conflicting testimony or evidence. Credibility judgments, however, may not rest on whether testimony is not linear or incomplete, or if the party or witness displays stress or anxiety.

Weighing Testimony

- **Factual Testimony:** The Hearing Board will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.
- **Expert Witnesses:** The University allow parties to call expert witnesses for direct and cross examination. While the expert witness will be allowed to testify and be cross-examined, they will be afforded lower weight relative to fact witnesses.
- **Character Witnesses:** While the character witnesses will be allowed to testify and be cross-examined if they so choose, they will be afforded low weight to any non-factual character testimony of any witness.
- **Polygraph Tests:** The University will admit and allow testimony regarding polygraph tests, also known as “lie detector tests,” and other procedures that are outside of standard use in the University’s conduct processes. While witnesses regarding processes used and outcomes will be allowed to testify and be cross-examined, they will afford lower weight relative to the testimony of fact witnesses.
- **Retaliation:** Where a party or witness conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Board may draw an adverse inference as to that party or witness credibility.

Use of privileged information

In reaching a determination, the University will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Written Decision

If there are no extenuating or unforeseen circumstances, the Hearing Chair will render a written decision (“Determination Regarding Responsibility”) within 15 business days after the conclusion of the hearing. The Determination Regarding Responsibility will be issued simultaneously to all parties by the email addresses listed in the Student Information System. The Title IX Coordinator and the Appeals Officer shall be copied on the Determination Regarding Responsibility unless otherwise conflicted, and a designee is assigned.

The Determination Regarding Responsibility will include:

- Identification of the allegations potentially constituting covered sexual harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Policy, if any, the Respondent has or has not violated;
- For each allegation there will be
 - a statement of, and rationale for, a determination regarding responsibility;
 - a statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
 - a statement of, and rationale for, whether remedies designed to restore or preserve equal access to the University’s education program or activity will be provided by the University to the Complainant;
- The University’s procedures and permitted reasons for the Complainant and Respondent to appeal the Determination of Responsibility.
- The Determination Regarding Responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Possible Sanctions and Remedies

The following sanctions may be imposed upon a determination of responsibility. All are considered disciplinary actions that will remain on file with the University during the pendency of a student’s enrollment, and for at least seven (7) years after separation.

- **Written Warning:** A written reprimand for violation of a specific nature, including a warning that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

- **Exclusion/Removal from University Activity/Event:** A student given this sanction may be barred from attending University sponsored activity and events for a specified period of time. These restrictions may be extended to participation in online events sponsored by the University.
- **Suspension:** A student may be suspended from the University for a specified period of time, dependent on the severity of the action. The student will meet with the Title IX Coordinator and any other University staff the Title IX Coordinator, in his or her sole discretion, deems appropriate prior to being reinstated at the University. The student while suspended shall not participate in any University sponsored activity and will be barred from University premises. Students suspended from the University are not entitled to refunds for tuition or fees associated with their interrupted enrollment.
- **Dismissal from the University:** Permanent separation of the student from the University. A permanent transcript notation is mandatory. Students dismissed from the University are not entitled to refunds for tuition or fees associated with their interrupted enrollment. This is reserved for the most severe of cases.
- **Postponing or Withholding of a Degree –** The University may withhold the award of a degree, otherwise earned. This is reserved for the most severe of cases.
- **Revocation of a Degree -** An awarded degree may be revoked in severe cases. This is reserved for the most severe of cases.

Determination of appropriate remedies for a complainant, if applicable, will be made on a case-by-case basis by the Title IX Coordinator. The following remedies may be available to a complainant after a determination of responsibility.

- **Academic Accommodations:** If the complainant experienced any academic detriment due to the issue or issues, academic accommodations can be provided. This might include course or assignment extensions, testing accommodations or course withdrawals without penalty.
- **No-Contact Order:** The implementation of an order stating that Respondent may not contact Complainant in any manner.
- **Counseling Services:** Providing access to counseling services for complainant to assist in any recovery that may be necessary as a result of the issue or issues at hand in the Title IX Complaint.
- **Safety Protocols:** If the complainant is on campus for any educational programs, implementing safety protocols to ensure complainant's physical safety on campus as is appropriate.

V. Appeals

How to Appeal

The Procedures on how to appeal will be provided in the Determination Regarding Responsibility or in the Dismissal of a Formal Complaint or any allegation contained therein.

The Complainant(s) or Respondent(s) may appeal in writing to the Appeals Officer:

- the University's dismissal of a Formal Complaint (or any allegations therein) and
- Determinations Regarding Responsibility

All requests for appeal must be submitted **in writing** to the Appeals Officer within ten (10) business days from the date on the letter notifying the parties of the Determination Regarding Responsibility or dismissal of a Formal Complaint. Failure to appeal within the allotted time will render the original decision final.

Appeals shall be granted for only the following:

- If the sanctions are found to be significantly disproportionate to the offense;
- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- The Title IX Coordinator, Investigator(s), or Hearing Chair/Officers had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The fact that one of the parties disagrees with the finding or sanction **does not** constitute grounds for appeal.

Notices of Appeal to Parties

The Title IX Coordinator will send the parties a written Notice of Appeal when an appeal is submitted, and both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

- If the Appeals Officer finds no grounds for an appeal, then the decision will become final, and there will be no further appeal within the University.
- If the Appeals Officer finds grounds for appeal, then he may dismiss the case, change the sanction, modify the finding, or uphold the finding based on the grounds identified.

The Appeals Officer will issue a written decision describing the result of the appeal and the rationale for the result within ten (10) business days from the date the appeal is received. The decision will be sent to the parties simultaneously and in writing by emails listed in the Student Information System, or, if employees via their University email addresses.

The decision of the Appeals Officer is final and there will be no further appeals within the University.

The Title IX Coordinator and the Hearing Board Chair will also be copied on all appeals decisions.

VI. Retaliation

Retaliation is: Reprisal, interference, restraint, penalty, discrimination, intimidation, threats, harassment or any other adverse action taken against a person who reports sexual misconduct; any person involved in the investigation of such a report. Retaliation may occur in response to engaging in permitted conduct or for refusing to engage in prohibited conduct.

Any allegations of retaliation should immediately be filed with the Title IX Coordinator. Allegations of retaliation will result in an immediate investigation and appropriate action consistent with the University's due process procedures.

VII. Maintenance of Records

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

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the recipient's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and

VIII. Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Grievance Process that do not fundamentally alter the Process.

If a student alerts the Title IX Coordinator that the Student currently receives disability accommodations from the University, and requests disability accommodations to participate in the Title IX Grievance process, the Title IX Coordinator will coordinate with the University's ADA office to provide disability accommodations deemed appropriate to enable the student to participate in the Title IX Grievance Process.