

**THE UNIVERSITY OF MICHIGAN – DEARBORN  
STUDENT PROCEDURES**

**Effective October 1, 2021**

**Dearborn Student Procedures**  
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## **OVERVIEW**

This document describes the procedures the University applies when it receives a report of possible PROHIBITED CONDUCT<sup>1</sup> by a STUDENT (referred to as “Student Procedures” or “Procedures”). The Procedures are part of the [Policy on Sexual and Gender-Based Misconduct](#) (“Policy”). The University uses these Procedures to address allegations of PROHIBITED CONDUCT, as defined in the Policy and to impose sanctions, as appropriate, for violation of the Policy.

The Policy and the Student Procedures may address the same topic, with the Policy providing more general guidance and the Procedures more specific rules. These Procedures therefore must be read in conjunction with the [Policy](#).

For information regarding available resources or how to make a report, please refer to Section V and Section VI, respectively, of the [Policy](#).

These Procedures apply to the Dearborn campus.

Capitalized terms used and not otherwise defined in these Procedures are defined in the Policy.

### **I. RELEVANT POLICIES AND PROCEDURES**

At all times, it is within the University’s discretion to determine which policies and procedures apply and under which action may be taken. Some PROHIBITED CONDUCT may result in separate and additional proceedings under one or more University policies. A list of the potential policies and procedures that may apply can be found in [Standard Practice Guide 601.89](#) (“SPG 601.89”).

### **II. INITIAL ASSESSMENT AND INTAKE**

#### **A. Initial Assessment**

When the Equity, Civil Rights and Title IX Office (ECRT) receives a report of possible PROHIBITED CONDUCT, ECRT will:

- Assess the nature and circumstances of the report, including whether the names and/or any other personally identifiable information for the COMPLAINANT, the RESPONDENT, any WITNESSES, and/or any other individual with knowledge of the reported incident is provided, to facilitate appropriate follow up;

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<sup>1</sup> The [University of Michigan Policy on Sexual and Gender-Based Misconduct](#) (“Policy”) prohibits the following types of conduct as defined in Section XI (also referred to collectively as “PROHIBITED CONDUCT”): Sexual and Gender-Based Misconduct (i.e., Sexual Assault; Sexual Exploitation; Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Intimate Partner Violence; Sex and Gender-Based Discrimination; Retaliation and Violation of SUPPORTIVE MEASURES); and Title IX Misconduct (i.e., *Quid Pro Quo* Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Intimate Partner Violence and Stalking; as defined by and within the scope of Title IX.)]

- Assess the nature of the allegations to identify possible [resolution options](#) that may be available and/or to identify other offices that may be appropriate to address matters not related to PROHIBITED CONDUCT;
- Ascertain the ages of the COMPLAINANT and the RESPONDENT, if known, and, if either party is a minor (under 18 years old), take all necessary actions based upon the facts and circumstances of the case, including contacting the appropriate child protective service agency, if required by law; and
- Notify the DIVISION OF PUBLIC SAFETY AND SECURITY (“DPSS”) of the report if the conduct, as alleged, would constitute a crime.

## **B. Intake with the Parties**

### **1. Complainant**

After receiving a report of possible PROHIBITED CONDUCT committed by a STUDENT, ECRT will promptly contact the COMPLAINANT, if one is identified or identifiable, to (1) discuss the availability of [SUPPORTIVE MEASURES](#) (e.g., academic accommodations, confidential support, employment accommodations, mutual contact restrictions, etc.); (2) ask about the COMPLAINANT’S wishes with respect to SUPPORTIVE MEASURES; (3) explain that SUPPORTIVE MEASURES are available with or without the filing of a FORMAL COMPLAINT; and (4) explain how to file a [FORMAL COMPLAINT](#).

ECRT will also provide the COMPLAINANT with a written explanation of available resources, options, and other important Policy information, including the following:

- Support and assistance available through [University resources](#), including the COMPLAINANT’S option to seek [SUPPORTIVE MEASURES](#) regardless of whether they choose to participate in a University and/or law enforcement investigation;
- The COMPLAINANT’S option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- The process for filing a FORMAL COMPLAINT, if appropriate;
- The University’s [procedural options](#), including [investigative](#) and [Adaptable Resolution](#);
- The COMPLAINANT’S right to an ADVISOR of the COMPLAINANT’S choosing (see [Section VII\(A\)\(8\)](#) below);

- The University’s prohibition of [Retaliation](#) against the COMPLAINANT, the RESPONDENT, the WITNESSES, and the reporting parties, how to report acts of Retaliation, and that the University will take prompt action when Retaliation is reported;
- The opportunity to discuss with the TITLE IX COORDINATOR or designee the COMPLAINANT’S [resources](#), rights, and options; and
- A copy of or link to the University’s [Policy on Sexual and Gender-Based Misconduct](#) and these Procedures.
- That parties and WITNESSES are prohibited from knowingly making false statements or knowingly submitting false information during this process.

## 2. Respondent

When a FORMAL COMPLAINT is made, ECRT will ensure that the RESPONDENT is informed of the following in writing:

- Notice of the allegations potentially constituting [PROHIBITED CONDUCT](#), including the identities of the parties (if known), the date and location of the alleged incident (if known), and potential [Policy](#) violations;
- Notice that a determination regarding responsibility is made at the conclusion of the proceeding and the RESPONDENT is presumed not responsible for the alleged PROHIBITED CONDUCT prior to the determination;
- Support and assistance available through [University resources](#), including the RESPONDENT’S option to seek [SUPPORTIVE MEASURES](#) (e.g., academic accommodations, confidential support, employment accommodations, mutual contact restrictions, etc.);
- The RESPONDENT’S right to an ADVISOR of the RESPONDENT’S choosing who may be, but is not required to be, an attorney (see [Section VII\(A\)\(8\)](#) below);
- The University’s prohibition of [Retaliation](#) against the COMPLAINANT, the RESPONDENT, the WITNESSES, and the reporting parties, how to report acts of Retaliation, and that the University will take prompt action when Retaliation is reported;
- The opportunity to discuss with the TITLE IX COORDINATOR or designee the RESPONDENT’S resources, rights, and options; and

- A copy of or link to the University’s [Policy on Sexual and Gender-Based Misconduct](#) and these Procedures.
- That parties and WITNESSES are prohibited from knowingly making false statements or knowingly submitting false information during this process.

### III. SUPPORTIVE MEASURES

A definition, explanation, and examples of SUPPORTIVE MEASURES are described in Section IX of the [Policy](#).

Individuals who wish to request SUPPORTIVE MEASURES confidentially without making a report to ECRT may do so through the [Counseling and Psychological Services \(“CAPS”\)](#), [Ombuds Services](#), or the Program Manager for Violence Prevention and Response Initiatives at [DearbornPreventionEducation@umich.edu](mailto:DearbornPreventionEducation@umich.edu). These CONFIDENTIAL RESOURCES can often arrange SUPPORTIVE MEASURES directly; however, they may need to interact with other University offices in order to implement the SUPPORTIVE MEASURES. The CONFIDENTIAL RESOURCES will not communicate with other University offices about arranging a SUPPORTIVE MEASURE unless the individual requesting the SUPPORTIVE MEASURE waives confidentiality for that purpose, with the understanding that the University office contacted may report the matter to ECRT. SUPPORTIVE MEASURES are also available to RESPONDENTS through ECRT or confidentially through [CAPS](#) and [Ombuds Services](#).

Individuals may also request SUPPORTIVE MEASURES through ECRT. During the initial intake meetings with the COMPLAINANT, the RESPONDENT, ECRT will discuss SUPPORTIVE MEASURES. If an individual requests SUPPORTIVE MEASURES, ECRT will communicate with the individual and other offices as appropriate in order to assess what SUPPORTIVE MEASURES are available. The TITLE IX COORDINATOR is responsible for approving or denying a request for a SUPPORTIVE MEASURE(s). Once the SUPPORTIVE MEASURES are approved, the individual receiving the SUPPORTIVE MEASURES, and any other individuals affected by the SUPPORTIVE MEASURES, will be notified in writing.

Implementation of SUPPORTIVE MEASURES does not suggest that the University has made any decision about the merits of the report or FORMAL COMPLAINT.

The University will keep confidential any SUPPORTIVE MEASURES provided under this Policy to the extent possible, and will promptly address any reported Violation of SUPPORTIVE MEASURES. An individual who believes a person has engaged in Violation of SUPPORTIVE MEASURES (e.g., failure to abide by a mutual restriction on contact) should report their concern to ECRT.

A COMPLAINANT or a RESPONDENT concerned with the adequacy of SUPPORTIVE MEASURES may raise those concerns with the TITLE IX COORDINATOR.

#### IV. RESOLUTION OPTIONS FOLLOWING AN INITIAL ASSESSMENT

Upon completion of an initial assessment and intake, ECRT will initiate one of the below actions with the understanding that as a case progresses, the action warranted can change, as described in these Procedures. In all cases, the final decision as to whether, how, and to what extent the University will proceed and whether other measures will be taken in connection with any report of possible PROHIBITED CONDUCT rests with ECRT.

- **Investigative Resolution:** Investigative resolution includes, in the following order: (1) an investigation by ECRT resulting in a written report containing a summary of the evidence; (2) a Hearing to determine by a preponderance of the evidence if there has been a Policy violation; (3) the imposition of sanctions and/or appropriate remedies if there has been a finding of a Policy violation; and (4) the opportunity to challenge the outcome of the Hearing or the sanction through an Appeal. The University will strive to complete an investigative resolution, which begins with the determination that an investigation will be opened and continues through the completion of the investigation, Hearing, and outcome within 135 calendar days, or within 180 days if any Appeals are filed;
- **Adaptable Resolution:** Adaptable Resolution, conducted through the Office of Student Conflict Resolution (“OSCR”), includes a spectrum of facilitated, structured, and adaptable processes that seek to identify and meet the needs of the COMPLAINANT while providing an opportunity for the RESPONDENT to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the COMPLAINANT and/or the UNIVERSITY COMMUNITY. OSCR is located on the Ann Arbor campus, but Adaptable Resolution is generally conducted virtually or, in limited circumstances, on the Dearborn campus. This resolution pathway offers multiple potential modes of voluntary participation described in further detail in [Section VII](#). Adaptable Resolution does not include an investigation, hearing, or formal disciplinary action. However, remedies may include any appropriate and reasonable educational, restorative, and accountability-focused measures as agreed to by the parties and approved by the TITLE IX COORDINATOR. The University will strive to complete the Adaptable Resolution process within 90 calendar days from the time both parties have signed an Agreement to Participate in Adaptable Resolution; or
- **Other Remedies:** May include training and other educational measures for members of the UNIVERSITY COMMUNITY.

Detailed information regarding investigative resolution, Adaptable Resolution, and other remedies is set forth below in [Sections VI](#), [VII](#), and [VIII](#) respectively.

The time frames set forth in these Procedures may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation; comply with a request by law enforcement for a temporary delay to gather evidence; accommodate the availability of parties or WITNESSES, the need for language assistance or accommodation of disabilities; account for University breaks or vacations; account for case



complexities (including the number of WITNESSES and volume of information provided by the parties), or for other legitimate reasons. The parties will be notified in writing to the extent the University exceeds any of the time frames set forth above, and the reason for such extension.

ECRT's course of action will be guided by: (1) whether the COMPLAINANT wishes to pursue investigative or Adaptable Resolution; (2) where the COMPLAINANT wishes to pursue Adaptable Resolution, whether the RESPONDENT also wishes to pursue Adaptable Resolution, and, if both parties wish to pursue Adaptable Resolution, whether the TITLE IX COORDINATOR approves Adaptable Resolution; (3) whether the COMPLAINANT requests anonymity, that an investigative resolution not be pursued, and/or that no disciplinary action be taken; (4) the availability of information or evidence suggesting that a Policy violation may have occurred and the University's ability to proceed to completion of a process; and (5) the University's Title IX or other obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent, and address the effects of the alleged PROHIBITED CONDUCT.

**A. Where the Complainant Wishes to Pursue Investigative Resolution or Adaptable Resolution**

In every case in which the COMPLAINANT files a FORMAL COMPLAINT with the TITLE IX COORDINATOR and requests an investigative resolution, ECRT will determine whether investigative resolution is appropriate under the Policy. Specifically, an investigative resolution is appropriate if: (1) the alleged conduct at issue would constitute PROHIBITED CONDUCT; (2) the University has disciplinary authority over the RESPONDENT; and (3) the University has, or has means to obtain, sufficient information about the alleged conduct to carry out the investigative resolution process (including consideration of the COMPLAINANT'S willingness to participate in the process). If investigative resolution is deemed appropriate, the University will initiate an investigative resolution.

Alternatively, a COMPLAINANT may file a FORMAL COMPLAINT and request that the reported matter be resolved through an Adaptable Resolution process. Adaptable Resolution cannot occur unless the COMPLAINANT files a FORMAL COMPLAINT and requests Adaptable Resolution. In these instances, both parties must voluntarily consent in writing to pursuing an Adaptable Resolution process and the TITLE IX COORDINATOR must determine that the matter is appropriate for Adaptable Resolution. In determining whether a matter is appropriate for Adaptable Resolution, the TITLE IX COORDINATOR will consider a request in light of: (1) the safety of the parties and the campus community; (2) each party's interest in participating in Adaptable Resolution; (3) the parties' opportunities to freely choose among resolution options; (4) whether the University has Title IX obligations to investigate the matter, and if so, whether the University has, or has means to obtain, sufficient information about the alleged conduct to carry out an investigative resolution process (including consideration of the COMPLAINANT'S willingness to participate in that process). If the matter is approved to be resolved through an Adaptable Resolution process, OSCAR will conduct the Adaptable Resolution process as described further in [Section VII](#) of these Procedures.

**B. Complainant Request for No University Response or to Not Participate in a University Response.**

In some instances, the COMPLAINANT may not wish to file a FORMAL COMPLAINT or participate in any process. The University's ability to investigate and respond to a report may be limited if the COMPLAINANT requests anonymity or declines to participate. However, in instances where a COMPLAINANT chooses not to participate in a resolution process, the TITLE IX COORDINATOR will consider the COMPLAINANT'S request<sup>2</sup> in light of: (1) the availability of information or evidence suggesting that a Policy violation may have occurred and the University's ability to proceed effectively to completion of a process; and (2) whether the University has a Title IX obligation to investigate or otherwise determine what happened and take corrective action as appropriate to eliminate, prevent, and address the effects of the PROHIBITED CONDUCT.

**1. Determination That a Complainant's Request(s) Can be Honored**

Where the TITLE IX COORDINATOR determines that a COMPLAINANT'S request(s) can be honored, the University may nevertheless take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the COMPLAINANT and the UNIVERSITY COMMUNITY. Those steps may include offering appropriate SUPPORTIVE MEASURES to the COMPLAINANT, providing training and prevention programs, and/or providing other remedies. The COMPLAINANT may later choose to pursue Adaptable Resolution (if available) or investigative resolution under this Policy. The TITLE IX COORDINATOR also may later determine that a report be re-opened and pursued under the Policy and Procedures if any new or additional information becomes available.

**2. Determination That a Complainant's Request(s) Cannot be Honored**

In those instances when the TITLE IX COORDINATOR determines that the University must proceed with an investigative resolution when a COMPLAINANT chooses not to sign a FORMAL COMPLAINT, the TITLE IX COORDINATOR will sign a FORMAL COMPLAINT and initiate an investigative resolution. In such instances, ECRT will notify the COMPLAINANT in writing of initiation of an investigative resolution, and that the COMPLAINANT may but is not required to participate in the investigative resolution or in any of the actions taken by the University.

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<sup>2</sup> A COMPLAINANT'S lack of response to ECRT, discontinuation of response to ECRT, or decision not to file a FORMAL COMPLAINT may constitute such a request, for purposes of this Section.

## V. **EMERGENCY REMOVAL**

If, after an individualized safety and risk analysis, the University determines that the RESPONDENT'S presence on campus or in the University's PROGRAM OR ACTIVITY poses an immediate threat to the physical health or safety of any STUDENT or another individual arising from the allegations of Prohibited Sexual and Gender-Based Misconduct, the TITLE IX COORDINATOR or designee, may immediately suspend the RESPONDENT on an interim basis, from all or part of any University PROGRAM OR ACTIVITY. Following communication of the suspension, including rationale, the STUDENT may request an Appeal of the suspension to be heard by the Dean of Students (or designee).

## VI. **INVESTIGATIVE RESOLUTION**

A flowchart depicting the investigative resolution process can be found [here](#). The University will strive to complete the investigative resolution (investigation, Hearing, finding, sanctions as applicable, and Appeals, if any) within 180 days.

### A. **Core Principles**

1. **Impartiality.** The TITLE IX COORDINATOR (including Deputy Title IX Coordinator(s)), INVESTIGATOR, HEARING OFFICER, ADAPTABLE RESOLUTION COORDINATOR, those who determine sanctions, and the EXTERNAL REVIEWER each must be impartial and free of any actual conflict of interest or bias.

A COMPLAINANT or a RESPONDENT who has concerns that the TITLE IX COORDINATOR cannot conduct their role in a fair and unbiased manner (e.g., has a personal connection with one of the parties or WITNESSES, etc.) may report those concerns by contacting:

Executive Director  
Equity, Civil Rights & Title IX Office  
2072 Administrative Services  
1009 Greene Street  
Ann Arbor, Michigan 48109-1432  
[ecrtbiasconcerns@umich.edu](mailto:ecrtbiasconcerns@umich.edu)  
734-763-0235

A COMPLAINANT or a RESPONDENT who has concerns that the INVESTIGATOR, HEARING OFFICER, individual determining sanctions, or EXTERNAL REVIEWER cannot conduct their role in a fair and unbiased manner (e.g., has a personal connection with one of the parties or WITNESSES, etc.) may report those concerns by contacting:

Title IX Coordinator  
1114 Administration Building

4901 Evergreen Road  
Dearborn, Michigan 48128  
[TitleIXCoordinator-Dearborn@umich.edu](mailto:TitleIXCoordinator-Dearborn@umich.edu)  
313-436-9194

2. **Presumption of Good Faith Reporting.** The University presumes that reports of PROHIBITED CONDUCT are made in good faith.
3. **Presumption of Non-Violation and Standard of Proof – Preponderance of the Evidence.** The RESPONDENT is presumed not to have violated the Policy unless it is determined through applicable procedures that a preponderance of the evidence supports a finding of a Policy violation. Preponderance of the evidence means the evidence demonstrates it is “more likely than not” that conduct occurred in violation of the Policy.
4. **False Statements.** A person who makes a materially false statement in bad faith in the course of a proceeding may be subject to disciplinary action. A determination regarding responsibility, standing on its own, is insufficient to conclude that any party made a materially false statement in bad faith.
5. **Participation by the Parties and Witnesses Is Voluntary.** The COMPLAINANT, the RESPONDENT, or the WITNESSES may choose to participate or decline to participate in the investigative resolution. However, even if a COMPLAINANT or a RESPONDENT declines to participate, the University may deem it necessary to continue to investigate the allegation(s). Non-participation by a party or WITNESS may impact the outcome of the investigative resolution. Coercing any party or WITNESS not to participate in the investigative resolution constitutes [Retaliation](#) and violates University [policy](#).
6. **Expectations of Complainant, Respondent, and Witnesses.** The COMPLAINANT, the RESPONDENT, the WITNESSES and others sharing information in the process are expected to provide all relevant information at the time of their interview, or as soon as otherwise possible, and to be truthful and complete in their statements throughout the process.

A party or WITNESS who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a WITNESS who chooses to participate is expected to make themselves available for an interview and Hearing if requested to do so).

7. **Advisors.** Throughout the process, a COMPLAINANT and a RESPONDENT may each have an ADVISOR of their choice. An ADVISOR is an individual chosen by a party to provide support and guidance to them during the process. This ADVISOR may or may not be the same person as the ADVISOR who asks the other party and WITNESSES relevant questions during a Hearing. The University will offer, without fee or charge to a party who does not have an ADVISOR, to provide an ADVISOR of the University's choice for the investigation phase. The ADVISOR is available to provide advice to the party they are supporting during the investigation and Hearing phases and will conduct cross examination on behalf of the party at the Hearing.

A party may request to consult with their ADVISOR at any point. However, the ADVISOR may not represent or otherwise speak for the party they are supporting except during the cross-examination portion of the Hearing. Specifically, during a Hearing, the ADVISOR has sole responsibility to ask the other party and WITNESSES relevant questions. If a party does not have an ADVISOR available at the Hearing, the University will select an ADVISOR to ask questions on behalf of that party, as described in [Section VII\(A\)\(8\)](#), below, of these Procedures.

INVESTIGATORS, HEARING OFFICERS, and the TITLE IX COORDINATOR have the right at all times to determine what constitutes appropriate behavior on the part of an ADVISOR and to take appropriate steps including temporarily suspending the Hearing and/or removing the ADVISOR, to ensure compliance with the [Policy](#) and these Procedures.

8. **Prior Sexual Conduct of the Complainant.** Questions and evidence about the COMPLAINANT'S prior sexual behavior are not relevant, unless 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; or if due process under the applicable law otherwise requires it. For example, if the question being determined is whether consent was given through mutually understandable words or actions, information about the manner in which consent has previously been communicated between the parties may be relevant in determining whether consent was sought and given during the incident in question. The HEARING OFFICER will determine the relevance of this information. Prior sexual contact between a COMPLAINANT and a RESPONDENT is not relevant to prove character or reputation and will never be used for those purposes.

9. **Prior or Subsequent Conduct of the Respondent.** Prior or subsequent conduct of the RESPONDENT will never be used to prove character, but may be considered for other purposes, such as determining pattern, knowledge, or intent. For example, evidence of a pattern of PROHIBITED CONDUCT by the RESPONDENT, either before or after the incident in question may be deemed relevant to the determination of whether the RESPONDENT violated the Policy. A finding in a previous investigation that the RESPONDENT violated the Policy by engaging in similar conduct may be relevant evidence of a pattern of behavior. Likewise, evidence in a previous investigation that the RESPONDENT engaged in similar behavior, but the behavior was not at that time determined to be at a sufficient level to constitute a Policy violation, may be relevant to assessing severity, persistence and/or pervasiveness, as applicable, or relevant evidence of a pattern, in a subsequent investigation.

The relevance of pattern evidence will be determined based on an assessment of whether the previous or subsequent conduct was similar to the conduct under investigation or indicates a pattern of similar PROHIBITED CONDUCT. The HEARING OFFICER will determine the relevance of this information.

10. **Witnesses.** WITNESSES must have observed the acts in question or have information relevant to the FORMAL COMPLAINT. Witnesses will not be permitted to participate in the investigation or Hearing solely to speak about an individual's character, because character evidence is generally not relevant.

WITNESSES will have the opportunity to discuss the investigation process and participate in an interview. Where a WITNESS has provided relevant information, the INVESTIGATOR will produce to the COMPLAINANT and the RESPONDENT for their review and comment, a written summary of the WITNESS'S interview, which will identify the WITNESS by name and their relationship to the parties and the University.

## B. Ongoing Assessment

Throughout its handling of a report of PROHIBITED CONDUCT, ECRT will continue to assess the most appropriate procedures for addressing the allegations.

1. **Consolidation or Separation of Proceedings.** The TITLE IX COORDINATOR has the discretion to consolidate or separate claims of PROHIBITED CONDUCT, whether it be claims of Title IX Misconduct, Sexual and Gender-Based Misconduct (including Retaliation), or both. Specifically, the TITLE IX COORDINATOR may consolidate multiple FORMAL COMPLAINTS of PROHIBITED CONDUCT into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve a single or multiple COMPLAINANTS, a single or multiple RESPONDENTS, and conduct that is temporally or logically connected. If investigations involving multiple COMPLAINANTS and/or multiple RESPONDENTS are consolidated, each party will have access to all of the information being considered; including information as provided by all involved COMPLAINANTS, all involved RESPONDENTS, and all involved WITNESSES. The TITLE IX COORDINATOR also has the discretion to separate multiple FORMAL COMPLAINTS of PROHIBITED CONDUCT into distinct investigations, Hearings, or Appeals, including when part of the process is consolidated (e.g. having a consolidated investigation followed by separate Hearings).
  
2. **Concurrent Legal Proceedings.** At the request of law enforcement, and subject to the provisions in these Procedures pertaining to notifying the RESPONDENT of a FORMAL COMPLAINT, the University may agree to temporarily defer proceeding with part or all of its processes until after some or all of the law enforcement investigation is complete (e.g., deferring until the initial law enforcement evidence gathering phase is complete).
  
3. **Required Dismissal of Title IX Misconduct.** The TITLE IX COORDINATOR must dismiss allegations of Title IX Misconduct if, at any time before or during the resolution process, the TITLE IX COORDINATOR determines that:
  - The conduct alleged in the FORMAL COMPLAINT, if proved, would not constitute Title IX Misconduct;
  - The conduct alleged in the FORMAL COMPLAINT did not occur in a University PROGRAM OR ACTIVITY; or
  - The conduct alleged in the FORMAL COMPLAINT did not occur against a person in the United States.

The parties will be notified in writing that the allegations of Title IX Misconduct must be dismissed and the reason for dismissal.

The TITLE IX COORDINATOR will determine whether the alleged conduct

would still, as alleged, constitute Sexual or Gender-Based Misconduct, and if so, this dismissal for Title IX purposes may have no practical effect on the University's investigation and the allegations of Sexual and Gender-Based Misconduct may continue to be addressed under these Procedures.

If allegations of Title IX Misconduct are dismissed for one of the above reasons, the parties may appeal that dismissal using the process described in [paragraph 5](#) below.

**4. Other Dismissal and Closure.** In addition to the required dismissal of allegations of Title IX Misconduct, the TITLE IX COORDINATOR may, in their discretion, dismiss a FORMAL COMPLAINT of PROHIBITED CONDUCT and/or otherwise close an investigative resolution if at any time:

- The COMPLAINANT notifies the TITLE IX COORDINATOR in writing that the COMPLAINANT would like to withdraw their FORMAL COMPLAINT of PROHIBITED CONDUCT;
- The RESPONDENT is no longer a STUDENT of or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination on the underlying allegations of the FORMAL COMPLAINT (this may include a COMPLAINANT'S stated or otherwise apparent intent not to participate in a hearing or other aspect of the process).

If allegations of Title IX Misconduct are dismissed pursuant to this section, the parties may appeal that dismissal using the process described in [paragraph 5](#), below. Dismissal of Sexual or Gender-Based Misconduct pursuant to this section is not subject to Appeal.

**5. Appeal of Dismissal of Title IX Misconduct.** If allegations of Title IX Misconduct are dismissed for a reason set forth in [paragraph 3](#) or [4](#), above, either party may appeal that dismissal on the following bases only:

- Procedural irregularity that materially affected the dismissal determination;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could materially affect the determination; and/or
- The TITLE IX COORDINATOR or designee making the dismissal



decision had a conflict of interest or bias for or against the COMPLAINANTS or RESPONDENTS generally or the individual COMPLAINANTS or RESPONDENTS that materially affected the dismissal decision.

An Appeal of the dismissal of a FORMAL COMPLAINT must be filed no later than five (5) calendar days after the date on which the University transmitted the written determination to the parties. The Appeal shall consist of a plain, concise, and complete written statement of no more than five (5) pages, outlining the basis for appeal and all relevant information to substantiate the Appeal.

The University will notify all parties in writing when an Appeal is filed and implement Appeal procedures equally for all parties. The other party(ies) may then have a period of five (5) calendar days from the date of notice to submit a statement in support of the written determination and/or in opposition to the Appeal. This statement will be limited to five (5) pages. Any such statement will be shared with the party who filed the Appeal.

The Appeal review will be conducted by the EXECUTIVE DIRECTOR of ECRT on the Ann Arbor campus or designee. The EXECUTIVE DIRECTOR will review the matter based on the issues identified in the Appeal(s) materials. The EXECUTIVE DIRECTOR may, at any time, freely consult with or request additional information from the TITLE IX COORDINATOR, the University Office of General Counsel, and other University administrators as necessary. The parties may object to the service of the EXECUTIVE DIRECTOR by providing a written statement as to why the party believes that the EXECUTIVE DIRECTOR has a conflict of interest or bias. The Dean of Students or designee will make decisions regarding such objections and the appointment of an alternative decision-maker as necessary.

The EXECUTIVE DIRECTOR or alternate decision-maker will strive to complete the Appeal review within five (5) calendar days of receipt of all documents. The EXECUTIVE DIRECTOR will issue a written decision describing the result of the Appeal and the rationale for the result; and ECRT will provide the written decision simultaneously to both parties.

6. **Acceptance of Responsibility.** The RESPONDENT may, at any time in the investigation or Hearing process, elect to resolve a matter by accepting responsibility for the PROHIBITED CONDUCT. If the RESPONDENT accepts responsibility, and the COMPLAINANT agrees in writing, the process will be advanced to the final steps. Specifically, the INVESTIGATOR will issue a brief investigation report and/or the HEARING OFFICER (as applicable) will issue a brief outcome notice summarizing the allegations and stating that the RESPONDENT has accepted responsibility, and refer the matter to the Student Conduct Advisor or designee to determine sanctions.

### C. Investigation Process

An investigation will afford both the COMPLAINANT and the RESPONDENT an opportunity to submit information and other evidence and to identify WITNESSES. During an investigation, the INVESTIGATOR typically will: (1) meet separately with the COMPLAINANT, the RESPONDENT, and the relevant WITNESSES; (2) offer the parties an equal opportunity to submit and/or identify related and relevant information or evidence; and (3) gather other relevant information or evidence reasonably available to the INVESTIGATOR. Following their interview(s), the parties and WITNESSES will each be provided with a draft summary of their own statement or key relevant information therefrom so that they have the opportunity to comment within three (3) calendar days to ensure the summary's accuracy and completeness. After the INVESTIGATOR has conducted interviews and gathered other available evidence and before any determination is reached, the parties receive a preliminary written report and evidence for their review and comment.

1. **Role of Investigator.** When an investigative resolution is initiated, ECRT will designate an INVESTIGATOR, who will be responsible for gathering evidence directly related to the allegations at issue in the investigative resolution.<sup>3</sup>
2. **Notice of the Investigation and Notice of Interview.** The RESPONDENT will be informed in writing of the initiation of the investigation prior to their initial interview. The written notice will include, among other information: the identities of the parties (if known); the date and location of the alleged incident(s) (if known); potential Policy violations; information that the RESPONDENT is presumed not to have violated the Policy; and the other information set forth above. Such notice will be provided with sufficient time for the RESPONDENT to prepare for the interview.

If, during the investigation, additional information is disclosed that may constitute additional PROHIBITED CONDUCT under the Policy, the RESPONDENT will be accordingly informed in writing and will have an

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<sup>3</sup> The TITLE IX COORDINATOR may designate themselves to investigate.

opportunity to respond to those allegations consistent with these Procedures.

In advance of each investigation interview, the INVESTIGATOR will send the individual being interviewed (COMPLAINANT, RESPONDENT, or WITNESS) a Notice of Interview that will identify the date, time, location, list of participants, and purpose of the interview. Such Notice will be provided with sufficient time for the individual to prepare for the interview.

3. **Evidence.** The INVESTIGATOR, not the COMPLAINANT or the RESPONDENT, is responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given the opportunity, and is encouraged, to identify WITNESSES; provide other relevant information, such as documents, communications, photographs, and other evidence; and suggest questions to be posed to the other party or a WITNESS(ES). Although the University is responsible for gathering evidence sufficient to reach a determination regarding responsibility, all parties/WITNESS(ES) are expected to share any relevant information and/or any information that is requested by the INVESTIGATOR, and to do so as early in the process as possible or upon request. Failure to do so by a participating party or WITNESS may lead the HEARING OFFICER to draw a negative inference from a refusal to provide information that the HEARING OFFICER knows or reasonably believes exists. A decision by a party or WITNESS not to participate in an investigation at all will not lead the HEARING OFFICER to draw a negative inference from that decision.

The INVESTIGATOR will review all information identified or provided by the parties as well as any other evidence they obtain. The INVESTIGATOR has the discretion not to interview a WITNESS if the evidence they may have is not relevant or would be cumulative. Evidence directly related to the allegations in the FORMAL COMPLAINT obtained as part of the investigation will be shared with the parties for their review and comment, as described below.

The INVESTIGATOR may consult experts who have no connection to the reported incident when expertise on a specific topic or submitted evidence is needed to gain a fuller understanding of the relevance or value of the evidence or the issue at hand. In instances where an expert is consulted, ECRT will determine whether the expert has any conflicts of interest or bias. The expert's identity will be shared with both parties so that they may also have the opportunity to identify any risk of such conflicts or bias for assessment by ECRT. ECRT will not use a medical expert who has an actual or apparent conflict of interest. ECRT will not use a non-medical expert whom ECRT determines to have an actual conflict of interest or bias.

4. **Use of Law Enforcement Evidence.** Where ECRT is made aware that there is a concurrent or related criminal investigation, the INVESTIGATOR will make reasonable efforts to contact the DIVISION OF PUBLIC SAFETY AND SECURITY or other applicable law enforcement agency to ascertain the status of the criminal investigation and determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

In some instances, aspects of a criminal investigation may be available and relevant to the University's process; however, standards for criminal investigations are often different from the preponderance of the evidence standard used to determine violations of this Policy. Therefore, the University will not base its decisions under this Policy solely on law enforcement determinations and/or the outcomes of any criminal proceedings.

5. **Time Frame for Completion of Investigation.** The University will strive to complete the investigation phase of the process, meaning the period from commencement of an investigation through to completion of a final investigation report, within 90 calendar days. An investigation commences with the determination that an investigation will be opened, typically either the date of the COMPLAINANT'S interview, receipt of a FORMAL COMPLAINT, or such time as the TITLE IX COORDINATOR determines that an investigative resolution will be opened.

Additional time beyond 90 calendar days may be necessary to: ensure the integrity and completeness of the investigation; comply with a request by law enforcement for temporary delay to gather evidence; accommodate the availability of parties and/or WITNESSES, the need for language assistance or accommodation of disabilities; account for University breaks or vacations; account for case complexities, including the number of WITNESSES and volume of information provided by the parties; or for other legitimate reasons.

6. **Preliminary Investigation Report.** After the COMPLAINANT and the RESPONDENT have had the opportunity to comment on their own statement (three (3) calendar days) and to identify WITNESSES and other potential information, and the INVESTIGATOR has completed interviews and the gathering of evidence, the INVESTIGATOR will prepare a preliminary report.

The INVESTIGATOR will provide the parties and their ADVISORS (if any) with the preliminary report, which will include, as applicable, the COMPLAINANT'S statement, the RESPONDENT'S statement, each WITNESS'S statement, and a summary of any other information the INVESTIGATOR

deems relevant. At the same time, the INVESTIGATOR will also provide each party and their ADVISORS (if any) all evidence directly related to the allegations in the FORMAL COMPLAINT that was obtained as part of the investigation. The evidence will be provided in an electronic format.

The COMPLAINANT and the RESPONDENT will generally have one opportunity to concurrently review the preliminary report and evidence and provide feedback in response. The COMPLAINANT and the RESPONDENT must submit any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional WITNESSES, or any other information they deem relevant to the INVESTIGATOR (up to ten (10) written pages of comments, additional documents or other evidence) within ten (10) calendar days after it is sent to them for review. As parties are encouraged to provide all relevant evidence as early as possible in the process, any party providing new evidence in their response to the preliminary report should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report and/or included in the evidence file.

Generally, only information that is provided to, or otherwise obtained by, the INVESTIGATOR during the course of the investigation may be considered by the HEARING OFFICER in determining whether a Policy violation occurred. Any and all information for consideration by the HEARING OFFICER must be provided to the INVESTIGATOR during the investigation phase of the process and otherwise will not be allowed during the Hearing, unless the party asking that additional information be considered has clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the HEARING OFFICER may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

7. **Final Investigation Report.** After receiving any comments submitted by either party, or after the ten (10) calendar day comment period has lapsed without comment, the INVESTIGATOR will, as appropriate, pursue any additional investigative steps as needed (as determined by the INVESTIGATOR) and issue a final investigation report.

The INVESTIGATOR'S final investigation report will contain all information from the preliminary report, as supplemented by the relevant feedback submitted, and any additional information gathered, as applicable.

8. **Referral to Hearing.** ECRT will provide the final investigation report to the parties simultaneously, along with information regarding the Hearing process, as described below. ECRT will also provide the final investigation report and evidence file to the HEARING OFFICER.

The parties may, within ten (10) calendar days of receiving the final investigation report, submit to the HEARING OFFICER, via ECRT, any additional comments or other response to the final investigation report. Such a response will also be provided to the other party in advance of the Hearing.

If the University learns that the COMPLAINANT, the RESPONDENT, or a material WITNESS will not attend the Hearing, the TITLE IX COORDINATOR will determine how the University will proceed, including potentially dismissing the FORMAL COMPLAINT.

#### D. Hearings

Following the investigation, the parties will be afforded a live Hearing as described below.

1. **Hearing officer.** Hearings will be facilitated by a HEARING OFFICER.
  - a. **Role.** The HEARING OFFICER is responsible for maintaining an orderly, fair, and respectful Hearing and has broad authority to determine the process and conduct of the Hearing, including responding to disruptive or harassing behaviors, adjourning the Hearing, or excluding the offending person(s). The HEARING OFFICER will make the decision as to whether or not the RESPONDENT violated the Policy using a preponderance of the evidence standard.
  - b. **Impartial and Free from Conflict of Interest.** All persons serving as HEARING OFFICERS must be impartial and free from actual bias or conflict of interest. HEARING OFFICERS will be informed of the identities of the parties so that they can identify any conflict of interest to the TITLE IX COORDINATOR or designee. At the discretion of the TITLE IX COORDINATOR, an alternate HEARING OFFICER will be assigned. The parties will be notified of the identity of the selected HEARING OFFICER in advance of the Hearing, and parties may, within three (3) calendar days of such notice, object to the HEARING OFFICER by providing a written statement to the TITLE IX COORDINATOR as to why the party believes that the HEARING OFFICER has a conflict of interest or bias. The TITLE IX COORDINATOR will make decisions regarding

such objections and the appointment of alternate HEARING OFFICERS, as necessary. If a potential conflict of interest is identified outside of the three (3) days, it is within the discretion of the TITLE IX COORDINATOR to appoint an alternate HEARING OFFICER.

- 2. Scheduling of Hearing and Pre-Hearing Meeting.** ECRT will notify the parties in writing of the date, time, and electronic (virtual) audio/video format of the pre-hearing meeting and Hearing; the name of the HEARING OFFICER; and how to challenge the appointment of the HEARING OFFICER for bias or actual conflict of interest. The HEARING OFFICER will strive to complete a Hearing within 15 calendar days from the distribution of the investigation report.
- 3. Format of the Hearing and Pre-Hearing Meetings.** As a default, the live Hearing will be conducted virtually, with technology enabling all participants (HEARING OFFICER, parties, ADVISORS, and WITNESSES) to see and hear one another in real time. Alternatively, the TITLE IX COORDINATOR in their discretion may decide for the Hearing to occur with the parties located in separate rooms of the same location with technology enabling the HEARING OFFICER and the parties to simultaneously see and hear the party or the WITNESS answering questions.
- 4. Pre-Hearing Meeting.** Each party will meet separately with the HEARING OFFICER (their ADVISOR may also attend the pre-hearing meeting) to: (1) plan for the Hearing; (2) review the FORMAL COMPLAINT and issues of interest to the HEARING OFFICER and the party; (3) describe the procedures to be followed at the Hearing; (4) discuss as set forth in [Section VI\(D\)\(5\)](#), below, the process of raising a concern that the Student Conduct Advisor (or designee) cannot make a fair and unbiased sanctioning determination (if applicable); (5) identify the names of the WITNESSES that will be asked to appear; (6) discuss any technology that will be used at the Hearing and how to operate such technology; and (7) answer any other questions or share information prior to the Hearing. The HEARING OFFICER also will discuss the time allotted for the Hearing and any time limitations. If either party does not attend the pre-hearing meeting, the TITLE IX COORDINATOR will determine whether and how that absence affects the ability of the University to move forward with the Hearing, as well as the Hearing schedule.

- 5. Participation in Hearing.** The Hearing is an internal student conduct proceeding and attendance at the Hearing is limited to the parties, RESPONDENT’S ADVISOR, COMPLAINANT’S ADVISOR, WITNESSES, HEARING OFFICER, EQUITY SPECIALIST (if one is assigned to the hearing) and Student Conduct Advisor (or designee). Other University administrators may attend at the request of or with the prior approval of the HEARING OFFICER – and the parties will be notified in advance of anyone who will be in attendance.
- a. Parties.** Both the COMPLAINANT and the RESPONDENT have a right to be present at the Hearing. If despite being notified of the date, time, and location of the Hearing, either party is not in attendance, the TITLE IX COORDINATOR will decide if the Hearing may proceed, and whether a determination on the merits may be made, and whether applicable remedies and/or sanctions may be imposed.
- b. Advisors.** Each party may have an ADVISOR of their choice present at the Hearing. The ADVISOR does not participate in the Hearing except for the limited purpose of conducting cross-examination on behalf of that party. If a party does not have an ADVISOR of their choice present at a Hearing, the University will, without fee or charge to the party, provide an ADVISOR of the University’s choice. The ADVISOR is available to provide advice to the party they are supporting during the investigative and Hearing phase and will conduct cross-examination on behalf of the party. No later than ten (10) calendar days before the Hearing, parties must inform ECRT of any ADVISOR of choice who will accompany them to the Hearing, so that it is known whether or not there is a need to arrange for the presence of a University-provided ADVISOR. If a party does not identify an ADVISOR ten (10) calendar days prior to the Hearing, the University will provide an ADVISOR to the party.

At a time and in a manner deemed appropriate by the HEARING OFFICER, the ADVISOR for each party will be permitted to ask the other party and any WITNESSES all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, ADVISORS may not participate actively in the Hearing and may not speak or otherwise communicate on the part of their advisee, unless the ADVISOR is raising a concern regarding the HEARING OFFICER’s decision as to the relevance of a cross-examination question. However, the ADVISOR may request to consult privately in a non-disruptive manner with their advisee during the Hearing and/or at a recess in the Hearing. Scheduling accommodations generally will not be made for ADVISORS if they unduly delay the process. The



University reserves the right to take appropriate action regarding any ADVISOR who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the HEARING OFFICER, which may include exclusion of the ADVISOR from the Hearing and the appointment of an alternate University-provided ADVISOR.

- c. **Witnesses.** ECRT will contact each WITNESS interviewed during the investigation to establish their intent to participate in the Hearing if called by the HEARING OFFICER. The HEARING OFFICER will request the presence of any WITNESSES they deem necessary to their determination. If a party wishes to have an individual appear at the Hearing as a WITNESS, they must provide notice of the identity of the proposed WITNESS pre-hearing meeting. ECRT will provide information regarding WITNESSES requested to attend the Hearing to both parties in advance of the Hearing.

- 6. **Conduct of the Hearing and Relevance.** The Hearing is not intended to be a repeat of the investigation. Before the Hearing, the HEARING OFFICER will review the final investigation report and related materials and will be well versed in the facts of the case.

Subject to the discretion of the HEARING OFFICER, Hearings will begin with introductory remarks by the HEARING OFFICER, followed by opening statements from any party who wishes to provide one, starting with the COMPLAINANT(s). Opening statements will be followed by the HEARING OFFICER asking relevant initial questions of the parties. During this portion of the Hearing, parties may confer privately and in a non-disruptive manner with their ADVISOR, but ADVISORS are not allowed to make opening statements or otherwise address the HEARING OFFICER or anyone else present at the Hearing.

After the HEARING OFFICER has asked their initial questions of the parties, the HEARING OFFICER will permit each party's ADVISOR to ask the other party all relevant questions and follow-up questions, including those challenging credibility. The HEARING OFFICER may ask follow-up questions as necessary. Subject to the discretion of the HEARING OFFICER, questioning of WITNESSES will follow a similar process, whereby the HEARING OFFICER will pose relevant questions to WITNESSES, and then the parties' ADVISORS will be permitted to ask relevant questions of WITNESSES. Such cross-examination of the parties and WITNESSES by ADVISORS will be conducted directly, orally, and in real time by the party's ADVISOR of choice and never by the party personally.

At the discretion of the HEARING OFFICER, parties (but not their ADVISORS) will be given an opportunity to make a closing statement at the conclusion of the Hearing, starting with the COMPLAINANT.

7. **Relevance of Cross-Examination Questions.** Only relevant cross-examination questions may be asked of a party or WITNESS. Before a COMPLAINANT, a RESPONDENT, or a WITNESS answers a cross-examination or other question, the HEARING OFFICER will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. ADVISORS may raise concerns to the HEARING OFFICER about any decision regarding relevance at the time the decision is made.

Questions and evidence about the COMPLAINANT'S prior sexual behavior are not relevant, except for the limited bases explained in [Section VI\(A\)\(9\)](#).

Information protected under a legally recognized privilege (e.g., privileged communications between a party and their attorney, physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment or other legally-privileged capacity), is not considered unless the information is relevant and the person holding the privilege has waived the privilege.

8. **New Evidence Offered at Hearing.** In the absence of good cause as determined by the HEARING OFFICER, information, including the identification of WITNESSES, that was reasonably available at the time of the investigation that is not provided to the INVESTIGATOR during the investigation phase, will not be considered during the Hearing. Unless the HEARING OFFICER agrees to the admission of new evidence offered at the Hearing, the HEARING OFFICER may delay the Hearing and instruct that the investigation needs to be re-opened to consider any new evidence.

Any party or WITNESS who submits to cross-examination at the Hearing must have first been interviewed by the INVESTIGATOR (or otherwise offered a statement). A party who has not previously participated in the investigation process may be limited (as determined by the HEARING OFFICER) in the evidence or statements the party may present.

9. **Record of Hearing.** Derived from an audio/video recording of the proceeding, the University will create a transcript of the Hearing and make it available to the parties for inspection and review. Any other recording is prohibited. No camera, TV, or other equipment, including any cell phones, will be permitted in the Hearing except as arranged by the University.
10. **Determination Regarding Responsibility.** The HEARING OFFICER and Student Conduct Advisor (or Designee) will strive to complete the written determination regarding responsibility (the “Hearing Outcome”) and the sanctioning determination (as applicable) within 30 calendar days of the Hearing.
- a. **Standard of Review.** The HEARING OFFICER will apply the preponderance of the evidence standard when making such determinations.
- b. **Written Determination.** The Hearing Outcome will include:
- Identification of the section(s) of the Policy alleged to have been violated;
  - A description of the procedural steps taken from the receipt of the FORMAL COMPLAINT through the determination, including but not limited to, as applicable, the notification to the parties, interviews with parties and WITNESSES, site visits, methods used to gather other evidence, and Hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of definitions of PROHIBITED CONDUCT in the Policy to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions imposed on RESPONDENT, and whether remedies will be provided to the COMPLAINANT; and
  - Identification of the University’s procedures and permissible bases for the COMPLAINANT and RESPONDENT to Appeal (as outlined below in [Section VI\(F\)](#)).

The HEARING OFFICER will provide ECRT with the Hearing Outcome. If there is a finding that the RESPONDENT is not responsible for a violation of the Policy, ECRT will share the Hearing Outcome with the parties. If there is a finding that the RESPONDENT is responsible for a violation of the

Policy, ECRT will share the determination regarding responsibility with the Student Conduct Advisor (or designee) for a sanctioning determination. If sanctions or remedies are appropriate, they will be assigned in accordance with [Section VI\(E\)](#) below and the HEARING OFFICER will update the Hearing Outcome to include the sanctioning determination.

## **E. Sanctions and Remedies**

If the RESPONDENT is found to have violated the Policy, the RESPONDENT will be sanctioned and appropriate remedies will be provided to the COMPLAINANT. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the University has a wide latitude in the imposition of sanctions and implementation of remedies tailored to the facts and circumstances of the PROHIBITED CONDUCT, the impact of the conduct on the COMPLAINANT and UNIVERSITY COMMUNITY, and accountability for the RESPONDENT. Remedies will be designed to restore or preserve equal access to the University's PROGRAM OR ACTIVITY.

Sanctions or interventions may also serve to remedy the discriminatory effects of the PROHIBITED CONDUCT on the COMPLAINANT and others, including any systemic actions found to be appropriate for the broader UNIVERSITY COMMUNITY. Other interventions may include targeted or broad-based educational programming or training.

- 1. Sanctioning Determination.** The Student Conduct Advisor (or designee)<sup>4</sup> is responsible for making the sanctioning determination. The Student Conduct Advisor must be impartial and free of any actual conflict of interest. If the Student Conduct Advisor has concerns that they cannot make a fair and unbiased sanctioning determination, the Student Conduct Advisor may report those concerns to the Dean of Students and at their discretion a different staff member will be assigned to determine the sanctions. Similarly, a COMPLAINANT, a RESPONDENT, or any other participant who has concerns that the Student Conduct Advisor cannot make a fair and unbiased sanctioning determination may report those concerns to the TITLE IX COORDINATOR, who will consult with the Dean of Students to assess the circumstances and determine whether a different staff member should be assigned to make the sanctioning determination.

The Student Conduct Advisor will review the final investigation report, the Hearing recording and transcript, any additional information from Student Affairs regarding the RESPONDENT'S disciplinary record, if any, and any sanctioning input statement provided by the parties as set forth below. The Student Conduct Advisor may consult with the TITLE IX

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<sup>4</sup> The Student Conduct Advisor may identify an appropriate designee to coordinate all aspects of sanctioning described in section E of the Policy.

COORDINATOR or the HEARING OFFICER as necessary. In total, the HEARING OFFICER and Student Conduct Advisor will strive to complete the finding and sanctioning determination within 30 days of the Hearing.

2. **Party Input Regarding Desired Remedies.** Within seven (7) calendar days following the Hearing, but prior to the date on which the HEARING OFFICER issues their determination, the COMPLAINANT and RESPONDENT may each offer a brief written input statement that will be shared with the Student Conduct Advisor regarding desired remedies and sanctions should the HEARING OFFICER determine that the RESPONDENT violated the Policy. The written input statements may not exceed five (5) pages, including attachments.

The input statement(s) will be shared with the other party(s), but not with the HEARING OFFICER. Each party is given the opportunity to provide an input statement, however, responses to input statements will not be requested from the parties and, if one is provided, it will not be considered.

An input statement from the COMPLAINANT is a written statement describing the impact of the PROHIBITED CONDUCT on the COMPLAINANT and expressing the COMPLAINANT'S preferences regarding appropriate remedies and sanctions if the HEARING OFFICER determines the RESPONDENT violated the Policy. An input statement from the RESPONDENT is a written statement explaining any factors that the RESPONDENT believes should mitigate or otherwise be considered in determining the remedies and sanctions if the HEARING OFFICER determines the RESPONDENT violated the Policy.

Each party's decision whether to provide an input statement is voluntary.

The Student Conduct Advisor may use information from these statements to help determine the RESPONDENT'S sanction(s) and COMPLAINANT'S remedies, as necessary.

3. **Factors Considered in Sanctioning.** In determining the appropriate sanctions, the Student Conduct Advisor, or designee, will be guided by a number of considerations, including:

- The nature of the conduct at issue;
- The impact of the conduct on the COMPLAINANT;
- The impact of the conduct on the community or the University, including protection of the UNIVERSITY COMMUNITY;

- Prior misconduct by the RESPONDENT, including the RESPONDENT’S relevant prior disciplinary history, both at the University or elsewhere, and any criminal convictions, if such information is available, known and reliable;
- Whether the RESPONDENT has accepted responsibility for the conduct, which may be considered as a factor that may lessen, not increase, the severity of the sanctions;
- Maintenance of a safe and respectful environment conducive to learning;
- The necessity of any specific action in order to eliminate the PROHIBITED CONDUCT, prevent its recurrence, and remedy its effects on the COMPLAINANT or other UNIVERSITY COMMUNITY members; and
- Any other mitigating, aggravating, or compelling circumstances, including those set forth in the sanctioning input statements, to reach a just and appropriate resolution in each case.

4. **Possible Sanctions or Interventions Directly Impacting the Respondent.** The list of potential sanctions or interventions includes one or more of the following:

Educational Interventions

- **Class/Workshop/Training/ Program Attendance:** Enrollment in and verified completion of a class, workshop, training, online learning, program, and/or follow up meetings with staff members any of which could help the RESPONDENT and/or the UNIVERSITY COMMUNITY. Examples include, but are not limited to, the following: Conflict Coaching, Ethical Decision-Making Coaching, Counseling (recommended & voluntary only), educational programming related to alcohol and other drugs, scheduled Check In Meetings with staff member, and Healthy Relationship/Consent/Wellness Education coaching; or
- **Educational Project:** Completion of a project specifically designed to help the RESPONDENT understand why certain behavior was inappropriate and to prevent its recurrence.

### Community Removal and/or Contact Restriction

- **Permanent or Fixed-Duration Removal from Specific Courses or Activities:** Suspension or transfer from courses or activities at the University for a specified period of time; or
- **Permanent No Contact:** Restriction from entering specific University areas and/or from all forms of contact with certain persons.

### Student Status Change, Restriction, or Record Notation

- **Disciplinary Probation:** A designated period of time during which the RESPONDENT is not in good standing with the University. The terms of disciplinary probation may involve restrictions of STUDENT privileges and/or set specific behavioral expectations;
- **Suspension:** Separation from the University for a specified period of time or until certain conditions are met;
- **Expulsion:** Termination of STUDENT status for an indefinite period;
- **Transcript Notation, Hold, and/or Notification to Other Institutions:** A notation of non-academic disciplinary action may be made on a transcript and/or the University may notify other institutions of non-academic disciplinary action. In addition, the University may place a hold on transcripts, meaning that the University may prevent a RESPONDENT from registering for classes, receiving a copy of their transcript/diploma, or both;
- **Withholding, Delaying, or Revoking the Conferral of the Degree:** The University may delay the conferral of the degree pending the outcome of an investigation or withhold the conferral of the degree due to a finding of PROHIBITED CONDUCT. In extraordinary circumstances, the University may revoke the conferral of the degree; or
- **Restriction from Employment at the University:** Termination of or prohibition on University employment.

### Compensatory Requirement

- **Restitution:** Reasonable compensation limited to the actual and verifiable replacement or repair value of property lost or damaged.

If a STUDENT-EMPLOYEE is found to have engaged in PROHIBITED CONDUCT, the STUDENT-EMPLOYEE may be subject to sanctions both in connection with their employment and in connection with their STUDENT status, as appropriate, under the Student Procedures, any corrective actions as set forth in the [Employee Procedures](#), and any other applicable processes.

5. **Possible Interventions to Remedy Discriminatory Effects on the Complainant and Others.** The Student Conduct Advisor will also be responsible for identifying and recommending any non-disciplinary actions necessary to prevent recurrence of the conduct and to remedy its discriminatory effects on the COMPLAINANT and others as appropriate, including any systemic actions found to be appropriate for the broader UNIVERSITY COMMUNITY. Such interventions may include academic accommodations, counseling, reimbursement, community-focused restorative processes, education or training, monitoring or other individual support needed to remedy the harm. The Student Conduct Advisor will identify what actions the University will take, who will be responsible for implementing such actions, and by when. To the extent the Student Conduct Advisor determines that non-disciplinary interventions for the COMPLAINANT or others are not necessary, the Student Conduct Advisor will identify why such remedies are not needed.
6. **Written Notice of Sanction(s) and Interventions.** ECRT will provide to the COMPLAINANT and the RESPONDENT simultaneously a Hearing Outcome that includes both the determination regarding responsibility, the sanctioning determination and intervention(s), and whether the COMPLAINANT will be provided with remedies. The sanctioning determination portion of the Hearing Outcome will include the sanction(s) and intervention(s), a summary of the Student Conduct Advisor's rationale in support of the sanction(s) and intervention(s), and the Appeal process, including permissible grounds for Appeal.

### F. Appeals of Hearing Outcome

Either party may file a written Appeal of a Hearing Outcome. Either party may appeal the determination regarding whether the PROHIBITED CONDUCT occurred on the following bases only:

- Procedural irregularity that materially affected the outcome of the matter;



- New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could materially affect the outcome of the matter; and/or
- The TITLE IX COORDINATOR, INVESTIGATOR(s), or decision-maker(s) had a conflict of interest or bias for or against COMPLAINANTS or RESPONDENTS generally or the individual COMPLAINANT or RESPONDENT that materially affected the outcome of the matter.

Either party may appeal the sanction on the following ground:

- The sanction was clearly inappropriate and/or disproportionate to the conduct for which the RESPONDENT was found responsible.

Appeals must be submitted to ECRT within 14 calendar days of the date of the issuance of the Hearing Outcome. The University may deem a late submission reasonable only under extraordinary or extenuating circumstances.

The Appeal shall consist of a plain, concise written statement of no more than ten (10) pages, including exhibits, outlining the basis for Appeal and all relevant information to substantiate the Appeal. If a party's Appeal includes an assertion that new relevant evidence unavailable earlier in the proceedings exists and that includes written or other documentary evidence, such evidence will not be subject to this page limit.

Each party will be given the opportunity to review and respond in writing, up to ten (10) pages, including exhibits, to an Appeal submitted by the other party. Any response by the opposing party must be submitted to ECRT within 14 calendar days of the ECRT providing notice of the other party's Appeal. All Appeal documents from each party will be considered together in one submitted Appeal.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the Dean of Students' decision, if an Appeal is filed, or if an Appeal is not filed, the date on which the Appeal would no longer be considered timely.

1. **External Reviewer.** An EXTERNAL REVIEWER will conduct the Appeal review. The University will notify the parties of the identity of the EXTERNAL REVIEWER, and the EXTERNAL REVIEWER of the identity of the parties. If the EXTERNAL REVIEWER has concerns that they cannot conduct a fair or unbiased review, the EXTERNAL REVIEWER must report those concerns to the TITLE IX COORDINATOR and a different EXTERNAL REVIEWER will be assigned to the Appeal. Similarly, a COMPLAINANT or a RESPONDENT who has concerns that the assigned EXTERNAL REVIEWER cannot conduct a fair and unbiased review, may report those concerns to the TITLE IX COORDINATOR who will assess the circumstances and determine whether a different EXTERNAL REVIEWER should be assigned to the Appeal.

The EXTERNAL REVIEWER will review the matter based on the issues identified in the Appeal(s) materials. The EXTERNAL REVIEWER may, at any time, freely consult with or request additional information from the TITLE IX COORDINATOR and other University administrators as necessary. The EXTERNAL REVIEWER has the authority to determine the appropriateness of evidence, including whether certain evidence should be considered, and the strength and value that evidence will be given. In deciding an Appeal of the finding or the sanction, the EXTERNAL REVIEWER may consider the investigation report; the hearing transcript; the Hearing Outcome, including the sanctioning determination; any written Appeal by the parties outlining any basis for altering the finding of responsibility and/or sanctions; and any sanctioning input statements. The EXTERNAL REVIEWER also may consider any other materials the University (or the EXTERNAL REVIEWER) deems relevant and that have been shared with the parties.

2. **Decision of External Reviewer.** The EXTERNAL REVIEWER may conclude that there are no relevant issues of concern, and therefore, recommend that the Hearing Outcome and/or the sanctioning determination be affirmed. In the alternative, the EXTERNAL REVIEWER may identify issues of concern. If so, the EXTERNAL REVIEWER will provide, in writing, to ECRT, copying the TITLE IX COORDINATOR, one of the following recommended actions and any additional instructions or recommendations they deem appropriate under the circumstances:

- If there was a procedural irregularity that materially impacted the outcome of the case, remand the matter to the TITLE IX COORDINATOR or the HEARING OFFICER, as appropriate, with corrective instructions from the EXTERNAL REVIEWER;
- If new information that was not reasonably available at the time the determination regarding responsibility was made that could materially impact the Hearing Outcome, remand the matter to the

HEARING OFFICER to determine whether a new Hearing is necessary and/or whether any modifications may need to be made to the Hearing Outcome;

- If the TITLE IX COORDINATOR, INVESTIGATOR, or HEARING OFFICER had a conflict of interest or bias for or against COMPLAINANTS or RESPONDENTS generally, or the individual COMPLAINANT or RESPONDENT that materially affected the outcome of the matter, remand the matter to the ECRT EXECUTIVE DIRECTOR on the Ann Arbor campus to find a replacement for whomever was biased; or
- If the EXTERNAL REVIEWER determines the sanctions to be clearly inappropriate or disproportionate, they will alter the sanctions or interventions accordingly. The EXTERNAL REVIEWER'S decision regarding sanctions is final. There will be no further opportunity for the parties to appeal the sanctions, except as set forth in the following paragraph of these Procedures.

The EXTERNAL REVIEWER will strive to complete the Appeal review within 14 calendar days of receipt of all documents.

The EXTERNAL REVIEWER will provide the determinations to the Dean of Students or their designee who may accept or modify the determinations made by the EXTERNAL REVIEWER within 72 hours of receiving the EXTERNAL REVIEWER'S decision. If the Dean of Students or their designee does not complete the review within 72 hours, the review will be waived and the EXTERNAL REVIEWER'S determination will be deemed final. The Dean of Students' final and unreviewable decision will be made available to the participating parties, in writing, simultaneously, by the ECRT.

If a new Hearing is deemed necessary following an Appeal and results in a different determination, either party can appeal the new Hearing Outcome subject to the following grounds:

- A procedural irregularity during the remanded Hearing that materially impacted the outcome of the Hearing in a way that is fundamentally unfair;
- The TITLE IX COORDINATOR, INVESTIGATOR, or HEARING OFFICER in the remanded investigation and/or Hearing had a conflict of interest or bias for or against the COMPLAINANTS or the RESPONDENTS generally, or the individual COMPLAINANT or RESPONDENT that materially affected the outcome of the matter;

- There is new and relevant information that was not reasonably available at the time the determination regarding responsibility was made that could materially impact the remanded Hearing Outcome; and/or
- If the new and different outcome determination is a finding of responsibility following the sanctioning process, the parties may appeal the sanction as clearly inappropriate and/or disproportionate to the conduct for which the person was found responsible.

If the Hearing results in a new sanction, either party can appeal the new sanction subject to the following grounds:

- The sanction was clearly inappropriate and/or disproportionate to the conduct for which the person was found responsible.

## **VII. ADAPTABLE RESOLUTION**

The University recognizes that it is important to take into account the needs of STUDENTS, some of whom may prefer not to utilize an investigative resolution process. Adaptable Resolution is a voluntary, remedies-based, non-disciplinary structured process between or among affected parties that focuses on creating an agreement to address harm and promote accountability. Adaptable Resolution is generally designed to allow a RESPONDENT to acknowledge harm and take responsibility for repairing harm (to the extent possible) experienced by the COMPLAINANT and/or the UNIVERSITY COMMUNITY. Adaptable Resolution is designed to eliminate the PROHIBITED CONDUCT, prevent its recurrence, and remedy its effects in a manner that meets the needs of the COMPLAINANT while maintaining the safety of the campus community. Adaptable Resolution must be approved by the TITLE IX COORDINATOR and voluntarily consented to by all parties. The University will strive to complete Adaptable Resolution within 90 days from the date that the parties agree on an Adaptable Resolution pathway.

### **A. Circumstances in Which Adaptable Resolution May be Used**

The TITLE IX COORDINATOR reviews the matter to confirm it appropriate for an Adaptable Resolution process and that use of an Adaptable Resolution process is without pressure or compulsion from others. The COMPLAINANT may meet with the ADAPTABLE RESOLUTION COORDINATOR before filing a FORMAL COMPLAINT to learn more about this option. The Adaptable Resolution process may be pursued only following the filing of a FORMAL COMPLAINT.

After a FORMAL COMPLAINT is filed, the University will provide the parties a written notice disclosing the allegations, the requirements of the Adaptable Resolution process, and any consequences resulting from participating in the process, including the records that will be maintained or could be shared. The written notice will inform the parties that either can elect to end Adaptable Resolution at any time before an agreement is reached. In discontinuing an

Adaptable Resolution process, a separate investigative resolution may be pursued. The written notice will also inform the parties that information gathered and utilized in Adaptable Resolution by and between the parties cannot be used in any other University process, including investigative resolution, if Adaptable Resolution ends and investigative resolution begins or resumes. Upon receiving the written notice, the RESPONDENT may meet with the ADAPTABLE RESOLUTION COORDINATOR before deciding whether to participate.

The Adaptable Resolution options available under this Policy recognize:

- The goal of Adaptable Resolution is to address the PROHIBITED CONDUCT, identify ways that individuals and/or the community have been harmed, identify unique expressed needs and interests, and develop a written resolution agreement to address the harm and prevent future PROHIBITED CONDUCT;
- Participation is voluntary and both the COMPLAINANT and the RESPONDENT, as well as any other participating individuals, must consent in writing to participation in Adaptable Resolution;
- Adaptable Resolution procedures do not include in-person mediation and are distinct from mediation;
- The University will not pressure or compel any party to participate in any particular form of Adaptable Resolution; and
- Adaptable Resolution processes are designed to address harm and prevent additional potential harm. The ADAPTABLE RESOLUTION COORDINATOR may, in their judgment, discontinue an Adaptable Resolution process when they determine that one or more of the parties have been coerced or where the Adaptable Resolution process may not have the intended effect.

## **B. Adaptable Resolution Options**

The Adaptable Resolution options will be facilitated by a trained ADAPTABLE RESOLUTION COORDINATOR (“ARC”) within the Office of Student Conflict Resolution on the Ann Arbor campus. Any concerns related to the assigned ARC should be directed to the TITLE IX COORDINATOR, who will consult with the OSCR Director.

With approval from the TITLE IX COORDINATOR, after consultation and intake with the ARC, and in order for Adaptable Resolution to proceed, the COMPLAINANT and the RESPONDENT must agree on the process that best meets the interests and needs of the parties. Adaptable Resolution may include one or more of the following restorative approaches:

- **Facilitated Dialogue:** A structured and facilitated conversation between two or more individuals, most often the COMPLAINANT, the RESPONDENT, and/or other community members. The focus is often on providing a space for voices to be heard and perspectives to be shared. Depending on stated interests, the participants may sometimes work towards the development of a shared agreement, although working towards an agreement is not always the intended outcome;
- **Restorative Circle or Conference Process:** A facilitated interaction where individuals who have experienced harm can come together with an individual(s) who assumes responsibility for repairing harm, with the goal of creating a plan or agreement to repair the harm (to the extent possible). A circle or conference may include multiple members of the community to explore individual and community impact, harm, obligations, and opportunity for repairing them. The parties must agree on all those who will be present;
- **Restorative Shuttle Agreement:** A negotiated agreement between the COMPLAINANT and the RESPONDENT (and potentially other participants) facilitated via a process wherein the COMPLAINANT and RESPONDENT do not meet together, but instead meet separately with a facilitator to discuss perspectives and experiences, and to explore interests while working towards meeting expressed needs. This facilitated process does not require direct interaction between the parties. Rather, participants meet independently with a coordinator to create an agreement to repair harm; and/or
- **Community Supported Accountability Circle (“CSA”):** A facilitated interaction between the RESPONDENT and University faculty and/or staff designed to provide accountability, structured support, and the development of a learning plan. The focus of a CSA is to balance support and accountability for an individual who has acknowledged their obligation to repair harm, prevent future harm, and willingness to engage in an individual educational process. The CSA model does not require participation from the COMPLAINANT.

### C. Adaptable Resolution Agreements

A mutual voluntary resolution agreement may include any terms that the parties mutually and voluntarily agree to and which the TITLE IX COORDINATOR approves. Examples of common terms are:

- Agreement for the RESPONDENT to participate in an educational program designed to prevent additional harm;

- Agreement for the RESPONDENT to complete an educational plan with regular meetings with the ADAPTABLE RESOLUTION COORDINATOR or other appropriate University staff or faculty member;
- Agreement for the RESPONDENT to participate in alcohol education classes;
- Agreement for the RESPONDENT to participate in regular meetings with an appropriate University individual, unit, or resource;
- Agreement to no contact;
- Agreement to not participate in one or more University PROGRAM OR ACTIVITY;
- Agreement by the RESPONDENT to refrain from attending specific events;
- Agreement by the RESPONDENT to participate in counseling sessions; and/or
- Agreement by the RESPONDENT to voluntary, temporary or permanent separation from the University.

Individuals who wish to participate in an Adaptable Resolution process must have successfully completed preparatory meetings with an appropriate staff member(s) within OSCR. The ARC will assist STUDENTS with coordination of Adaptable Resolution.

Individuals may be accompanied by an ADVISOR at any meetings related to the Adaptable Resolution process. Information shared or obtained during Adaptable Resolution will be treated as private to the extent permitted by law and will not result in subsequent disciplinary actions by the University.

Any agreement reached in Adaptable Resolution must be documented by the ARC and approved by the TITLE IX COORDINATOR or designee to ensure consistency with the University's Title IX obligations. An agreement will not be considered valid if the TITLE IX COORDINATOR or designee does not approve it.

If the TITLE IX COORDINATOR or designee approves an agreement after the parties have voluntarily reached consensus as to its terms, the RESPONDENT will be required to comply with the agreement. Typically, an agreement also includes agreed upon consequences when obligations under the agreement are not fulfilled. Should the process transition to investigative resolution, information obtained through the Adaptable Resolution process may not be utilized in the investigative resolution. Once the TITLE IX COORDINATOR approves an agreement, the parties are bound by its terms and cannot return to investigative resolution.

To fairly assess pattern or systemic behavior, the TITLE IX COORDINATOR will maintain records of all reports and conduct referred for Adaptable Resolution. While considering the voluntary and participant-driven nature of Adaptable Resolution, the University will strive to complete Adaptable Resolution within 90 calendar days beginning with parties signing agreement to participate through the signing of the resolution agreement, if applicable.

### **VIII. OTHER INTERVENTIONS OR REMEDIES FOR THE UNIVERSITY COMMUNITY**

In addition to the sanctions and/or interventions issued to the RESPONDENT, and regardless of whether the University pursues an investigative resolution or takes other formal disciplinary action, the TITLE IX COORDINATOR may find it necessary to request or require a RESPONDENT or others to undertake specific steps designed to eliminate the misconduct, prevent its recurrence, and/or remedy its effects. Examples include, but are not limited to, the following:

- Requesting or requiring a University entity to provide training for its staff or members;
- Requesting or requiring a RESPONDENT to receive training;
- Continuing any SUPPORTIVE MEASURES previously established;
- Identifying the need for any additional or ongoing measures, supports and remedies; or
- Revising University policies, practices, or services.

### **IX. RECORDS RETENTION**

The University shall retain for a period of seven (7) years after the date of case closure: the official file relating to an Adaptable Resolution, including any result of the Adaptable Resolution process and/or the official file relating to an investigative resolution, including any investigation Hearing, sanctioning, and/or Appeals processes involving allegations of PROHIBITED CONDUCT. In cases in which a RESPONDENT was found to have violated the Policy and was expelled, the University may retain such official case files indefinitely. For each report of conduct within the scope of the Policy, the University will also retain for seven (7) years records of any actions, including any SUPPORTIVE MEASURES, taken in response to a report to ECRT or FORMAL COMPLAINT. If the University does not provide a COMPLAINANT with requested SUPPORTIVE MEASURES, the University will document why such a response was not clearly unreasonable in light of the known circumstances.

### **X. ANNUAL REPORT**

The TITLE IX COORDINATOR will issue an [Annual Report](#) to the UNIVERSITY COMMUNITY providing an overview of the number and nature of reports of PROHIBITED CONDUCT received



during the preceding fiscal year. The report will provide the community with an overview of response efforts.