

*This draft policy has been posted to meet obligations under Title IX. This policy is still under review and will be updated in final form as per University policy protocols in a timely fashion. This policy applies to all conduct occurring on or after August 1, 2024.”*

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## DISCRIMINATION AND HARASSMENT POLICY

**Policy Number: ESU-2011-06**

**Adopted: May 25, 2011**

**Effective Date: December 17, 1987**

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**Last Reviewed: June 25, 2021**

**Related Policies: Sex Discrimination and Sex-Based Harassment Policy**

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### **PURPOSE**

To define what actions and conduct are prohibited under this Policy and the process East Stroudsburg “University” will undertake to respond to reports of discrimination and harassment against applicants for admission or employment, students, employees, volunteers, officials, and contractors of the University.

The Pennsylvania State System of Higher Education and the University are committed to providing equal access to all individuals and prohibiting any form of discrimination and harassment on the basis of race, color, religion, national origin, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity and expression, pregnancy, genetic information, disability, status as a veteran, or any other characteristic prohibited under applicable federal or state law (all a “protected category”) in any decision-making regarding admissions, employment, or participation in a University Education Program or Activity, as hereinafter defined.

### **SCOPE OF POLICY**

This Policy applies to the reporting, investigation, and adjudication of allegations of harassment or discrimination. There is no time limit for reporting these allegations; however, the University strongly encourages prompt reporting to allow the University to respond effectively and in a timely manner. If the reported Respondent is not a member of the University community or is no longer associated with the University at the time of the report or at the time a resolution process is initiated, the University may be unable to investigate or take disciplinary action.

### **LEGAL AUTHORITY**

Discrimination and harassment are currently prohibited under federal, state, and local laws including under Titles IV, VI and VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act; the Age Discrimination in Employment Act; Title IX

of the Education Amendments of 1972 and its implementing regulations; and the Pennsylvania Human Relations Act.

This Policy is not intended to interfere with or replace any rights an individual may have under principles of the Constitution, due process, merit principles, an applicable collective bargaining agreement or applicable University or Board of Governors policies.

## DEFINITIONS

1. Complainant: An individual who has reported being or is alleged to be subjected to conduct that could constitute a violation of this Policy.
2. Complaint: An oral or written request to the University that objectively can be understood as a request for the University to investigate and make a determination about alleged conduct.
3. Confidential Employee: An individual who is:
  - a. An employee of the University whose communications are privileged or confidential under federal or state law. The employee's confidential status only extends to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - b. An employee of the University whom the University has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status only extends to information received about sex discrimination in connection with providing those services; or
  - c. An employee of a postsecondary institution who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination—but the employee's confidential status only extends to information received while conducting the study.
4. Consent: A knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood.

In order to be valid, Consent must be active, present and ongoing.

Consent is not present when it is the result of coercion, intimidation, force, or threat of harm.

Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence of or impaired by the use of the drug. Alcohol and other drugs impact each individual differently. Determining whether an individual is incapacitated requires an individualized determination. When determining whether a person has the capacity to provide Consent, the University will consider whether a sober, reasonable person in the same position knew or should have known that the other party could or could not consent to the sexual activity.

When determining whether Consent has been provided, all the circumstances of the relationship between the parties will be considered.

5. Contractor: An individual, program, company or school that provides a program, activity, or service to the University. This includes experiential learning services such as internships, practicum experiences, pre-service teaching experiences, or other community service experiences in which the University places students. For purposes of this Policy, ROTC instructors and employees and officials of recognized affiliated entities will be considered Contractors.
6. Days: Unless otherwise stated, calculated as business days when the University is officially open.
7. Employee: An individual who is employed by the State System (either at a State System University or in the Office of the Chancellor) including, but not limited to, faculty members, coaches, staff, managers and student employees.
8. Education Program or Activity: Conduct that occurs under a University's "Education Program or Activity" includes, but is not limited to:
  - a. Conduct that occurs in any on-campus premises;
  - b. Conduct that occurs in any off-campus premises the University has substantial control over. This includes buildings or property owned or controlled by a recognized student organization or a recognized affiliated entity;
  - c. Conduct that occurs using computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of the University's programs and activities over which the University has substantial control; and

d. Conduct that is the subject to the University's disciplinary authority. In addition to the above, the University's obligation to address allegations of Sex Discrimination extends to conduct that contributes to a hostile environment within the University's Education Program or Activity even when the conduct occurred outside the University's Education Program or Activity or outside the United States.

9. Official: A member of a Council of Trustees or of the Board of Governors or their respective designees.
10. Relevant: Related to the allegations under investigation as part of the grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged discrimination or harassment occurred, and evidence is relevant when it may aid a Decision Maker in determining whether the alleged discrimination or harassment occurred.
11. Respondent: Any individual who is alleged to have committed a violation of this Policy.
12. Reporting Individual: The individual making a report of discrimination or harassment, who may or may not be the Complainant.
13. Reviewing Office: The office with jurisdiction to review, investigate, and/or adjudicate a Complaint.
14. Student: A person who has gained admission to the University. Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculations in or at an Education Program or Activity operated by the University. The term "Student" shall include Employees, Volunteers and Officials where the Employee, Volunteer or Official has gained admission to the University.
15. Supportive Measures: Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:
  - a. Restore or preserve that Party's access to the University's Education Program or Activity, including measures that are designed to protect the safety of the Parties or the University's educational environment; or
  - b. Provide support during the University's grievance procedures or during the informal resolution process.
16. Volunteer: A recognized volunteer or any individual who represents or acts on behalf of the University or whose actions may bind the University, regardless of whether the

individual receives monetary or other compensation.

## PROHIBITED CONDUCT

1. Discrimination: Conduct of any nature that denies a qualified individual the opportunity to participate in or benefit from a University Education Program or Activity, or otherwise adversely affects a term or condition of an individual's employment, education, or access to a University Education Program or Activity based on the individual's membership in a protected category.

There are generally two types of discrimination recognized: disparate treatment and disparate impact. Disparate treatment discrimination involves a person being treated differently because of membership in a protected category. Disparate impact discrimination involves a practice that has a greater negative effect on members of a particular protected category than those not in the protected category.

Retaliation is a form of discrimination.

2. Harassment: Unwelcome conduct directed against a person that is based on a protected category, that a reasonable person would determine is sufficiently severe or pervasive that it has the effect of unreasonably interfering with access to a University Education Program or Activity or creates an intimidating, hostile or offensive work or academic environment.

Whether the alleged conduct constitutes prohibited harassment depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question, the location and context in which it occurs, whether the conduct constitutes constitutionally protected expression, and the status of the individuals involved. A single incident that is extremely serious may meet the standard of being considered severe or pervasive.

3. Sex Discrimination: Discrimination on the basis of sex includes discrimination on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. This includes discrimination based on perceived identity whether that perception is accurate or not.
4. Sex-Based Harassment: A form of sex discrimination, which includes Sexual Harassment and other harassment on the basis of sex, including:
  - a. *Quid Pro Quo Harassment* – An employee, agent, or other person authorized by the University to provide an aid, benefit, or service under the University's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
  - b. *Hostile Environment Harassment* – Unwelcome sex-based conduct that,

based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- i. The degree to which the conduct affected the Complainant's ability to access the University's Education Program or Activity;
  - ii. The type, frequency, and duration of the conduct;
  - iii. The Parties' ages, roles within the University's Education Program or Activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
  - iv. The location of the conduct and the context in which the conduct occurred; and
  - v. Other sex-based harassment in the University's Education Program or Activity; or
- c. Specific Offenses
- i. *Sexual Assault* – An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, as follows:
    - I. *Sex Offenses, Forcible* – Any sexual act directed against the Complainant, without the Consent of the Complainant including instances where the Complainant is incapable of giving Consent, including the following:
      - a. *Forcible Rape (Except Statutory Rape)* – Vaginal sexual intercourse with the Complainant without the Complainant's Consent.
      - b. *Forcible Sodomy* – Oral or anal sexual intercourse with the Complainant without the Complainant's Consent.
      - c. *Sexual Assault With An Object* – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of the Complainant without the Complainant's Consent.

d. *Forcible Fondling* – The touching of the private body parts of the Complainant for the purpose of sexual gratification without the Complainant’s Consent.

II. *Sex Offenses, Nonforcible* (Except Prostitution Offenses) – Unlawful, nonforcible sexual intercourse, including the following:

a. *Incest* – Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

b. *Statutory Rape* – Nonforcible sexual intercourse with a person who is under the statutory age of consent. The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than the Minor is at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other person does not have authority over them as defined in Pennsylvania’s institutional sexual assault statute, 18 Pa.C.S.A. § 3124.2.

ii. *Dating Violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on a consideration of the length and type of relationship and the frequency of interaction between the Parties involved in the relationship.

iii. *Domestic Violence* – Violence committed by a person who:

1. Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the Complainant;
2. Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
3. Shares a child in common with the Complainant; or
4. Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic

violence laws of the jurisdiction; or

- iv. *Stalking* – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or suffer substantial emotional distress.
5. **Retaliation**: Intimidation, threats, coercion, or discrimination against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University’s Education Program or Activity, (a) for the purpose of interfering with any right or privilege secured by Title IX, or (b) because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an informal resolution process, in grievance procedures, and any other actions taken by the University.

A finding of Retaliation under this Policy is not dependent on a finding that the underlying misconduct occurred.

6. **False Report**: Any person who willfully files a bad faith report or makes misrepresentations as part of a resolution of a complaint under this Policy is subject to disciplinary action up to and including dismissal or termination from the University.

## REPORTING

### 1. Reporting to the University

Any individual, including a third Party, who becomes aware of behavior prohibited under this Policy may make a report to the appropriate individuals or offices, as set forth below.

All University Officials, Volunteers, Contractors, and Employees (including student employees) are obligated to report incidents of Sex Discrimination or Sex-Based Harassment against a Student, Official, Employee, Volunteer, or any other person who was participating or attempting to participate in the University’s Education Program or Activity at the time of the alleged Sex Discrimination, to the Title IX Coordinator, unless they serve in a role that makes such reports privileged or are identified as a Confidential Employee. See Statement on Privacy and Confidentiality, below.

Individuals are encouraged to report as soon as possible, which will permit the University to respond promptly and effectively, and to use reporting forms provided by the University. Written reports are preferred to verbal reports but are not required.

Reports should be referred to the appropriate Reviewing Office, as follows:



- For Sex Discrimination Complaints and Sex-Based Harassment Complaints involving only Students as Parties, the matter must be reported to the University's Title IX Coordinator and will be resolved under the procedures outlined in the University's Sex Discrimination and Sex-Based Harassment Policy.
- For Sex-Based Harassment Complaints where one of the Parties is a Student, the matter must be reported to the University's Title IX Coordinator and will be resolved under the procedures outlined in the University's Sex Discrimination and Sex-Based Harassment Policy.
- For discrimination and harassment Complaints based on a protected class other than sex, sexual orientation, or gender identity where a Student is a Respondent, the matter should be referred to the Student Conduct Office and will be resolved under the procedures outlined in the University's Student Code of Conduct.
- For all other Complaints of discrimination or harassment involving Officials, Contractors, Volunteers, Employees, or other persons, the matter should be referred to the East Stroudsburg University Office of Human Resources and will be resolved under the procedures outlined in this Policy.

<b>Complainant</b>	<b>Respondent</b>	<b>Type of Alleged Offense</b>	<b>Report To this Office</b>	<b>Policy Governing Procedures</b>
Student	Student	Non-Sex-Based Discrimination or Harassment	Student Conduct and Community Standards	Student Code of Conduct
		Sex Discrimination or Sex-Based Harassment	Title IX Coordinator	Sex Discrimination and Sex-Based Harassment Policy
	Employees or Third Parties (including Officials, Volunteers and Contractors)	Non-Sex-Based Discrimination or Harassment	Human Resources	Discrimination and Harassment Policy
		Sex Discrimination	Title IX Coordinator and Human Resources	Discrimination and Harassment Policy
		Sex-Based Harassment	Title IX Coordinator	Sex Discrimination and Sex-Based Harassment Policy

Employees or Third Parties (including Officials, Volunteers and Contractors)	Student	Non-Sex-Based Discrimination or Harassment	Student Conduct and Community Standards	Student Code of Conduct
		Sex Discrimination or Sex-Based Harassment	Title IX Coordinator	Sex Discrimination and Sex-Based Harassment Policy
	Employees or Third Parties (including Officials, Volunteers and Contractors)	Non-Sex-Based Discrimination or Harassment	Human Resources	Discrimination and Harassment Policy
		Title IX Sex Discrimination or Sex-Based Harassment	Title IX Coordinator and Human Resources	

[Student Conduct and Community Standards:](#) 570-422-3461

[Human Resources:](#) 570-422-3422

[Title IX Office:](#) 570-422-2277

## 2. Anonymous Reporting

While anonymous reports are accepted, the University's ability to address alleged misconduct reported anonymously is significantly limited. Anonymous complaints of discrimination or harassment against an office, employee, student or third Party may be filed with the University through the [University's electronic reporting system](#).

Individuals may file an anonymous complaint with the State System's Incident Reporting System by calling **855-298-5316** or filling out a form [online](#). The [Incident Reporting System](#) is not intended to take the place of the reporting and investigation procedures established at each university. Matters reported through the Incident Reporting System may be referred to the University to be handled under applicable University policy.

## 3. External Reporting

In addition to reporting to the University via the reporting procedures in this Policy, individuals may file a discrimination complaint directly with the outside agencies listed below.

A complaint may be filed with the U.S. Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by calling 1-800-[421-3481](#) : 1-877-[521-2172 TTY](#) or emailing [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov) or visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

A complaint may be filed with the Pennsylvania Human Relations Commission by

calling 717-787-9780 for the Harrisburg Regional Office; 412-565- 5395 for the Pittsburgh Regional Office; or 215-560-2496 for the Philadelphia Regional Office; or by visiting <https://www.phrc.pa.gov/Pages/default.aspx>.

Employees may file a charge with the Equal Employment Opportunity Commission regarding an alleged violation of Title VII by calling 1-800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>.

The filing of a complaint under this Policy does not excuse the Complainant from meeting the time limits of outside agencies, which generally require reports to be made within 180 days of the alleged incident or knowledge of the incident.

External agencies may or may not inform the University of reports made to them.

#### 4. Criminal Reporting Options

An individual may report criminal conduct to law enforcement, independent of or parallel with any report made to the University. Law enforcement agencies may or may not inform the University of reports made to them.

East Stroudsburg University Campus Police  
Hemlock Suites, Smith Street, Ground Floor  
570-422-3064 or 911

Stroud Area Regional Police  
100 Day St, East Stroudsburg, PA 18301  
570-421-6800 or 911

Pennsylvania State Police  
2730 Rimrock Drive Stroudsburg, PA 18360  
570-619-6800

**PLEASE NOTE:** The University's policy, definitions, and burden of proof may differ from criminal law. Neither law enforcement's decision whether to prosecute, nor the outcome of any criminal prosecution, is determinative of whether a violation of this Policy has occurred. In cases where there is a simultaneous law enforcement investigation, there may be circumstances when the University may need to temporarily delay its investigation while law enforcement gathers evidence; however, the University will generally proceed with investigations even during the time of a pending law enforcement investigation.

## RESOURCES

The University is committed to ensuring that individuals who experience discrimination or harassment have access to a variety of services and resources. To talk with someone to receive support and assistance in a confidential setting contact the following supportive resources, as applicable. Employees are eligible for crisis counseling by contacting the State Employee Assistance Program ("SEAP") at 800-692-7459. Students may see a counselor at [The Department of](#)

[Counseling and Psychological Services \(CAPS\)](#) by calling 570-422-3277 or visiting their office in the lower level of Sycamore Suites.

## **SUPPORTIVE MEASURES**

Complainants who report allegations of Sex Discrimination and Sex-Based Harassment have the right to receive Supportive Measures from the University regardless of whether they file a Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may vary depending upon what is reasonably available at the University.

As appropriate, Supportive Measures may include, but are not limited to:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex Discrimination and Sex-Based Harassment

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or the University's educational environment, or to provide support during the Nondiscrimination Resolution Procedure or Informal Resolution process under this policy.

The University may modify or terminate Supportive Measures at the conclusion of the grievance procedure or at the conclusion of the informal resolution process or may continue them beyond that point within the University's discretion.

The University will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the Supportive Measure or restore or preserve a Party's access to the University's Education Program or Activity, or there is an exception that applies, such as:

- The University has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable

information is at issue;

- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex Discrimination or Sex-Based Harassment under Title IX in the University's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g), or FERPA's implementing regulations, 34 CFR Part 99).

The University provides for a Complainant or Respondent to seek modification or reversal of the University's decision to provide, deny, modify or terminate a Supportive Measure by submitting, in writing, a challenge to the Vice President for Administration for review. Grounds for challenge of Supportive Measures include, but are not limited to:

- Whether a Supportive Measure is unreasonably burdensome;
- Whether a Supportive Measure is reasonably available;
- Whether a Supportive Measure is being imposed for punitive or disciplinary reasons;
- Whether the Supportive Measure is being imposed without fee or charge; and
- Whether the Supportive Measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

The Vice President for Administration will have the authority to modify or reverse the decision if that they determine that the decision to provide, deny, modify or terminate the Supportive Measure was inconsistent with the procedures as outlined above for providing Supportive Measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual Supportive Measures. Challenges by one Party to Supportive Measures afforded to the opposite Party will not be heard, unless that Supportive Measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

## **TRAINING**

The University will conduct annual training on discrimination and harassment for employees and students and as part of new student and employee orientations. All faculty, staff, and administrators are required to participate in this training within 60 days of commencing employment and at least every year thereafter. Failure to do so

may subject the individual to discipline.

### **FREE EXPRESSION AND ACADEMIC FREEDOM**

The University is committed to the principles of free expression and academic freedom, as noted in this statement, applicable collective bargaining agreements and related University policies, and to creating and maintaining a safe, healthy, and harassment-free environment for all members of its community. Unlawful or otherwise prohibited discrimination or harassment against members of the University community is not protected expression nor the protected exercise of academic freedom. The free expression of ideas is protected, even if the expressions are unpopular, because this is required by the First Amendment and is vital in promoting learning in an educational setting. Freedom of speech can sometimes protect offensive and hurtful language and controversial ideas; however, it does not protect true threats, harassment or discrimination that violates this Policy, the Student Code of Conduct, other University policies or relevant federal, state, and local laws.

There may be situations where protected speech can give rise to a hostile environment. In such a situation, while the University may not be able to take action against the individual speaker, because their speech constitutes protected speech, the University may still have an obligation to provide Supportive Measures and redress the effects of the hostile environment.

Nothing in this Policy requires the University to restrict any rights that would otherwise be protected from University action by the First Amendment of the U.S. Constitution.

For more information on free speech, please refer to the University's Time, Place and Manner for Expressive Activities Policy.

### **STATEMENT ON PRIVACY AND CONFIDENTIALITY**

The University has a duty to respond to allegations of discrimination and harassment and cannot guarantee confidentiality once allegations are disclosed to designated University personnel. The University will respect the sensitivity of information disclosed during the course of investigations or informal resolution efforts. This means that information about the complaint is shared only with those individuals within the University community who "need to know" in order to effectively investigate and/or resolve the complaint. Parties with a need to know include the Respondent, witnesses, and designated University personnel who need to be informed of the complaint while conducting an investigation or implementing a resolution. With respect to allegations of Sex Discrimination or Sex-Based Harassment under this Policy, the University will take reasonable steps to prevent and address the unauthorized disclosure of information and evidence obtained solely through the grievance process.

Communication with certain individuals may be privileged by operation of law and reports made to these individuals will not be shared with the University's Title IX Coordinator or law enforcement except in very limited situations, such as when failure to

disclose the information would result in imminent danger to the individual or to others or as otherwise required by law.

All University proceedings are conducted in compliance with the requirements of the FERPA, the Clery Act, Title IX of the Education Amendments of 1972 (“Title IX”), Violence Against Women Act (“VAWA”), state and local law, applicable collective bargaining agreements, and University policy. No information will be released from such proceedings except as required or permitted by law and University policy.

The University may share non-identifying information about reports received in order to issue timely warnings to the community, for crime reporting purposes, or in aggregate form, including data about outcomes and disciplinary sanctions.

## **CONFIDENTIAL EMPLOYEES**

*For Sex Discrimination and Sex-Based Harassment Complaints*, certain individuals are designated as Confidential Employees. For reports made to Confidential Employees, the University will respect the reporting Party’s expectations of privacy to the extent permissible by law while still ensuring compliance with other reporting obligations such as mandatory reporting obligations concerning abuse, including sexual misconduct, involving minors.

When an individual informs a Confidential Employee of conduct that may reasonably constitute a violation of this Policy, the Confidential Employee will inform the individual: (1) of the employee's status as a Confidential Employee, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that may constitute a violation of this Policy; (2) how to contact the Title IX Coordinator to make a complaint of sex discrimination; and (3) that the Title IX Coordinator may be able to offer and coordinate Supportive Measures, as well as initiate an informal resolution process or investigation under the grievance procedures of this Policy.

Confidential Employees will not share information with the Title IX Coordinator or any other employee of the University without the express permission of the disclosing Party. Confidential Employees can provide information about the University and off-campus resources, support services and other options. As noted above, because of the confidential nature of these resources, disclosing information to or seeking advice from a Confidential Employee does not constitute a report or Complaint to the University and will not result in a response or intervention by the University. A person consulting with a Confidential Employee may decide to make a report to the University and/or law enforcement.

Confidential resources on the East Stroudsburg University campus are [The Department of Counseling and Psychological Services \(CAPS\)](#) and [Student Health Services at Lehigh Valley Health Network – Pocono](#).

## **DISABILITY ACCOMMODATIONS**

This Policy does not alter any obligations of the University 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 from the Reviewing Office at any point before or during the resolution process that do not fundamentally alter the process. The Reviewing Office may consult, as appropriate, with [The Office of Accessible Services Individualized for Students \(OASIS\)](#) to provide support to employees and students with disabilities or to determine how to comply with the ADA and Section 504. The Reviewing Office will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other University Education Programs and Activities.

## **PARENTAL, FAMILY, MARITAL STATUS OR PREGNANCY OR RELATED CONDITIONS**

Title IX prohibits discrimination against students, employees, or applicants based on parental, family, marital status, or pregnancy or related conditions. The University must take actions to prevent sex discrimination and ensure equal access to the University's Education Program or Activity, such as by providing reasonable modifications for students and accommodations for employees; reasonable break time for lactation for employees; and lactation space for students and employees. The University also has an obligation to inform individuals of their rights in connection with pregnancy or related conditions. For additional information, please see the University's Policy on Parental, Family, or Marital Status, Including Pregnancy and Related Conditions.

## **RELATED POLICIES**

This Policy is a companion policy to [Board of Governors Policy 2020-01: Sexual Misconduct](#) and [Board of Governors Policy 2009-03-A: Non Discrimination Policy](#), the University's policy on Sex Discrimination and Sex-Based Harassment, and the University's Policy on Parental, Family, or Marital Status, Including Pregnancy and Related Conditions. All University employees, officials, contractors, and volunteers must also comply with the requirements set forth in [Board of Governors Policy 2020-02: Amorous Relationships](#).

Nothing in this Policy modifies the obligations of University mandated reporters to report suspected child abuse and child neglect consistent with the requirements of [Board of Governors Policy 2014-01-A: Protection of Minors](#) and the [University's Protection of Minors Policy](#).

Allegations not falling under this Policy or the University's Sex Discrimination and Sex-Based Harassment Policy shall be referred to the appropriate University Office for further handling under applicable University policies.

## **NONDISCRIMINATION RESOLUTION PROCESS**



## 1. Timeline for Resolution

Absent unusual or extenuating circumstances, the resolution process typically takes approximately 120 days to resolve once a complaint has been filed.

## 2. Evaluating Reports

If the Reviewing Office determines the allegations, if true, may represent a violation of this Policy or a related policy, an investigator will be assigned, the Complainant or Reporting Individual will be notified that an investigation will occur, and the Respondent will be notified in writing of the allegations consistent with the requirements of the applicable policy and any applicable collective bargaining agreement.

The Reviewing Office will respond to all inquiries, reports, and requests or refer the Reporting Individual to the appropriate office as promptly as possible, and in a manner appropriate to the particular circumstances. This response may include Supportive Measures to protect the Parties during the investigation process. Supportive Measures involving employees in collective bargaining units should be determined in consultation with human resources and labor relations representatives. The University has the discretion to consolidate multiple allegations into a single investigation if the allegations arise out of the same facts or circumstances.

In the case of allegations against the President, the appropriate Reviewing Office will communicate with and cooperate with the State System's Office of Chief Counsel to identify an appropriate investigator. The selected investigator will forward a report to the Chancellor or Designee for review and final determination.

In the case of allegations against an employee of the Office of Student Conduct, the Human Resources Director, the Social Equity Director or the Title IX Coordinator, The Office of the President will identify which policy applies and will proceed accordingly.

In the case of allegations against an employee or agent of a Contractor, the matter may be referred to the Contractor for handling.

## 3. Dismissals

With respect to allegations of non-sex-based discrimination or harassment brought under this Policy, if the Reviewing Office determines the allegations, if true, would not constitute a violation of this Policy or a related policy, the Reporting Individual will be advised in writing of that determination and of any other recourse that may be available.

With respect to allegations of Sex Discrimination or Sex-Based Harassment brought under this Policy, the Title IX Coordinator may dismiss a Complaint, or any specific allegations raised within that Complaint, at any time during the investigation or hearing, if:

- a. The University is unable to identify the Respondent after taking reasonable steps to do so; or
- b. The Respondent is not participating in the University's Education Program or Activity and is not employed by the University; or
- c. The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX; or
- d. The University determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX.

The University must obtain the Complainant's withdrawal in writing if dismissing a Complaint based on the Complainant's voluntary withdrawal of the Complaint or as outlined, above. Prior to dismissing the Complaint, the University must make reasonable efforts to clarify the allegations with the Complainant. Any Party may appeal a dismissal.

Upon reaching a decision that any specific allegation contained in the Complaint will be dismissed, the University must provide the Parties, simultaneously, with written notice of the dismissal and the basis for the dismissal. However, if the dismissal occurs before the Respondent has been notified of the allegations, the University must provide such written notice only to the Complainant.

#### 4. Appeal of Dismissal for Sex Discrimination and Sex-Based Harassment Complaints Only

In situations where the dismissal occurs before the Respondent has been notified of the allegations, only the Complainant has the right to appeal. In situations where the dismissal occurs after the Respondent has been notified of the allegations, either Party may appeal the dismissal of a Complaint of Sex Discrimination or Sex-Based Harassment on the following grounds:

- a. A procedural irregularity that would change the outcome.
- b. New evidence that would change the outcome and that was not reasonably available when the determination whether sex discrimination occurred, or the dismissal was made.
- c. The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeals must be filed in writing within 5 days of being notified of the dismissal and must indicate the grounds for the appeal. Supportive Measures remain available during the pendency of the appeal.

If a Party appeals, the University will notify the other Party in writing of the appeal, along with a copy of the appeal, as soon as practicable; however, the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal. The Parties shall be provided with a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal of the Complaint.

Appeals will be decided by a University designated Appeals Officer, who will be free of conflict of interest and bias, and will not serve as an Investigator, Title IX Coordinator, Advisor or Decision Maker in the same matter.

The appealing Party must meet its burden to demonstrate the outcome was affected by a preponderance of the evidence. The role of the designated Appeals Officer is not to reweigh the evidence. The designated Appeals Officer will confine their review to the basis of appeal alleged.

#### 5. Complaints involving Allegations related to Multiple Protected Classes

If there are allegations of Sex Discrimination or Sex-Based Harassment, in addition to allegations of discrimination or harassment based on an individual's membership in another protected class, all allegations of misconduct arising from the same incident are subject to the procedures and processes applicable to Complaints alleging Sex Discrimination or Sex-Based Harassment. If the Sex Discrimination or Sex-Based Harassment claim is dismissed, the remaining alleged violations will be processed under the applicable policy.

#### 6. Written Notification of Allegations

Upon the Reviewing Office's determination a Complaint should be investigated, the Respondent(s) will be notified in writing of the allegations and the identity of the Reporting Individual. The University will assign an investigator who is free of conflict of interest or bias. For investigations involving non-sex-based discrimination and harassment involving a faculty member as the Respondent, notice of allegations and the investigation may be delayed consistent with collective bargaining agreement requirements if the Complainant is a student in the Respondent faculty member's class.

For investigations involving allegations of Sex Discrimination or Sex-Based Harassment pursuant to this Policy, the Notice of Allegations will include the following:

- A. The University's grievance procedures under this Policy, and any informal resolution process available;

- B. Sufficient information available at the time to allow the Parties to respond to the allegations. Sufficient information includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex Discrimination under Title IX, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to the University;
- C. A statement that Retaliation is prohibited; and
- D. A statement that the Parties are entitled to an equal opportunity to access a written Investigative Report that accurately summarizes the relevant and not otherwise impermissible evidence, and the Parties are entitled to an equal opportunity to access to the relevant and not otherwise impermissible evidence upon the request of any Party.

The Parties will be notified by their University email accounts if they are a Student or Employee, and by other reasonable means if they are neither. It is the responsibility of the Party to update the Title IX Coordinator (students) or the Human Resources Office (employee) of any email address or other changes to the means of contact.

If, in the course of an investigation, the University decides to investigate allegations about either Party that are not included in the Notice of Allegations and are otherwise covered violations falling within this Policy or other violations of the University's policies, the University will notify the Parties of the additional allegations by their University email accounts or other reasonable means.

The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

#### 7. Participation of Complainant or Respondent

The participation of the Complainant and the Respondent is encouraged. As necessary, the University reserves the right to initiate resolution proceedings without participation by either the Complainant or the Respondent and continue with the information available. The University will generally not defer disciplinary proceedings until after the conclusion of any parallel criminal or civil proceedings.

#### 8. Role of Advisors/Union Representative

During the resolution process, whether formal or informal, the Complainant and Respondent may designate and be accompanied by an advisor of that individual's choosing at meetings and interviews; however, no advisor may speak for or on behalf of the Party or otherwise actively participate in a meeting or interview. An individual may only have one advisor present at a time. A Respondent who is a member of a collective bargaining unit may designate a union representative as their advisor. Except with respect to allegations of Sex-Based Harassment subject to this Policy, legal counsel for

either Party may not act in the capacity of an Advisor as part of the resolution process, unless the legal counsel is acting in the role of a union representative.

## 9. Informal Resolution

Informal means of resolution, such as mediation, may be used as an alternative to the formal investigation and hearing procedures. Upon written agreement of the Complainant and the Respondent, informal resolution may be initiated at any time prior to a finding of responsibility by the applicable Decision Maker and may be terminated by either Party at any time prior to final resolution. If the informal process is terminated, the General Procedures process, which includes an investigation, will continue.

If an informal resolution has been reached and a written agreement signed by all Parties, the resolution may not be appealed.

Informal resolution may not be utilized when a Student files an allegation of Sex Discrimination or Sex-Based Harassment against a University Employee, Volunteer, Contractor, or Official.

If a Party breaches the resolution or if the University has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, the University may void the agreement and initiate or resume the Nondiscrimination Resolution Process.

## 10. Effect on Pending Disciplinary Actions

Allegations of a violation of this Policy will not stop or delay any unrelated evaluation or disciplinary action regarding a Complainant.

## 11. Investigation Process

The investigator(s) will review and investigate the Complaint, interview the Parties and relevant witnesses, and seek out any relevant documents and communications deemed pertinent to the investigation.

During the investigation process, the Complainant and Respondent should provide the investigator with all documents relevant to the issues raised in the Complaint, as well as the identity of witnesses and a summary of the information the witness can provide regarding the allegations.

Investigations will be completed in a prompt manner, recognizing the length of investigations may vary depending on the nature, extent and complexity of the allegations, availability of the involved Parties, witnesses, and police involvement, if any.

The investigation is not intended to interfere with any rights of an individual either under state or federal law or under the appropriate collective bargaining agreement, if

applicable. The role of the investigator is not to impose or recommend discipline.

## 12. Final Investigative Report

The investigator will provide an Investigative Report that includes a summary of possible policy violation(s), a proposed statement of findings and copies of any relevant evidence, in hard copy or through an electronic format, considered as part of the investigation to the designated Decision Maker within ninety (90) calendar days of receipt of the Complaint, unless unusual circumstances require more time.

*For investigations involving allegations of non-sex-based discrimination or harassment brought under this Policy*, the Investigative Report will be shared with the Respondent at least 10 days prior if there is to be a pre-disciplinary conference, as required by applicable collective bargaining agreement requirements.

*For investigations involving allegations of Sex Discrimination or Sex-Based Harassment*, the Investigative Report will be shared with the Parties and their Advisors at least 10 days prior to a pre-disciplinary conference, as required by applicable collective bargaining agreement requirements, for their review. The Parties will be able to provide any response to the Investigative Report, in writing, at least three days prior to the pre-disciplinary conference. The University is not under an obligation to use any specific process or technology to provide the evidence or report and shall have the sole discretion in terms of determining format and any restrictions or limitations on access. Upon the request of either Party, the University will make available to each Party and each Party's Advisor any additional evidence that is relevant and not otherwise impermissible and not appended to the Investigative Report, if any, for review.

## 13. Relevant Evidence

*For investigations involving allegations of Sex Discrimination or Sex-Based Harassment*, "relevant" means related to the allegations of Sex Discrimination under investigation as part of the grievance procedures. Questions are "relevant" when they seek evidence that may aid in showing whether the alleged Sex Discrimination occurred, and evidence is "relevant" when it may aid a Decision Maker in determining whether the alleged Sex Discrimination occurred. Both Parties must have the opportunity to ask questions and present evidence that is "relevant" but not otherwise impermissible. The following types of evidence and questions seeking that evidence are deemed impermissible at all stages of any process initiated under this Policy:

- 1) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless:
  - a) Offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
  - b) About specific incidents of the Complainant's prior sexual conduct with respect to the Respondent and offered to prove Consent.

- 2) Evidence that is protected under a privilege as recognized by federal or state law, including attorney-client privilege, or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; or
- 3) Records of a Party or Witness that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the recipient obtains the voluntary, written consent of the Party or Witness to use the records in the recipient's grievance procedures.

#### 14. Meetings with Parties and Witnesses

*For adjudications involving allegations of Sex Discrimination or Sex-Based Harassment only*, the Decision Maker has the opportunity to question Parties and witnesses to adequately assess a Party's or Witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of Sex Discrimination. The Decision Maker will determine whether a Party's or Witness' credibility is in dispute and relevant to evaluating allegations of Sex Discrimination. If so, the Decision Maker will establish individual meetings with Parties and Witnesses to ask questions.

#### 15. Pre-Disciplinary Conference

The designated Decision Maker will arrange a pre-disciplinary conference, as required by applicable collective bargaining agreement requirements, prior to issuing a final determination.

#### 16. Final Determination

The burden of proof for demonstrating violation of this Policy has occurred is on the University. The standard of proof is the preponderance of the evidence, meaning the designated Decision Maker must find it is more likely than not that a violation of the Policy occurred.

The designated Decision Maker may issue any combination of the following results concerning the investigation report:

- a. Not in Violation - If there is insufficient information to warrant a finding of a violation of this Policy, the matter will be closed.
- b. In Violation - If there is sufficient evidence to support a finding that this Policy has more likely than not been violated, the finding(s) of responsibility will be forwarded to the appropriate manager or office or vice president for disciplinary action, consistent with applicable University and Board of Governors policy and collective bargaining agreements.

## 17. Notification of Conclusion of Process

For adjudications involving allegations of non-sex-based discrimination and harassment, the Respondent will receive notification of the final determination. The Complainant will be notified that the matter has concluded; however, the Complainant will not be notified of the result of the adjudication.

For adjudications involving allegations of Sex Discrimination or Sex-Based Harassment only, following the issuance of a final determination by the designated Decision Maker, the Parties shall receive notification that the resolution process has been concluded. The Parties will be notified in writing of the determination and the rationale for the determination.

For all adjudications under the Policy, the decision of the designated Decision Maker is final, unless a right to appeal is provided pursuant to another policy, such as [Board of Governor Policy 1983-01-A: Merit Principles](#). If the outcome finds a determination of false charges, the party loses their right to appeal. If retaliation is a determination, the party loses their right to appeal. All other instances of investigation outcomes may be appealed to the Vice President of Administration if the basis for appeal is one or more of the following criteria: 1) A procedural irregularity that would change the outcome. 2) New evidence that would change the outcome and that was not reasonably available when the determination was made. 3) The Decision Maker or Investigator(s) had a conflict of interest or bias for or against the party that would change the outcome.

To appeal, the party must email a written statement to the Vice President of Administration containing any new evidence for review. Such appeal must be delivered within 15 calendar days of ESU email notification of the Decision Maker's determination. The Vice President of Administration will schedule a meeting with the party to review the evidence and appeal request. The Vice President of Administration will consider the information provided and make an appeal decision. The Vice President of Administration's appeal decision is final.

For decisions of allegations of Sex Discrimination or Sex-Based Harassment, if another University policy gives the Respondent a right to appeal, the Complainant will have a right to appeal, using the grounds and procedure to appeal under the University's Sex Discrimination and Sex-Based Harassment Policy.

## **DISCIPLINARY SANCTIONS**

1. Employees - Disciplinary sanctions imposed on an Employee for violating this Policy, subject to an applicable collective bargaining agreement/memoranda of understanding or University/System policies, may include a penalty up to and including separation from employment.
2. Officials and Volunteers - Disciplinary sanctions imposed on an Official or Volunteer



may include a penalty up to and including removal or the request for removal of the Official or Volunteer from their respective position.

3. Contractors - Violations of this Policy by a Contractor or any employee or agent of the Contractor may result in the exercise of any contractual remedies including, but not limited to, termination of the contract for fault or for convenience and referral for disbarment.

### **EFFECTIVE DATE**

This Policy is effective immediately following approval and replaces all other nondiscrimination policies whether in print or electronic format.

DRAFT