



Title IX Sexual Harassment Policy

Embry-Riddle Aeronautical University does not tolerate sexual harassment. Such conduct is harmful to the well-being of our community members, our learning and working environments, and the collegial relationships among students, faculty, and staff that characterize the culture of Embry-Riddle. All forms of sexual harassment under this policy are regarded as serious University offenses, and violations may result in discipline, including the possibility of separation from the University.

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I. Scope

The University has two policies in order to address incidents of sexual misconduct. This policy is referred to as the Title IX Sexual Harassment Policy and the second is referred to as the University Sexual Misconduct Policy. These policies are interrelated and should be read together. If the allegations forming the basis of a formal complaint (defined below), if substantiated, would constitute prohibited conduct under both policies, then the grievance process set forth in this Title IX Sexual Harassment policy will be applied in the investigation and adjudication of all of the allegations.

This Title IX Sexual Harassment policy is based on definitions set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972. This policy limits the scope of Title IX Sexual Harassment to, among other things, conduct that occurs within the United States and conduct that occurs within the University's education program or activity (a concept further defined and discussed below).

The University Sexual Misconduct policy applies only to certain conduct, as defined under that policy. Specifically, the University Sexual Misconduct policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy, including Sexual Exploitation, Improper Conduct related to Sex, and University Sexual Harassment. The University Sexual Misconduct policy also applies to certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Sexual Assault, Domestic Violence, Dating Violence, and Stalking), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet the jurisdictional requirements.

The University responds to reports and/or formal complaints of conduct prohibited under this policy. Students/faculty/staff receive educational training and information about sexual harassment and misconduct to help prevent prohibited conduct, its recurrence as well as options in addressing the issues.

II. Compliance Responsibility

The Title IX Coordinators oversee compliance of Title IX Sexual Harassment in accordance with Federal Regulations as well as incidents falling under the University Sexual Misconduct policy.

When Title IX Coordinator(s) receive reports or formal complaints for violations of this policy they ensure a centralized response in compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA). The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable policies, including this policy and the University Sexual Misconduct Policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and

- Responding to any report or formal complaint regarding conduct that violates this policy. For any report of which the University has actual knowledge (and any formal complaint), the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the Title IX Coordinators oversee the investigation and resolution of such alleged misconduct, direct the provision of any additional supportive measures, and monitor the administration of any related appeal.

The Title IX Coordinators may delegate certain responsibilities under this policy to Title IX Investigators or other designated and trained administrators.

A. CONTACT INFORMATION

Title IX Coordinators & Investigators

Campus	Name	Title	Phone	Email
Daytona Beach & Worldwide	Autumn Meyers-Parker	Title IX Coordinator	386-226-6677	meyerspa@erau.edu dbtitle9@erau.edu wwtitle9@erau.edu
	Christina de la Osa	Title IX Investigator	386-481-9131	DELAOSAC@erau.edu
	Kenneth Blankumsee	Title IX Investigator	386-241-1881	blankumk@erau.edu
	Andrea Hooper	Title IX Investigator	386-226-7269	hoopera1@erau.edu
Prescott	Dr. Elizabeth “Liz” Frost	Title IX Coordinator	928-777-3747	elizabeth.frost@erau.edu prtitle9@erau.edu
	Michael Williams	Title IX Investigator	928-777-6205	willm136@erau.edu

Information a party shares with Confidential Resources will not be shared with the Title IX Office or any other individual without the individual’s express written permission. Exceptions are made if there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (e.g., if there is suspected abuse or neglect of a minor).

Confidential Resources

Campus	Department & Website Link	On-Campus Location	Phone / Email	Mailing Address
Daytona Beach	Counseling Center	Wellness Center Complex, Building 502	386-226-6035	1 Aerospace Boulevard Daytona Beach, FL 32114-3900
	Health Services	Wellness Center Complex, Building 500	386-226-7917 dbhealth@erau.edu	
	Chaplain's Office	Center for Faith and Spirituality, Building 267	386-226-6580 chaplainsoffice@erau.edu	
Prescott	Counseling Services	Haas Chapel, Building 46	928-777-3312 928-777-5000 prcounsel@erau.edu	3700 Willow Creek Road, Prescott, AZ 86301
	Wellness Services	Haas Commons, Building 73	928-777-6653 928-777-3850 prwellnesscenter@erau.edu	

Officials with Authority ¹

Campus	Department	Location	Phone	Email
Daytona Beach	Campus Safety & Security	Building 175 Student Union	386-226-6480 <u>Emergency</u> 386-226-SAFE (7233)	N/A
	Dean of Students Office (and designees)	Student Union Suite 324	386-226-6326	dbdos@erau.edu
Worldwide	Dean of Students Office (and designees)	Call or Email	1-888-292-5727	wwsdos@erau.edu
Prescott	Campus Safety & Security	Building 14	928-777-3333	prsafety@erau.edu
	Dean of Students Office (and designees)	Building 49	928-777-3879	prdos@erau.edu
University	Vice President of Human Resources (and designees)	Corsair Hall	386-226-7245	youngbr@erau.edu

¹ See Terminology for the definition of Officials with Authority.

Responsible Employees²

- Housing and Residence Life Professional Staff
- Resident Assistants (RA’s)
- Athletics Staff
- ROTC faculty, staff, and contracted employees
- College Deans

For any complaints received by the Title IX Office or an Official with Authority, involving an employee the Title IX Office will communicate with the appropriate persons in Human Resources. If Human Resources receives, a complaint related to this policy they will consult with the appropriate Title IX Coordinator or their designee.

Other On-Campus Resources

Campus	Department & Website Link	On-Campus Location	Phone / Email	Mailing Address
Daytona Beach	Campus Safety & Security	Building 175	386-226-6480 Emergency 386-226-SAFE (7233)	1 Aerospace Boulevard Daytona Beach, FL 32114-3900
	Office of Diversity & Inclusion	Building 255	386-226-7544 diversit@erau.edu	
Prescott	Campus Safety & Security	Building 14	928-777-3333 prsafety@erau.edu	3700 Willow Creek Road, Prescott, AZ 86301
	Women’s & Diversity Center	Building 16	928-777-3968 Melanie.Wilson@erau.edu	

² See Terminology for the definition of Responsible Employees.

Disability Support Services

FOR STUDENTS

Campus	Name	Department	Location	Phone	Email
Daytona Beach	Tracy Umphenour	Director Disability Support Services	Wellness Center	386-226-6098 386-226-7916	dbdss@erau.edu umpenhot@erau.edu
Prescott	Jane Ellingwood	Director Disability Support Services	Library, 112	928-777-6750	prdss@erau.edu ELLINGWJ@erau.edu
Worldwide	Karen Zielinski	Disability Support & Student Services Coordinator	N/A	386-226-7334	wwdss@erau.edu ZIELINSK@erau.edu

FOR EMPLOYEES

Campus	Name	Title	Phone	Email
Daytona Beach & Worldwide	Andrea Hooper	Director of Employment and Engagement	386-226-7269	hoopera1@erau.edu
Prescott	Laurie Petry	Benefits Administrator	386-226-7657	petryl@erau.edu

External Inquiries

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

For complaints involving employees:

Equal Employment Opportunity Commission (EEOC) ³
Miami District Office (*Florida*)
Miami Tower
100 SE 2nd Street, Suite 1500
Miami, FL 33131
Phone: (800) 669-4000
Fax: (305) 808-1758
TTY: (800)669-6820
ASL Video Phone: (844) 234-5122

Phoenix District Office (Arizona)
3300 North Central Avenue, Suite 690
Phoenix, AZ 85012-2504
Phone: (800) 669-4000
Fax: (602) 640-5071
TTY: (800)669-6820
ASL Video Phone: (844) 234-5122

To raise any concern involving possible bias, conflict of interest, misconduct or discrimination by the Title IX Coordinator, contact the University's Vice President and General Counsel 386-323-8812 or Charlie.Sevastos@erau.edu.

Concerns of possible bias, conflict of interest, misconduct, or discrimination by any other Title IX Team member should be raised with the Title IX Coordinator.

³ EEOC has jurisdiction over Title IX employment claims. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate your local office's contact info.

III. Terminology

The following definitions clarify key terminology as used in this policy.

- **Actual Knowledge** means that the Title IX Coordinator / Office or an Official with Authority has received notice of sexual harassment or allegations of sexual harassment.
- **Advisor** refers to a person selected by a party⁴ or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination during a hearing (if applicable).
- **Appeals Decision-Maker** refers to the person that reviews Title IX Sexual Harassment requests for appeals; determines approval/denial of the appeal; and if the appeal is approved, makes the final determination as to whether the original determination by the Hearing Decision-Maker stands.⁵
- **Clear and Convincing Evidence Standard** means the evidence is highly and substantially more likely to be true than untrue. Put another way, clear and convincing evidence requires that the evidence to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts at issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.
- **Clery Act** requires that all colleges and universities disclose crimes that have occurred on their campus to the federal government.
- **Complaint** refers to notification to the Title IX Office of sexual harassment.
- **Complainant** refers to the individual alleged to be the victim of conduct that could constitute Title IX Sexual Harassment.
- **Confidential Resource** means an employee/office who is exempt from notifying sexual harassment to the Title IX Office. (Some exceptions may apply if person is a minor or for the physical safety of the person or campus community.)
- **Consent** is a clearly communicated mutual agreement in which all parties are knowing and capable of voluntarily making the decision to engage in sexual activity. Voluntary consent does not include coerced submission. A lack of physical resistance does not mean that consent was voluntarily given. **The clearest method to convey consent to sexual activity is through the use of affirmative words, actions, and/or behaviors.**
- **Day** means a business day when Embry-Riddle Aeronautical University is in full operation.

⁴ See section on Advisors for exclusions.

⁵ The Appeals Decision-Maker for Title IX Sexual Harassment cases will be the Vice President of Human Resources or designee.

- **Deliberately indifferent** means when the university’s response to Title IX Sexual Harassment is “clearly unreasonable in light of the known circumstances” (34 CFR§106.44(a)).
- **Education program or activity** includes locations, events, or circumstances where Embry-Riddle exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and includes any building owned or controlled by a student organization that the University officially recognizes.
- **FERPA** (Family Educational Rights and Privacy Act) is a Federal law that protects the privacy of student education records.
- **Final Determination** means the written conclusion using the clear and convincing standard that the alleged Title IX Sexual Harassment occurred and did or did not violate policy.
- **Finding** is a conclusion by the clear and convincing standard that the conduct did or did not occur as alleged.
- **Formal complaint** refers to a form or document filed by a complainant that contains the complainant’s physical or digital signature, alleging Title IX Sexual Harassment against a respondent and requesting that Embry-Riddle Aeronautical University investigate the allegations of Title IX Sexual Harassment. The Title IX Coordinator may also sign a formal complaint alleging Title IX Sexual Harassment against the respondent. Where the Title IX Coordinator signs a formal complaint, they are not a complainant or otherwise a party.
- **Formal Grievance Process** is a method of formal resolution designated by the University to address conduct that falls under the scope of Title IX Sexual Harassment.
- **Hearing Decision-Maker** refers to those who have decision-making authority within the University’s Formal Grievance process for Title IX Sexual Harassment cases.⁶
- **Incident Report** is a report submitted to the Title IX Coordinator by an employee, student or third party alleging violations of sexual harassment.
- **Informal Resolution** is a process that may encompass a broad range of conflict resolution strategies, including but not limited to, meetings between the parties and Title IX or other designees.
- **Intake Meeting** is a meeting that takes place with the Title IX Coordinator often prior to a person filing a formal complaint. The meeting is prompted by the Title IX Office receiving an incident report, walk-in, email, or phone call about an incident. This meeting allows the Title IX Coordinator to explain options, determine if an incident falls under Title IX Sexual Harassment, University Sexual Misconduct, or should be directed to another department. These meetings are informational to help persons decide on next steps, learn about available resources and supportive measures.
- **Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and

⁶ The Hearing Decision-Maker may be an internal or external person.

compiling this information into an investigation report and file of directly related evidence.

- **Official Notice** means that the Title IX Coordinator or Officials with Authority have received information of alleged violations of sexual harassment.
- **Officials with Authority (OWA)** refers to an employee/office/department of the University who has authority to institute corrective measures related to Title IX Sexual Harassment.⁷
- **Party or parties** refer to the complainant(s) and respondent(s), collectively.
- **Physical Helplessness** refers to a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- **Privacy** means that information related to a complaint will be shared with a limited number of Embry-Riddle Aeronautical University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report.
- **Proceeding** refers to the instituting or carrying on of an action within a process.
- **Recipient** refers to a postsecondary institution that is a recipient of federal funding (i.e. Embry-Riddle Aeronautical University).
- **Regret Sex/Sexual Regret** is common in the age of online dating and casual hookups. A person is more likely to regret a sexual encounter if they experienced negative emotions, such as worry, guilt, embarrassment, felt disgusted by their sexual partner, were seduced, or experienced low sexual gratification.
- **Regretted Sex** is when individuals consent to sexual intimacy, but one or both people experience regret or feel guilty afterwards. Though they may regret that encounter, they do not feel like they did not have a choice. Regretted sex should not be confused with nonconsensual sex (An experience where consent was not given.)
- **Remedial** refers to steps taken to address alleged offenses when a complainant may not want to move forward with an investigation or an informal meeting with the respondent, however wants the Title IX Office to converse with the respondent for situational awareness.⁸
- **Remedies** refer to actions made post-determination and designed to restore or preserve equal access to Embry-Riddle Aeronautical University’s education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- **Respondent** refers to an individual alleged to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.

⁷ The Title IX Office, Dean of Students (and designee), Vice President of Human Resources (and designee), and the Safety and Security Office are the OWA’s.

⁸ The Title IX Office may have a conversation with the respondent; recommend counseling, anger management, or other actions.

- **Resolution** refers to the determination or an agreement of an informal or formal grievance process.
- **Responsible Employee** is an employee of the University who may share knowledge, notice, and/or reports of sexual harassment with the permission of the complainant to the Title IX Coordinator.⁹
- **Result** refers to a consequence, effect, or outcome.
- **Sanction** refers to a consequence imposed by the Hearing Decision-Maker based on a finding of responsibility by the Hearing Decision-Maker for formal resolution (with Hearings).
- **Sex** has no regulatory definition. Anyone may experience sexual harassment, irrespective of gender identity or sexual orientation.
- **Sexual Harassment** – please refer to section IV. Prohibited Conduct / Sexual Harassment section of this policy.
- **Supportive Measures** refers to non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- **Third Party** refers to a person other than a Complainant that files a complaint.
- **Title IX Coordinator** refers to an official designated by Embry-Riddle Aeronautical University to ensure compliance with Title IX and Embry-Riddle Aeronautical University policies.
- **Title IX Investigator** is primarily responsible for conducting a non-biased, fair, impartial, prompt and thorough investigation of alleged Title IX Sexual Harassment allegations.
- **Title IX Sexual Harassment** is the umbrella term used to define three types of misconduct on the basis of sex, all of which jeopardize the equal access to education that Title IX is designed to protect. The three types are 1) quid pro quo, 2) sexual harassment (unwelcome conduct that is severe, pervasive and objectionably offensive), and 3) sexual assault (dating violence, domestic violence, or stalking).
- **Witness** refers to any individual who shares information relating to an allegation of prohibited conduct under this policy

⁹ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

IV. Prohibited Conduct / Sexual Harassment

This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the University's education program or activity, meaning a) locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and b) any building owned or controlled by a student organization that is officially recognized by the University; and
- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the University.

Allegations of sexual misconduct that do not fall under this policy because they do not constitute prohibited conduct as defined in this section may constitute violations of the University Sexual Misconduct Policy.

In determining whether alleged conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Individuals of any gender can commit any of the prohibited conduct defined in this policy, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses and will result in University discipline if the outcome of an investigation or a Work Rules violation determines the Respondent is responsible. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

A. PROHIBITED BEHAVIORS

- **Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- **Title IX Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity;
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the individual, including instances where the person is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:
 - **Rape:** The carnal knowledge of a person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **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 another person, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the individual, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent in the state that the incident occurred.
- **Domestic Violence:** A felony or misdemeanor crime of violence committed:
 - “Domestic violence” under the new regulations is also defined by reference to VAWA, at 34 U.S.C. § 12291(a)(8). Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- **Dating Violence:** “Dating violence” is defined by the Title IX Rule by reference to the Violence Against Women Act (VAWA), 34 U.S.C. § 12291(a)(10), which means violence committed by a person:
 - who is or has been in a social relationship of a romantic or intimate nature with the complainant;
 - where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the

relationship.

- **Stalking:** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to:
 - a) fear for the individual’s safety or the safety of others; or
 - b) suffer substantial emotional distress. For the purposes of the Stalking definition:
 - *Course of conduct* means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual’s property.
 - *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the complainant.
 - *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- **Retaliation under this policy:**
 - No individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
 - The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this policy. The University will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.
 - Counterclaims:
 - Embry-Riddle is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by either party may be made in good faith but are, on occasion, made for purposes of retaliation instead. Counterclaims made with retaliatory intent will not be permitted.
 - Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.
 - Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

Complaints alleging retaliation under this Title IX Sexual Harassment policy, including for the exercise of rights under this policy, must be filed in accordance with this policy and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise, subject to its policies, the University will process the complaint and respond appropriately.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this policy. Charging an individual with a University violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

B. CONSENT

For purposes of this policy, consent is defined as follows:

- **Consent** - is a clearly communicated mutual agreement in which all parties are knowing and capable of voluntarily making the decision to engage in sexual activity. Voluntary consent does not include coerced submission. A lack of physical resistance does not mean that consent was voluntarily given. ***The clearest method to convey consent to sexual activity is through the use of affirmative words, actions, and/or behaviors.***
- **Physical Helplessness** - refers to a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

Aspects of **Valid Consent** - for purposes of this policy, consent is considered present when clearly understandable words or actions manifest a knowing, active, voluntary, a present and an ongoing agreement to engage in specific sexual or intimate contact. Consent must be all of the following:

- **Knowing:** All individuals understand, are aware of, and agree as to the “who” (same partners), “what” (same acts), “where” (same location), “when” (same time), and “how” (the same way and under the same conditions) of the sexual activity.
- **Active:** Consent must take the form of “clearly understandable words or actions” that reveal one’s expectations and agreement to engage in specific sexual activity. This means that silence, passivity, submission, or the lack of verbal or physical resistance (including the lack of a “no”) should not – in and of themselves – be understood as consent. Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.
- **Voluntary:** Consent must be freely given and cannot be the result of Respondent’s intimidation (extortion, menacing behavior, bullying), coercion (severe or persistent pressure causing fear of significant consequences from Respondent if one does not engage in sexual activity), force (violence, physical restraint, or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).

- **Present and Ongoing:** Consent must exist at the time of the sexual activity. Consent to previous sexual activity does not imply consent to later sexual acts; similarly, consent to one type of sexual activity does not imply consent to other sexual acts. Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person.
- **Consent** may also be withdrawn at any time, provided the person withdrawing consent makes that known in clearly understandable words or actions.

Indications that consent is not present include but are not limited to:

- When physical force is used or there is a reasonable belief of the threat of physical force.
- When duress is present.
- When one individual overcomes the physical limitations of another individual.
- When an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- The existence of a prior or current relationship does not, in itself, constitute consent.
- Consent can be withdrawn or modified by using clear communication.
- Consent is not implicit in an individual's manner of dress.
- Accepting a meal, a gift, or an invitation for a date does not imply or constitute consent.
- Silence, passivity, or lack of resistance does not necessarily constitute consent. Clear words and clear actions are best to indicate that one party does not wish to engage in sexual activity.
- Initiation by someone who a reasonable person knows or should have known to be deemed incapacitated is not consent.

Best practices for ensuring consent:

- Both parties are sober
- Understand that consuming alcohol or drugs lowers inhibitions
 - When under the influence you may be more likely to engage in behavior you regret later
 - When under the influence it may confuse the issue of whether or not consent was clearly given and received
 - You may not make rational decisions but impulsive ones
 - You may be manipulating/coercing someone to do something that you would not if you or they were sober
- ASK along the way (always even sober)
 - Are you okay with what we are doing
 - Are you comfortable
 - I will not be mad or upset if you want to stop
 - Do you like this
 - Does this feel good to you
 - Am I hurting you
 - Are you a willing partner
 - Do you feel I am pressuring you to do something or more than you want to do

- If I am making you feel pressured or manipulated let me know and I will stop
- Do we agree this is a hookup and we are not in a relationship
- Don't be afraid to tell me to stop
- Do you want me to leave
- Do you want to leave
- Do not feel you have to give me oral sex
- Do not feel you have to say okay to me giving you oral sex

When one or more persons are under the influence of alcohol or drugs it is difficult to ascertain if either person(s) is incapacitated or in a blacked out state. Persons may appear to function normally when in reality that person does not have awareness. When persons do not know each other well they may not recognize that another is incapable of giving consent. Therefore, unless a person is physically helpless others may not recognize that someone is unable to consent. Know your limits! And if you don't know the limits of others *STOP!!*

V. Assessment and Dismissal of Formal Complaints

Upon receipt of a formal complaint, the Title IX Coordinator will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this policy. The University will seek to complete this initial assessment within ten (10) business days of receipt of the formal complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this policy, the Title IX Coordinator shall implement appropriate supportive measures. In addition, the Title IX Coordinator shall initiate an investigation of the allegations under this policy in a formal complaint. However, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

If the allegations forming the basis of the formal complaint, if substantiated, would not constitute prohibited conduct as defined in this policy, the Title IX Coordinator shall dismiss the formal complaint from the Title IX grievance process (and either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter to the University Sexual Misconduct process or to another office for review; or, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

In addition, at any time prior to the hearing, the University may dismiss a formal complaint if:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein.

Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) simultaneously to the parties via electronic format. Both parties will have equal right to appeal the dismissal through the appeal process.

The determination regarding dismissal becomes final either on the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a complainant cannot file a formal complaint under this policy concerning the same alleged conduct.

VI. Confidentiality, Privacy, and Related Responsibilities

Issues of privacy and confidentiality play important roles in this policy, and may affect individuals differently. Privacy and confidentiality are related but distinct terms that are defined below.

In some circumstances, the reporting responsibilities of University employees, or the University's responsibility to investigate, may conflict with the preferences of the complainant and/or respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of confidential resources, if applicable, in determining their preferred course of action.

A. CONFIDENTIALITY AND CONFIDENTIAL RESOURCES

The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.

Several campus professionals are designated as Confidential Resources, to whom confidentiality attaches. Confidential Resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of the University's Title IX Sexual Harassment Policy will be submitted to Campus Safety and Security for purposes of the anonymous statistical reporting under the Clery Act.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a Confidential Resource or a Title IX Coordinator. Confidential Resources are listed in the Administrator's Contact Information section at the beginning of this policy.

The University has an obligation to respond promptly and effectively to individuals alleged to be the victims of Sexual Harassment as defined by the Title IX policy. University employees who are designated as Mandatory Reporters or Others with Authority are required to notify the Title IX Coordinator of suspected violations of this policy, and cannot guarantee the confidentiality of a report under this policy. Other University employees may report the incident or concern to the Title IX Coordinator with the complainant's authorization.

B. CONFIDENTIALITY RIGHTS OF COMPLAINANTS AND RESPONDENTS

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this policy without the relevant party's voluntary, written consent.

C. PRIVACY

The term “privacy” refers to the discretion that the University will exercise in the course of any investigation or grievance processes under this policy.

In all proceedings under this policy, the University will take into consideration the privacy of the parties to the extent possible.

In cases involving students, the Title IX Coordinator may notify select University employees of the existence of the report and/or formal complaint for the purpose of overseeing compliance with this policy and addressing any concerns related to educational and residential life.

In accordance with federal regulations, the University will keep confidential the identity of any individual who has made a report or formal complaint under this policy, including any complainant, any individual who has been reported to be the perpetrator, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this policy.

Any additional disclosure by the University regarding information related to the report or formal complaint may be made if consistent with FERPA or the Title IX requirements. In addition, governmental agencies, such as National Science Foundation, may mandate certain reporting related to prohibited conduct under this policy involving University employees or students.

D. RELEASE OF INFORMATION

If Campus Safety and Security becomes aware of a serious and continuing threat to the campus community, Campus Safety and Security may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. Campus Safety and Security may also publish a reported incident in the daily crime log or annual security report. In addition, the University may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The University will not disclose the name or other personally identifiable information of the complainant unless it has received the express consent of the complainant or unless the release of such information is consistent with legal requirements or mandated by law.

VII. Options for Complainants, Respondents, and Other Reporting Individuals

A complainant, respondent, or witness has many options, including counseling and support services. Information regarding contact information for local law enforcement and medical assistance is provided in [Appendix B](#).

A complainant may:

- Request supportive measures from the Title IX Coordinator.
- File a formal complaint with the Title IX Coordinator, thereby invoking the University's internal grievance process.
- Contact Campus Safety and Security and/or the Title IX Coordinator for assistance in filing a criminal complaint and preserving physical evidence.
- Contact local law enforcement to file a criminal complaint. At the complainant's request, the University will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue a criminal process.

An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened.

A. EMPLOYEES' RESPONSIBILITY TO REPORT

In emergency situations where a suspected crime is in progress or imminent or serious threats to the safety of anyone, employees must immediately contact Campus Safety and Security (Daytona Beach 386-226-6480; Prescott 928-777-3333) or contact 911. If 911 is called first, contact Campus Safety and Security second if possible.

In non-emergency situations, employees who are designated as Officials with Authority under this policy, must promptly report suspected violations of this policy to the Title IX Coordinator. Responsible employees with the written authorization of the complainant must promptly report alleged violations of this policy to the Title IX Coordinator.

Students are encouraged to report any suspected violation of this policy.

B. ANONYMOUS REPORTING

Any individual may make an anonymous report alleging violation of this policy using the online Title IX Grievance form. However, the university cannot consider an anonymous report as a formal complaint because there is very limited action if any the university can take without knowing the complainant making the allegation.

C. TIMELINESS OF REPORT

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question providing a complainant is participating in or

attempting to participate in the education program or activity. If the respondent is no longer a student or employee at the time of the report or formal complaint, the University may not be in a position to gather evidence sufficient to reach a determination as to the formal complaint and/or the University may not be able to take disciplinary action against the respondent. If the complainant is actively participating even if the respondent is not the University will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

D. AMNESTY

In order to encourage reports of conduct that is prohibited under this policy, the University may offer leniency with respect to other violations, which may become known as a result of such reports, depending on the circumstances involved.

Daytona Beach Students, please refer to the [Responsible Intervention Protocol](#) (must be in ERNIE to access).

Prescott Students, please refer to the [Responsible Action Policy](#) found in the Student Handbook.

VIII. Supportive Measures for Complainants and Respondents

Upon receiving official notice, incident report, or formal complaint of a violation of this policy, the University, through the Title IX Coordinator, will promptly:

- Contact the complainant to discuss the availability of supportive measures;
- Consider the complainant's wishes with respect to supportive measures; and
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

The University will also consider supportive measures, as appropriate and reasonably available, for the respondent.

These supportive measures are designed to restore or preserve equal access to the University's educational and working programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader University community, or deter sexual harassment. While a supportive measure may impose some restrictions on a party, it will not unreasonably burden them. The University may provide supportive measures to the complainant or respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the complainant seeks formal disciplinary action. Once supportive measures are approved, the parties or affected individuals will be notified in writing of the supportive measures. The University will maintain any supportive measures provided to the complainant or respondent as confidential to the extent possible.

Supportive measures may include:

- counseling;
- extensions of deadlines or other course-related adjustments;
- modifications of work or class schedules;
- campus escort services;
- mutual restrictions on contact between the parties;
- changes in work or housing locations; Requests for a respondent to be moved is rarely granted as that measure may be seen as punitive if done prior to a ruling of responsibility; however the respondent may be asked if they are willing to move, if not the complainant can usually be moved to another dorm or room if the two parties are located near one another.
- leaves of absence;
- increased security and monitoring of certain areas of the campus; and/or
- any other measure that can be used to achieve the goals of this policy.

Requests for supportive measures may be made by or on behalf of the complainant or respondent to any University official, including the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus.

All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a supportive measure. The University will take immediate action to enforce a previously implemented measure and disciplinary sanctions can be imposed for failing to abide by a University-

imposed measure.

IX. Emergency Removal

The University may summarily remove an individual from an education program or activity on an emergency basis after an individualized safety and risk analysis, where a determination is made that the individual poses an immediate threat to the physical health or safety of any student, other individual or themselves. In these situations, the Title IX Coordinator will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

X. Informal Resolution Process

Subject to the consent of the parties and the approval of the Title IX Coordinator, the University permits informal resolution processes in cases in which a formal complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent as well as in matters involving a faculty/staff complainant and a faculty/staff respondent; the informal resolution process is not available in matters involving a student and an employee.

The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes with other students in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Sexual Harassment policy. The purpose of the informal resolution process is to address the conduct, which has been reported by the complainant, and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment.

The University may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process. They must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX Sexual Harassment grievance process with respect to the formal complaint.

The University will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of Title IX Sexual Harassment. Similarly, the University will not require, encourage, or discourage the parties from participating in the informal resolution process. The University will not offer the informal resolution process unless a formal complaint is filed.

See Appendix C for additional information regarding the informal resolution process.

XI. Formal Grievance Process for Title IX Sexual Harassment Complaints, In General

The University is committed to providing a prompt and impartial investigation and adjudication of all formal complaints alleging violations of this policy. During the grievance process, both parties (complainant and respondent) have equal rights to participate.

A. CONFLICT OF INTEREST

All individuals who have responsibilities in administering the grievance process under this policy must be free of any conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and will be trained as required by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as Investigators, Hearing Decision-Makers, and Appeal Decision-Maker. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has conflicting interest or is biased must report those concerns to the Title IX Coordinator within two (2) business days of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

B. RESPONSIBILITY TO REVIEW REPORTS AND FORMAL COMPLAINTS

In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. The Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.

C. PRESUMPTION OF GOOD FAITH REPORTING

The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

Inaccurately stating facts, embellishing facts, inconsistencies, and the spreading of rumors surrounding an event is counterproductive to the integrity of an investigation and could harm the credibility of the parties.

D. PRESUMPTION OF NON-RESPONSIBILITY

The respondent is presumed **not to be responsible** for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

E. HONESTY AND COOPERATION DURING GRIEVANCE PROCESS

The University expects all members of the University community to be honest and cooperative in their official dealings with the University under this policy. In this regard, individuals are expected to acknowledge requests from University officials for information in a timely fashion and to make themselves available for meetings with University officials or any officials acting on behalf of the University; any student or member of the faculty or staff who fails to do so may be subject to discipline. However, parties and witnesses may choose not to attend the hearing or may choose not to participate in cross-examination at the hearing.

F. ADVISORS

The parties may be accompanied by an advisor of their choice to all meetings and interviews during the grievance process. The parties must have an advisor present during hearings. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisees are responsible for preparing/formulating questions that their advisor will ask during the hearing process.

An advisor may be a member or non-member of the University community, and may be an attorney. If one party seeks to engage an attorney, the university will not provide an attorney for the other party.

It is highly recommended that advisors for one party not reach out to the advisor of the other party; to the other party; or to witnesses. The advisors reaching out may be seen as retaliatory/intimidating. It may be considered a violation of a No Contact Order between the parties if their representation attempts to contact the other party or witnesses to gather evidence. An advisors communication for the purposes of ERAU's policy should be limited to their own advisee. Parallel criminal cases conducted by law enforcement are separate and independent of this policy.

Please be aware if the advisor is not present for the hearing and the university assigns one, that advisor will not have the background and knowledge of the case to prepare in advance.

The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the grievance process, but the advisor may not actively participate in interviews and may not serve as a proxy for the party. The advisor must attend the hearing and is required to conduct cross-examination of the other party and any witnesses at the hearing; otherwise, the advisor may not actively participate in the hearing.

If a party does not have an advisor present at the hearing to conduct cross-examination, the University will provide without fee or charge to that party an advisor selected by the University to conduct cross-examination of the other party and/or any witnesses.

Any individual who serves as an advisor is expected to make themselves available for meetings and

interviews throughout the investigation process, as well as the hearing, as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a Hearing Decision-Maker) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this policy.

G. PRIOR SEXUAL BEHAVIOR

The complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process. Exceptions may be considered as an attempt 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 complainants' prior sexual behavior with respect to the respondent and are offered to prove consent.

H. CONSOLIDATION

The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of Title IX Sexual Harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.

INVESTIGATION OF ALLEGATIONS PERTAINING TO OTHER UNIVERSITY POLICIES

Allegations under the University Sexual Misconduct Policy

When an initial assessment or investigation under this policy identifies possible related violations by the same party('s) that by themselves would fall outside of Title IX but under the University Sexual Misconduct policy, the grievance process set forth under this policy will take precedence and apply to all allegations. If additional violations are found, an updated Notice of Allegations letter will be sent to both parties.

Violation of Other University Policies

During an initial assessment or investigation, other possibly related violations by the same party(ies) may be identified. The Title IX Coordinator may direct the Title IX Investigator to investigate those possible violations of other University Policies, at the same time that they are investigating the allegations falling under this policy. Under those circumstances, the outcomes from the investigation of the non-Title IX Sexual Harassment matter will be provided to the office of responsibility as a matter of record.

Procedures Where One Party Is a Member of the University Community and the Other Party Is a Non-Member of the University Community

When a third party, (i.e., a non-member of our University community, which could include, for example, alumni) is a party under this policy, the University will use disciplinary procedures that are generally consistent with the disciplinary procedures described in this policy, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and the like. In no case will a member of our community (i.e., current student, faculty member, or staff member) be afforded lesser rights or lesser opportunities to participate in the disciplinary proceeding than the non-member of the University community.

XII. Investigation and Adjudication

A. TIMING

The University seeks to complete investigations and adjudications within 90-120 business days after the investigators' first interview with the complainant. The university recognizes the stress for those involved and makes every effort to reduce the time from start to completion while still ensuring the integrity of the process. See Appendix E for more information about the process.

There may be circumstances that require the extension of time frames for good cause. Time frames may be extended to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, advisor, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

In accordance with University policy, the University will review requests for language assistance and accommodation of disabilities throughout the investigation and adjudication process.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding aspect of an investigation, under such circumstances, the University will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University however, will not wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide supportive measures for the complainant or respondent. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

B. INVESTIGATION

If the Title IX Coordinator has determined, following an initial assessment, that an investigation is appropriate, the Title IX Coordinator will appoint a Title IX Investigator.

Notice of Investigation

Following the receipt and review of the formal complaint by the Title IX Coordinator, and it being determined that the matter properly falls under this Title IX Sexual Harassment policy, the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting Title IX Sexual Harassment.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.

- A statement informing the parties that they will have the opportunity to inspect, review evidence and provide final comments.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University policy.
- Information regarding the applicable grievance process, including the informal resolution process.

If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

Gathering of Evidence

The investigator is responsible for gathering evidence as reasonably possible. Parties and witnesses are expected to provide all available relevant evidence to the investigator during the investigation. Each party will be given equal opportunity to suggest witnesses, provide other relevant information, such as medical, mental health, or law enforcement documentation, communications, photographs, and other evidence. If a party or witness fails to provide available relevant evidence during the investigation, such evidence may, at the discretion of the Hearing Decision-Maker, be excluded from consideration at the hearing. It is recommended that both parties suggest questions to be posed to the other party or witnesses. Parties and witnesses are expected to provide all available relevant evidence to the investigator during the investigation.

The Title IX Investigator will provide written notice no less than three (3) business days prior to any meeting. The written notice will include:

- Date
- Time
- Location and/or method
- Purpose
- Any other person(s) who will be attending the meeting

A Title IX Investigator will interview parties and witnesses separately. On occasion, a Title IX Investigator may seek assistance from another Title IX Investigator for interviewing purposes. The Title IX Investigators will record all interviews or take notes of the interviews. Any other recording of interviews is prohibited and violations may result in discipline.

The Investigators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

Case File

A case file is created by the investigator after interviewing all involved parties to include witnesses and the collection of relevant evidence.

The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation. The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigator will provide the case file, redacted of personally identifiable information in accordance with privacy regulations, to each party and their advisor in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisors. The investigator will also provide an updated Notice of the Allegations, as appropriate.

Within ten (10) business days of receiving the case file, each party may respond in writing, which may include a request that the investigator collect additional evidence. If the Investigators believe that further information is needed following receipt of any responses from the parties, the investigator will pursue any additional investigative steps as needed. The parties and their advisors will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigator, in electronic format or hard copy.

Investigative Report

Following their review of the parties' responses (if any) to the case file, the investigator will create a written investigative report that summarizes all relevant evidence; the report will not contain irrelevant information.

At least ten (10) business days prior to the hearing, the investigative report will be provided to the parties and their advisors via electronic or hard copy format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. At least two (2) business days prior to the hearing, the parties and their advisors will be provided with the other party's written response to the investigative report, if any, in electronic or hard copy format.

C. HEARING

The Hearing Decision-Maker will have absolute discretion with respect to administering the hearing to include deciding whether evidence, cross examination questions, and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted. The Hearing Decision-Maker will be responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or adviser.

Prior to the hearing, the parties, their advisors, and the Hearing Decision-Maker will be provided with the investigative report, which includes evidence and any responses to the investigative report.

At least ten (10) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

At least seven (7) business days in advance of the hearing the parties must notify the Investigator of any

witnesses they want to participate in the hearing.

At the Hearing Decision-Maker's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisors to explain the hearing protocol.

Standard of Proof

The standard of proof under this policy is clear and convincing. *The Clear and Convincing Evidence Standard* means the evidence is highly and substantially more likely to be true than untrue. Put another way, clear and convincing evidence requires that the evidence to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Expectation regarding the Complainant, the Respondent, and the Witnesses regarding the Hearing

All individuals sharing information are expected to do so in good faith.

If the complainant, the respondent, or a witness informs the University that they will not attend the hearing (or will refuse to be cross-examined), the hearing may proceed, as determined by the Title IX Coordinator and the Hearing Decision-Maker may use the Investigative Report to include all statements made by the party not in attendance at the hearing as evidence.

Each party may make requests related to the format or the nature of their participation in the hearing. The Hearing Decision-Maker will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the Hearing Decision-Maker and the parties to simultaneously see and hear the party answering questions. As appropriate and/or at the discretion of the Hearing Decision-Maker, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

Case Presentation

While the hearing is not intended to be a repeat of the investigation, the parties will be provided with an equal opportunity for their advisors to conduct cross-examination of the other party and/or of relevant witnesses that are present for the hearing. A typical hearing may include brief opening remarks by the Hearing Decision-Maker; questions posed by the Hearing Decision-Maker to one or both of the parties; questions posed by the Hearing Decision-Maker to any relevant witnesses; and cross-examination by either party's advisor of the other party and relevant witnesses.

The parties' advisors will have the opportunity to cross-examine the other party and witnesses, if present. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Only relevant cross-examination questions may be asked of a party or witness. Before a party or witness answers a cross-examination question that has been posed by a party's advisor, the Hearing Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Other University administrators may attend the hearing at the request of or with the prior approval of the Hearing Decision-Maker, but the parties will be notified in advance of anyone else who will be in attendance.

Record of Hearing

The University shall create an official record in the form of a recording or transcript of any live (or remote) hearing and make it available to the parties for inspection and review in the Title IX Office. Any other record of the hearing or any other recording is prohibited and violations may result in discipline.

D. WRITTEN DETERMINATION

The Hearing Decision-Maker shall make a determination, by a clear and convincing standard, whether the respondent has violated the policy. The Hearing Decision-Maker will provide to the Title IX Coordinator a written determination that includes:

- The allegations potentially constituting Title IX sexual harassment.
- The findings of fact supporting the determination.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred).
- The conclusions regarding the application of this policy to the facts.
- Determination of sanctions. (See Appendix D)

The Title IX Coordinator will provide the Notification of Outcome to both parties and their advisors. The Notification of Outcome will include the Hearing Decision-Maker's written and signed (or electronic signature) determination. The determination will contain:

- The allegations potentially constituting Title IX sexual harassment.
- A description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other information, and the hearing).
- Findings of fact supporting the determination.
- Conclusions regarding the application of this policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred).
- Relevant appeal information for the parties.

The parties and their advisors will simultaneously be provided with the written determination and sanctions (if appropriate) via electronic format.

E. APPEAL

A single Appeal Decision-Maker will hear appeals under this policy. The Appeal Decision-Maker may be internal or external.

Both parties have equal rights to an impartial appeal at the following junctures:

- Upon the dismissal of a formal complaint or any allegations therein.
- Upon receiving the Hearing Decision-Maker's written determination regarding responsibility and, when applicable, sanctions and remedies.

Appeals may be submitted on the following bases:

- Procedural irregularity that affected the outcome of the matter.
- New evidence that was not reasonably available at the time the determination regarding non-responsibility, responsibility or dismissal was made, which could affect the outcome of the matter.
- The Title IX Coordinator or their staff, investigator(s), or Hearing Decision-Maker, had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

To appeal, a party must electronically submit a written appeal statement to the Title IX Coordinator within five (5) business days of receipt of the written determination or dismissal. The Appeal Decision-Maker may deem a late submission reasonable only under extenuating circumstances, and the Appeal Decision-Maker may decide in their sole discretion what constitutes valid extenuating circumstances. The appeal shall outline the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response to the Title IX Coordinator within three (3) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred.

In deciding an appeal, the Appeal Decision-Maker may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Decision-Maker also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their advisors will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Appeal Decision-Maker finds that the earlier decision should stand, the parties will be so informed and the Title IX process is concluded.
- If the Appeal Decision-Maker finds that there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Hearing Decision-Maker to determine appropriate further action.
- If the Appeal Decision-Maker finds that new evidence is available which was not reasonably available at the time of the determination regarding non-responsibility, responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the Hearing Decision-Maker for appropriate further action.
- If the Appeal Decision-Maker finds that the Title IX Coordinator, Title IX Investigator(s), or Hearing Decision-Maker, had a conflict of interest or bias, for or against both parties or either of the parties that affected the outcome, the Appeal Decision-Maker will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.

The Appeal Decision-Maker will seek to complete the appeal review within ten (10) business days of

receipt of the appealing party's written statement.

The Appeal Decision-Maker's determination becomes final on the date that the parties are provided with the written determination or result of an appeal, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

XIII. Training

The University will provide appropriate training to University officials with responsibilities under this policy, including the Title IX Coordinator, Hearing Decision-Makers, Appeal Decision-Makers, and any individual who facilitates the informal resolution process. Such training will cover the definition of Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes under this policy, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The University will ensure that Hearing Decision-Makers receive training on any technology to be used at a hearing and on issues of relevance of questions and evidence, including questions and evidence about the irrelevancy of complainant's sexual predisposition or prior sexual behavior. The University will ensure that Investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant evidence. These training materials are publicly available on the Title IX Compliance website and will be made available for in-person review upon request. In addition, University officials with responsibilities under this policy will receive training related to intersectionality.

XIV. Record Retention

The University will maintain for a period of seven years records of the following:

- Each Title IX Sexual Harassment grievance process conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a hearing, any disciplinary sanction imposed on the respondent, and remedies provided to the complainant designed to restore or preserve access to the University's education program or activity.
- Any appeal and the result therefrom.
- Any informal resolution and the result therefrom.
- All materials used to train Title IX Coordinators, Investigators, Hearing Decision-Makers, Appeal Decision-Makers, and any individual who facilitates the informal resolution process with regard to Title IX Sexual Harassment.
- Records of any actions, including any supportive measures, taken in response to a report or formal complaint of Title IX Sexual Harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's educational and working program or activity. If the University does not provide a complainant with supportive measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XV. Modification and Review of Policy

Embry-Riddle Aeronautical University reserves the right to modify this policy to take into account applicable legal requirements or extraordinary circumstances.

At regular intervals, the University will review this policy to determine whether modifications should be made.

Appendix A: The Violence Against Women’s Act (VAWA)

<https://www.federalregister.gov/documents/2014/10/20/2014-24284/violence-against-women-act>

The Violence Against Women Reauthorization Act of 2013 (VAWA) ([Pub. L. 113-4](#)), which, among other provisions, amended section 485(f) of the HEA, otherwise known as the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). The Clery Act requires institutions of higher education to comply with certain Campus Safety and Security related requirements as a condition of their participation in the Title IV, HEA programs. Notably, VAWA amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking and to include certain policies, procedures, and programs pertaining to these incidents in their annual security reports. VAWA § 668.46 of title 34 of the Code of Federal Regulations (CFR) was amended to implement these statutory changes. The entire act is available at ([34 CFR668.46](#)).

VAWA provides the following requirements:

- Require institutions to maintain statistics about the number of incidents of dating violence, domestic violence, sexual assault, and stalking that meet the definitions of those terms.
- Clarify the very limited circumstances in which an institution may remove reports of crimes that have been “unfounded” and require institutions to report to the Department and disclose in the annual security report the number of “unfounded” crime reports.
- Revise the definition of “rape” to reflect the Federal Bureau of Investigation’s (FBI) updated definition in the UCR Summary Reporting System, which encompasses the categories of rape, sodomy, and sexual assault with an object that are used in the UCR National Incident-Based Reporting System.
- Revise the categories of bias for the purposes of Clery Act hate crime reporting to add gender identity and to separate ethnicity and national origin into separate categories.
- Require institutions to provide to incoming students and new employees and describe in their annual security reports primary prevention and awareness programs. These programs must include: a statement that the institution prohibits the crimes of dating violence, domestic violence, sexual assault, and stalking, as those terms are defined in these final regulations; the definitions of these terms in the applicable jurisdiction; the definition of “consent,” in reference to sexual activity, in the applicable jurisdiction; a description of safe and positive options for bystander intervention; information on risk reduction; and information on the institution’s policies and procedures after a sex offense occurs.
- Require institutions to provide, and describe in their annual security reports, ongoing prevention and awareness campaigns for students and employees. These campaigns must include the same information as the institution’s primary prevention and awareness program.
- Define the terms “awareness programs,” “bystander intervention,” “ongoing prevention and awareness campaigns,” “primary prevention programs,” and “risk reduction”.
- Require institutions to describe each type of disciplinary proceeding used by the institution; the steps, anticipated timelines, and decision-making process for each type of disciplinary proceeding; how to file a disciplinary complaint; and how the institution determines which type of proceeding to use based on the circumstances of an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Require institutions to list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceedings for an allegation of dating violence,

domestic violence, sexual assault, or stalking.

- Require institutions to describe the range of protective measures that the institution may offer following an allegation of dating violence, domestic violence, sexual assault, or stalking.
- Require institutions to provide for a prompt, fair, and impartial disciplinary proceeding in which:
 - Officials are appropriately trained and do not have a conflict of interest or bias for or against the accuser or the accused.
 - The accuser and the accused have equal opportunities to have others present, including an advisor of their choice.
 - The accuser and the accused receive simultaneous notification, in writing, of the result of the proceeding and any available appeal procedures.
 - The proceeding is completed in a reasonably prompt timeframe.
 - The accuser and accused are given timely notice of meetings at which one or the other or both may be present.
 - The accuser, the accused, and appropriate officials are given timely and equal access to information that will be used during informal and formal disciplinary meetings and hearings.
 - Define the terms “proceeding” and “result”.
- Specify that compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act ([20 U.S.C. 1232g](#)), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

Appendix B: Emergency Resources

1. LAW ENFORCEMENT

Many incidents of sexual harassment are also violations of the law. Individuals who wish to report a crime to law enforcement officials can contact the local agencies directly by dialing 9-1-1. They can also request assistance contacting the proper agency through the Title IX Coordinator, Campus Safety and Security or confidential reporter. *If the Reporting Party is under 18 years of age, the University has an obligation to contact law enforcement.*

2. MEDICAL ASSISTANCE

Emergency medical assistance is available both on campus (during business hours) and off campus (24/7). Individuals are encouraged (but not required) to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense. For more information about seeking assistance for a sexual harassment (sexual assault, rape, sodomy, domestic/dating violence, stalking) incident:

Daytona Beach Campus

Halifax Health Medical Center (Halifax)
303 N. Clyde Morris Blvd.
Daytona Beach, FL 32114
Phone: (877) 842-5432

Advent Health
301 Memorial Medical Pkwy
Daytona Beach, FL 32117
Phone: (386) 231-3023

Volusia County Rape Crisis Center
311 North Orange Street
New Smyrna Beach, FL 32168
Phone: (386) 236-3123 (Monday – Friday, 8 am – 5 pm)
Hour Sexual Assault Helpline: (800) 503-7621

Prescott Campus

Yavapai Family Advocacy Center
(YFAC) Prescott Valley, AZ 86312
Because YFAC is a safe place for victims, the physical address is not published
Phone: (928) 775-0669

Yavapai Regional Medical Center East
7700 Florentine Rd
Prescott Valley, AZ 86314
Phone: (928) 445-2700

Yavapai Regional Medical Center West
1003 Willow Creek Rd
Prescott, AZ 86301
Phone: (928) 445-2700

Appendix C: Informal Resolution Process

The University may resolve grievances/formal reports through informal resolution (such as facilitation or mediation) as appropriate based on the circumstances. Informal resolution is not appropriate for all matters, and the University retains the discretion to determine which cases may be appropriate for informal resolution and the type of informal resolution process that may be appropriate in a specific case.

The Informal Resolution Process is not available in matters involving a student and an employee.

Informal resolution is available only once a formal complaint has been filed, prior to a determination of responsibility, and where the Complainant, Respondent, and the University voluntarily consent to the process in writing. Before initiating an informal process, the University will provide the parties a written notice of the process and obtain the parties' voluntary, written request for and consent to the informal resolution process. The written notice to the parties will disclose:

- The allegations and potential policy violations at issue;
- The requirements of the informal resolution process (described below);
- The consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- The circumstances under which the parties are precluded from resuming a formal complaint arising from the same allegations; and
- The parties' right to withdraw from the informal resolution process and resume the formal resolution process with respect to the formal complaint, at any time prior to agreeing to a resolution.

Upon initiation of the informal resolution process the Title IX Coordinator will attempt to mediate the dispute through meetings with the parties. Although face-to-face mediation may be suggested, parties will never be required to meet directly with one another as part of the informal resolution process.

When sexual harassment allegations have been resolved through informal resolution by mutual consent of the parties and on a basis that is acceptable to the Title IX Coordinator, the resolution process shall be considered final and there will be no subsequent process or appeal.

The purpose of the informal resolution process is to eliminate the conduct which has been reported by the complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment. The Informal Resolution process is non-punitive unless both parties agree and the Title IX Coordinator approves.

The informal resolution process is a voluntary, remedies-based process designed to provide members of the Embry-Riddle Aeronautical University community with an option to resolve certain disputes with other members of the University community. The Informal Resolution Process is separate and distinct from the University's formal grievance processes under the Title IX Sexual Harassment Policy or the University Sexual Misconduct Policy.

The Informal Resolution Process is not available in matters involving a student and an employee.

Prior to participating in the informal resolution process, parties will be notified in writing. The following

are features of the informal resolution process:

- Participation in the informal resolution process is voluntary.
 - No party will be required to participate in the informal resolution process and the University will not require, encourage, or discourage the parties from participating in the informal resolution process.
 - All parties must consent in writing to participation in the informal resolution process.
- The University may offer the informal resolution process only under the following circumstances:
 - The complainant has filed a formal complaint.
 - The Title IX Coordinator has determined, through an initial assessment that the alleged conduct, if substantiated, would constitute Title IX Sexual Harassment or University Sexual Misconduct.
 - The Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the formal grievance process.
- Both parties may be accompanied by an advisor of their choosing but it is not a requirement. Advisors that attend any meetings may not actively participate, make suggestions/recommendations, or serve as a proxy for a party. Advisors are expected to make themselves available for meetings as scheduled by the University. Any University official or designee facilitating a meeting has the authority to determine what constitutes appropriate behavior on the part of the advisor and take appropriate steps to ensure compliance with this policy.
- The Title IX Coordinator must approve any agreements reached as part of the informal resolution process in order to ensure consistency with the University's federal obligations. If the Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a formal grievance process based on the conduct alleged in the formal complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the Title IX Coordinator will determine whether it is appropriate to proceed. For example, if both parties joined the same club subsequent to signing the agreement or participated in the same study abroad program, either party could request a supplemental agreement to address the changed circumstances, provided that both parties agreed to any such revisions. Under such circumstances, the above conditions would apply.

INITIATION OF THE INFORMAL RESOLUTION PROCESS

If the complainant files a formal complaint and requests to engage in the informal resolution process, the Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the Title IX Coordinator will consider the following factors:

- The disciplinary record (or past conduct) of the respondent relating to sexual misconduct, physical violence, failure to comply with a No Contact Order, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple complainants and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether the circumstances warrant the Title IX Coordinator filing a formal complaint (e.g., if there is sufficient evidence to proceed with an investigation/adjudication even absent participation by the complainant);
- Whether proceeding with the informal resolution process is in accordance with the principles and objectives of the University's Title IX Sexual Harassment policy/University Sexual Misconduct policy, as determined by the Title IX Coordinator; and/or
- Whether proceeding with the informal resolution process in matters involving faculty and staff members is in accordance with University employment practices.

If the Title IX Coordinator determines that a case is not appropriate for the informal resolution process, the Title IX Coordinator will inform the complainant in writing that the informal resolution process is unavailable.

If the formal grievance process has already begun, either party may seek to initiate the informal resolution process up until ten (10) business days prior to the hearing. If both parties agree to participate in the informal resolution process and the Title IX Coordinator approves of the informal resolution process, the formal grievance process will be adjourned while the informal resolution process is pending; if an agreement is not reached, the formal grievance process will be resumed.

Upon initiation of the informal resolution process, the Title IX Coordinator may refer the matter to a trained informal resolution facilitator or conduct the facilitation themselves. The facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

POTENTIAL OUTCOMES OF THE INFORMAL RESOLUTION PROCESS

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Mutual No Contact Order or No Communication Order.
- Imposition of a one party No Contact Order, requiring the respondent to limit their physical proximity to the complainant.
- Restrictions on the respondent from participation in particular organizations or events.
- Changes to on-campus housing, subject to availability.

- Conversation between the parties facilitated by the Title IX Coordinator or a trained individual appointed by the Title IX Coordinator.
- Other measures deemed appropriate by the Title IX Coordinator.

FAILURE TO COMPLY WITH THE INFORMAL RESOLUTION AGREEMENT

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with the disciplinary procedures described in other University policies.

DOCUMENTS RELATING TO THE INFORMAL RESOLUTION PROCESS

The records relating to the informal resolution process will be maintained for a minimum of seven (7) years.

Prior to participating in the informal resolution process, parties will be notified in writing that any information gathered in the informal resolution process may be used in the Title IX Sexual Harassment or University Sexual Misconduct formal grievance processes if the informal resolution process ends prior to a written agreement being signed by the parties. However, the University will not draw any adverse inference based on a respondent's participation in the informal resolution process, nor will such participation be considered an admission by the respondent.

Even if the parties enter into a written informal resolution agreement, if information related to the violation of other University policies (i.e., policies other than the Title IX Sexual Harassment policy or the University Sexual Misconduct policy) comes to light through the informal resolution process, such information may be used in other University disciplinary processes, subject to the Amnesty / The Responsible Intervention Protocol policy.

RETALIATION

The protections against Retaliation apply to individuals participating in the informal resolution process. Disciplinary consequences may result for those found responsible for Retaliation.

TIME FRAME FOR THE INFORMAL RESOLUTION PROCESS

The time frame for completion of the informal resolution process may vary, but the University will seek to complete the informal resolution process within thirty (30) business days of completion of the initial assessment. Should the time period extend beyond this time frame, the parties will be notified.

Appendix D: Range of Sanctions under this Policy

Members of the University community may be subject to disciplinary sanctions for violating this policy. Proof is what determines a violation. Severity, aggravation, mitigation and prior record determine sanctions.

SANCTIONS APPLICABLE TO STUDENTS

The sanctions for students are listed below.

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any Embry-Riddle Aeronautical University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- **Probation:** A written reprimand for violation of University policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their enrollment as a student at Embry-Riddle Aeronautical University.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Embry-Riddle Aeronautical University -sponsored events.
- **Withholding Diploma:** Embry-Riddle Aeronautical University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** Embry-Riddle Aeronautical University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of Embry-Riddle Aeronautical University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including Embry-Riddle Aeronautical University registration as a recognized organization) for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, Embry-Riddle Aeronautical University may assign any other sanctions as deemed appropriate.

The following may accompany the preceding sanctions, as appropriate:

University Housing. When appropriate to the infraction, particularly in instances involving

antisocial behavior having a serious impact on the residential community, removal from University housing or relocation within University housing may be added to any of the other sanctions listed above, except warning and reprimand.

Restriction of Access to Space, Resources, and Activities. When appropriate in cases involving behavioral misconduct between members of the community, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact among the parties.

Educational Refresher Programs. In addition to any of the sanctions listed above, a student may be required to participate in educational refresher programs appropriate to the infraction.

Restitution. The sanction for willful or reckless damage or vandalism will ordinarily include restitution for replacement or repair.

SANCTIONS APPLICABLE TO FACULTY AND STAFF MEMBERS

For violations of this policy by faculty or staff members, disciplinary sanctions may include (in accordance with the employment policies governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension (or recommendation for suspension), demotion, termination (or recommendation for termination) in accordance with applicable policies. The University may place a faculty or staff member on administrative leave during the pendency of a grievance process, provided that such action shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

SANCTIONS APPLICABLE TO NON-MEMBERS OF THE UNIVERSITY COMMUNITY

For violations of this policy by non-members of the University community, including alumni, disciplinary sanctions may include being temporarily or permanently barred from the University or subject to other restrictions.

Appendix E: Reasons Why the Process Takes Time

Listed below are reasons that a case/investigation may take longer than anticipated:

- Ensure the integrity and completeness of the investigation
- Comply with external law enforcement if parallel case
- Both the complainant and respondent are normally interviewed multiple times by the investigators as more questions arise
- Scheduling interviews around class / work schedules
- Interviewing witnesses (anywhere from none to 20)
- Gathering evidence from both parties and witnesses
- More persons identified during the investigation that need to be interviewed
- Investigators may be handling multiple cases along with other duties
- Winter / Spring / Summer breaks
- Time zone differences
- Writing up statements
- Developing case files
- Sending case files for the review of parties and their advisors (10 business days)
- Gathering the comments from parties after the review of the case file and incorporating those comments/asking additional questions
- Writing up final report to only include relevant information
- Scheduling Hearing (for formal investigations)
- Scheduling all parties for availability at the Hearing
- Logistics for hearings
- Review of final report by both parties and their advisors (10 business days)
- Updating report with any final comments by parties
- Sending out the comments to both parties prior to hearing

**Please understand the list above is not an exhaustive list and that other reasons (that will be communicated in writing) may apply.*