

# Title IX Related Documents

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## A07. Non-Harassment Policy

Includes New York State Sexual Harassment Prevention Policy Standards<sup>1</sup>

|                      |  |                              |                        |
|----------------------|--|------------------------------|------------------------|
| <b>Applies to:</b>   | All Employees  | <b>Overseer:</b>             | VP of Business Affairs |
| <b>Published in:</b> | Policy Manual<br>Employee Handbook<br>EBIC Workplace Safety Manual | <b>Additional Reviewers:</b> |                        |
| <b>Created on:</b>   | 01/26/2019   | <b>By:</b>                   | Andrew Weiler          |
| <b>Revised on:</b>   | 01/10/2024   | <b>By:</b>                   | Andrew Weiler          |

### Policy Statement:

EBIC's Non-harassment Policy applies to all employees, applicants for employment, volunteer staff, third parties, interns, whether paid or unpaid, contractors, and persons conducting business with EBIC. We prohibit harassment including, but not limited to sexual harassment, for any reason based on a "protected class" including, but not limited to: veteran status, uniform service member status, race, color, religion, sex, national origin, age, physical or mental disability, genetic information, or any other protected class under federal, state, or local law. Harassment of third parties by our employees is also prohibited.

EBIC campus housing and/or employment is limited to those persons who embrace and abide by the EBIC Statement of Faith and Community Living Agreement and is a matter of EBIC doctrine and is not harassment. That being understood, EBIC does fully support all state and federal prohibitions against harassment on the basis of sexual preference and gender identity and no harassment is permitted for any reason or in any manner.

No person covered by this Policy shall be subject to adverse employment action including being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee reports an incident of sexual harassment, provides information or otherwise assists in any investigation of a sexual harassment complaint. Any employee of EBIC who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. Anyone who believes they have been subject to such retaliation should inform the EVP and may also seek compensation in other available forums, as explained below in the section on Legal Protections.

EBIC will enforce sanctions against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

Additionally, EBIC has a Title IX coordinator. Every student is entitled to inquiries concerning Title IX and has the right to contact the institution's Title IX coordinator in such instances. Sexual harassment complaints may be submitted directly to the Title IX coordinator by filling out the Title IX complaint form at <https://form.jotform.com/6221504777156>. Students also have the right to file a complaint with the Office of Civil Rights at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

### Procedure:

1. This policy is posted in the institution's Policy Manual and made available through Populi and the local area network.
2. In accordance with the Matthew 18 principle, EBIC encourages employees who feel that they have been subject to sexual harassment to confront the offender and seek to resolve the situation.

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<sup>1</sup> Minimum standards for NYS Sexual Harassment Prevention Policy <https://www.ny.gov/combating-sexual-harassment-workplace/employers>

In some situations, asking an offender to stop will keep a would-be harassment situation from escalating. If a resolution is not found, individuals who feel that they have been harassed must report the incident to the EVP. Employees are encouraged to use the Sexual Harassment Complaint form available on the Populi and through this link directly:

(<https://form.jotform.com/83123575040146>) Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe to the EVP.

3. EBIC will conduct a prompt, thorough and confidential investigation that ensures due process for all parties. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment. All complaints or information about suspected sexual harassment will be investigated, whether that information was reported in verbal or written form. Reported sexual harassment will be investigated in the following manner.
  - a. The complaint of sexual harassment will be received by the EVP unless the complaint concerns the EVP. In that case, it should be directed to the president.
  - b. When the complaint JotForm is used, a copy of the submitted JotForm will automatically be sent to both the EVP and the President. The president will involve another member of the President's Cabinet to assist in hearing and investigating the complaint. The report will be assessed and investigated by this executive team and a plan of action will be determined.
  - c. Additional information may be requested from the reporter.
  - d. The offender will be given an opportunity to respond.
  - e. Depending on the severity of the complaint, the following actions may be taken:
    - i. The offender may be asked to stop certain behaviors.
    - ii. The offender may be asked to embrace a corrective action plan.
    - iii. The offender may be released from employment at EBIC.
    - iv. In cases of illegal activity, law enforcement will be contacted and the BOT will be notified.
  - f. The reporter will be notified of the general action taken in regard to their complaint.

#### **Examples of Harassment and Sexual Harassment:**

While it is not easy to define precisely what harassment is, it includes slurs, epithets, threats, derogatory comments or visual depictions, unwelcome jokes, and teasing.

Furthermore, sexual harassment includes physical assaults of a sexual nature, such as touching, pinching, patting, grabbing, brushing against another employee's body or poking another employee's body, rape, sexual battery, molestation, or attempts to commit these assaults, unwanted sexual advances or propositions, subtle or obvious pressure for unwelcome sexual activities, sexually-oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, sexual or discriminatory displays or publications anywhere in the workplace, hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender.

#### **Legal Protections and External Remedies:**

Sexual harassment is not only prohibited by EBIC but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at EBIC, employees may also choose to pursue legal remedies with the following governmental entities at any time.

1. **New York State Division of Human Rights (DHR).** Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly

in state court under The Human Rights Law (HRL), within three years of the alleged discrimination. An individual may not file with DHR if they have already filed an HRL complaint in state court. DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, [www.dhr.ny.gov](http://www.dhr.ny.gov) Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint.

2. **The United States Equal Employment Opportunity Commission (EEOC).** An individual can file a complaint with the EEOC anytime within 300 days from the harassment. The EEOC will investigate the complaint and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. Federal courts may award remedies if discrimination is found to have occurred. If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov) If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.
3. **Local Protections.** Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city, or town in which they live to find out if such a law exists.
4. **Contact the Local Police Department:** If the harassment involves physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

## A09. Student Complaint Process<sup>2</sup>

|                      |  |                              |   |
|----------------------|--|------------------------------|---|
| <b>Applies to:</b>   | Students                                     | <b>Overseer:</b>             | EVPP  |
| <b>Published in:</b> | Policy Manual<br>Academic Catalog<br>Website | <b>Additional Reviewers:</b> | President<br>President's Cabinet<br>IE Director |
| <b>Created on:</b>   | 2/10/2016                                    | <b>By:</b>                   | Danuta Case / Emily Sanders                     |
| <b>Revised on:</b>   | 12/8/2023                                    | <b>By:</b>                   | Cassandra Wilhelm                               |

### Policy Statement:

A complaint may be initiated by a student when he/she believes they have been treated unjustly. EBIC provides a way for students to address personal grievances and file any complaints whether the grievance is against EBIC or its staff and faculty or another student or tenant. Anonymous complaints or feedback for EBIC, Faculty, or staff may also be submitted to the "Suggestion Box" located in the College Hall Student Lounge.

### Procedure for grievances against EBIC, faculty, or staff:

1. Each student is encouraged to first attempt to resolve his/her grievance by consulting with the accused staff/faculty member.
2. If the student believes that the issue has not been resolved, he/she should communicate with the faculty/staff supervisor.
3. If the student still believes the issue has not been resolved, he/she may submit a [Student Complaint](https://form.jotform.com/60406376635962) (<https://form.jotform.com/60406376635962>) form. This form is sent directly to Executive Vice President and Provost (EVPP) as well as the President. The EVPP will investigate the matter unless the complaint concerns him/her. At that point, the President may appoint another person to handle the matter or he/she may choose to address it him/herself. The process may require contacting other parties involved and offering to meet with the student individually, as well as meeting with other members involved in the matter.
4. Once all of the information from the investigation has been gathered, the EVPP (or another designated, unbiased employee) will issue a letter/email that determines the position of the school on the matter. This letter/email will be sent to all the individuals associated with the complaint and it will include information about appealing the decision, including the President's Cabinet members. A written appeal may be sent from the student to the President's Cabinet within five business days of receiving the letter.
5. If the student feels that he/she has been treated unfairly in the process outlined above or that the issue has not been resolved, he/she may report the incident to the New York State Board of Regents ([NYSED Complaint Procedure: http://www.nysed.gov/college-university-evaluation/filing-complaint-about-college-or-university](http://www.nysed.gov/college-university-evaluation/filing-complaint-about-college-or-university)), Transnational Association of Christian Colleges and Schools ([TRACS Complaint Form: https://tracs.org/Documents/3.TRACSComplaintForm-AgainstInstitution\\_000.pdf](https://tracs.org/Documents/3.TRACSComplaintForm-AgainstInstitution_000.pdf)), or National Council for State Authorization Reciprocity Agreements<sup>3</sup> ([Student Complaints Process: https://nc-sara.org/student-complaints](https://nc-sara.org/student-complaints)).

<sup>2</sup> TRACS Accreditation Standard II.17.3

<sup>3</sup> Distance Education students from out-of-state locations should follow NC-SARA's process of filing complaints. Note that such complaints are addressed by the State Portal Entity, which in New York is OCUE.

6. Academic-related complaints will be stored in the Provost's office, and all other complaints will be stored digitally on a Google Drive with two people having access to it, which is the IE Director and the EVPP.

All links to various complaint forms are available on the website at <https://elim.edu/student-life/student-achievement/>.

**Procedure for grievances against another student or tenant:**

1. Each student is encouraged to first attempt to resolve their grievance by consulting with the offending student or tenant, according to the Matthew 18 principle. If a student, for whatever reason, feels unsafe to do so alone, such student is permitted to ask another person, or they may ask a dean, to assist them in the confrontation. It is, however, the responsibility of the student themselves to state their concerns with whom they have a grievance.
  - a. For student – student issues: the student will meet with the offending student, sharing their concern in a spirit of love. The student will send a follow-up email to the offending student recapping the meeting.
  - b. For student – tenant issues: the student will meet with the offending tenant, sharing their concern in a spirit of love. The student will send a follow-up email to the Executive Vice President and Provost (EVPP) recapping the meeting with the tenant.
2. If the student still believes the issue has not been resolved, they may submit a [Student Complaint \(https://form.jotform.com/60406376635962\)](https://form.jotform.com/60406376635962) form. This form is sent directly to EVPP as well as the President. The EVPP will investigate the matter and determine the path to resolution.

All links to various complaint forms are available on the website at <https://elim.edu/student-life/student-achievement/>.

Sexual harassment or sexual violence grievances can be filed using the Title IX complaint form at <https://form.jotform.com/62215047777156>. Students also have the right to file a complaint with the Office of Civil Rights at <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>. For further information, refer to the *Sexual Violence Response* policy and the *Title IX Policy*.

## R06. Sexual Assault Prevention Information (6432 – NYSED Article 129-A)

|                      |                                    |                              |                           |
|----------------------|------------------------------------|------------------------------|---------------------------|
| <b>Applies to:</b>   | <b>Everyone on EBIC Campus</b>     | <b>Overseer:</b>             | Title IX Coordinator      |
| <b>Published in:</b> | Policy Manual<br>Title IX Handbook | <b>Additional Reviewers:</b> | Campus Safety Coordinator |
| <b>Created on:</b>   | 6/20/2014                          | <b>By:</b>                   | Danuta Case               |
| <b>Revised on:</b>   | 5/21/2024                          | <b>By:</b>                   | Cassie Wilhelm            |

### Policy Statement:

Each college shall inform incoming students about sexual assault, domestic violence, and stalking prevention measures through programs which may include workshops, seminars, discussion groups, and film presentations, in order to disseminate information, promote discussion, encourage reporting, and facilitate prevention of sexual assault, domestic violence, and stalking.

Such information shall include, but not be limited to the:

- Applicable laws, ordinances, and regulations relating to such offenses;
- Penalties for the commission of a sex offense, a domestic violence incident, and a stalking offense;
- Procedures in effect at the college for dealing with such offenses;
- Availability of counseling and other support services for the victims of such offenses;
- Nature of and common circumstances relating to sex offenses, incidents of domestic violence, and stalking offenses on college campuses;
- Methods the college employs to advise and to update students about security procedures.

### Procedure:

The following website to New York State Laws is provided for users' convenience; it is not the official site for the State of New York laws. <http://codes.lp.findlaw.com/nycode>

For definitions of specific sex offenses see <http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>, click **Laws**, scroll to find, and select **PEN**.

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of New York State Consolidated.

<http://public.leginfo.state.ny.us/menusetf.cgi?COMMONQUERY=LAWS>

The guidelines, penalties, and procedures dealing with such offenses are described in:

- The policy for Bias-Related Crime Prevention
- Student Handbook: Code of Conduct, Dorm Life Guidelines, and Campus Safety

## R09. Sexual Violence Response (6444 – NYSED Article 129-B)

|                      |                         |                              |   |
|----------------------|-------------------------|------------------------------|---|
| <b>Applies to:</b>   | Everyone on EBIC Campus | <b>Overseer:</b>             | Campus Safety Coordinator                 |
| <b>Published in:</b> | Policy Manual           | <b>Additional Reviewers:</b> | Dean's Department<br>Title IX Coordinator |
| <b>Created on:</b>   | 7/12/2016               | <b>By:</b>                   | Jacob Smales                              |
| <b>Revised on:</b>   | 11/5/2024               | <b>By:</b>                   | Ashley Allen                              |

### Policy Statement:

In accordance with Federal Law 34 CFR 106 and New York State Law Article 129-B reporting individuals who wish to seek aid and help in cases of sexual violence shall have the following rights.

### Procedure:

Students have the right to make a report of sexual violence to the Title IX Coordinator, Dean of Students' Office, Campus Safety, local law enforcement, and/or State Police or choose not to report; to report the incident to the institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from the institution.

### Confidential Reporters

To disclose *confidentially* the incident to one of the following college officials, who by law may maintain confidentiality, and can assist in obtaining services.

- Title IX Coordinator

### Non-Confidential Reporters

To disclose the incident to one of the following college officials who can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and resources, how to contact the Title IX Coordinator:

- Safety Team (585) 355-1428
- Advisory Committee (names are posted in every building on billboards)
- Faculty
- Dean's Department
- President's Cabinet
- All Full or Part-Time Staff (Non-Faculty)

These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. These officials will provide the information contained in the Student's Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney.

### Filing an Institutional Complaint of Sexual Assault, Sexual Violence, or Dating Violence

#### **Contacts for Institutional Reporting**

- Title IX Coordinator Ashley Allen, 585-582-8210, ashleyallen@elim.edu
- Title IX Complaint Form

- Elim.edu > Student Life > Student Right to Know > Student Complaint Resources > Title IX Complaint Form
- Safety Team: Available 24 hours a day, seven days a week at 585- 355-1428
- Human Resources: Andrew Weiler, 585-582-8301, [andrewweiler@elim.edu](mailto:andrewweiler@elim.edu)
- Note: You may withdraw your complaint or involvement at any time.

**Title IX Coordinator, Ashley Allen, 585-582-8210, [ashleyallen@elim.edu](mailto:ashleyallen@elim.edu)**

- To receive assistance from the Title IX Coordinator in initiating legal proceedings in family court or civil court.
- To file a report of sexual assault, domestic violence, dating violence, and/or stalking, talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with Elim Bible Institute and College policy and the reporting individual’s identity shall always remain private if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may call the Title IX Coordinator’s office.
- When the accused is an employee, a reporting individual may also report the incident to the Title IX Coordinator or may request that one of the above referenced confidential or private employees assist in reporting to Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.

**Human Resources, Andrew Weiler, 585-582-8301, [andrewweiler@elim.edu](mailto:andrewweiler@elim.edu)**

- Every college shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to a college designated representative, the following information shall be presented to the reporting individual:

Filing Criminal Complaint of Sexual Assault, Sexual Violence or Dating Violence

- Livingston County Sheriff Department, 4 Court St, Geneseo, NY 14454: 585-243-7100
- State police 24-hour hotline to report sexual assault on a NY college campus: 1-844-845-7269.
- Title IX Coordinator: To receive assistance in initiating legal proceedings in family court or civil court.

**Grievance Process for Formal Complaints of Sexual Harassment Procedure<sup>4</sup>**

**1. WHEN A TITLE IX COORDINATOR RECEIVES A REPORT**

Elim Bible Institute and College (EBIC) will respond by: (A) equitably offering Supportive Measures to the Complainant and Respondent, whether or not a Formal Complaint is filed; and (B) refraining from imposing upon Respondent disciplinary sanctions or other actions that are not Supportive Measures unless and until the Respondent is found responsible for a violation of this Policy through a completed Grievance Process. Notwithstanding the foregoing, EBIC may impose an Emergency Removal or Administrative Leave.

A) First Steps

i) Purpose:

When the Title IX Coordinator receives a Report of alleged Title IX Sex Discrimination or a

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<sup>4</sup> Per 34 CFR 106.45

Formal Complaint alleging Title IX Sex Discrimination, the Title IX Coordinator will notify the college President unless the college President is the accused or involved in the allegation, then the Title IX Coordinator will notify another executive level college official who is uninvolved in the allegation, seek to gather additional information regarding the alleged Title IX Sex Discrimination, to evaluate any risk of harm to individuals or to the campus community, and to address the immediate physical safety and emotional well-being of the Complainant. The burden of proof and the gathering of evidence rests on EBIC not the parties.

ii) Evaluating Risk of Harm:

The Title IX Coordinator will take necessary action to address any risk of harm identified by the Title IX Coordinator, including implementation of Supportive Measures for either or both Parties, as appropriate, and actions designed to protect the larger campus community. Any decision to remove a Respondent from campus pending the Grievance Process will follow the process discussed in the Emergency Removal section of this Policy. At the president's discretion, an executive level official will join the Title IX Coordinator in the initial process of gathering evidence and evaluating the information given.

iii) Notifications:

During this discussion, the Title IX Coordinator will provide the following written notice:

- (1) notify the Complainant of the right to contact law enforcement (or not) and seek medical treatment;
- (2) notify the Complainant of the importance of preservation of evidence;
- (3) provide the Complainant with information about on- and off-campus resources;
- (4) notify the Complainant that the institution can provide assistance in initiating legal proceedings in family court or civil court;
- (5) notify the Complainant of the range of Supportive Measures available with or without filing a Formal Complaint;
- (6) provide the Complainant with an explanation of the procedural options; and
- (7) explain the college's policy prohibiting retaliation.

B) Determination of Next Step:

After assessing the information gathered, the Title IX Coordinator will consult with the President or the EVPP and take one of the following steps regarding the Grievance Process:

i) Initiate Grievance Process:

If the Title IX Coordinator determines that the alleged misconduct falls within this Policy and a Formal Complaint has already been submitted, the Title IX Coordinator will notify the college President and proceed with one of the options described below. If a Formal Complaint has not yet been submitted, the Title IX Coordinator will advise the Complainant that a Formal Complaint is required to initiate an investigation. The Title IX Coordinator will provide the Complainant a Formal Complaint form (or link to a website where one can obtain and submit a Formal Complaint through the web, by email or by mail) for the Complainant's completion and signature. Once a signed Formal Complaint is submitted, the Title IX Coordinator will proceed with one of the options described below. The Title IX Coordinator may initiate the Grievance Process without a Formal Complaint signed by the Complainant and in the Title IX Coordinator's discretion, require the institution to investigate the allegations underlying a Report. If this is the case, the Title IX Coordinator will communicate this with the college President prior to initiating an investigation.

ii) Dismiss Formal Complaint:

A written Notice of Dismissal will be issued to the Complainant if a Formal Complaint has been submitted but the Title IX Coordinator determines the alleged misconduct does not fall within this Policy because: the Complainant is not participating in or attempting to participate in an EBIC Program or Activity; the conduct did not occur within EBIC's Campus, Education Program or Activity; the conduct did not occur within the United States; or the Respondent is no longer enrolled or employed by EBIC. The Notice of Dismissal, which will be issued to the Complainant within 5 Business Days of the Title IX Coordinator's determination, will include the reasons for the dismissal. The Complainant has the right to Appeal from dismissal of a Formal Complaint on any of the following grounds:

- (1) Procedural Irregularity that affected the outcome of the matter,
- (2) New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter; and/or,
- (3) 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 Appeals from a Notice of Dismissal must be submitted in writing to the President of EBIC, within 5 Business Days from delivery of the Notice of Dismissal and in the method described in the Notice of Dismissal.
  - (a) Refer for Action Pursuant to Different EBIC Policy: With or without a Formal Complaint, when the Title IX assessment concludes with a determination that the alleged conduct does not fall within the scope of this Policy but involves conduct that, if found to have occurred, violates another EBIC policy, the matter will be referred for further action. The alleged behavior may be in violation of other EBIC policies. The determination regarding next steps will be communicated to the Parties in writing. When a Formal Complaint has been submitted, this information will be included in the Notice of Dismissal. The Parties have the right to submit an Appeal from dismissal of a Formal Complaint on the same grounds and in the same manner explained in above.

C) Weighing a Complainant's Request Not to Proceed with the Grievance Process

i) General Description of Process:

If a Complainant requests that EBIC refrain from proceeding with the Grievance Process, the Title IX Coordinator may still decide that proceeding with the Grievance Process is necessary. The Title IX Coordinator must weigh such a request against EBIC's obligation to provide a safe, non-discriminatory environment for all community members and will confer with the Complainant when reaching a determination of whether to proceed. If this is the case, the Title IX Coordinator will communicate this with the college President prior to proceeding with an investigation.

ii) Decision to Proceed:

If EBIC determines that it must proceed with the Grievance Process, as determined by the Title IX Coordinator and the college President, the Title IX Coordinator will notify both Parties prior to commencing any investigation. In the event the decision is made to proceed, the Complainant will still be treated as a Party within the Grievance Process. Even a non-participating Complainant will be offered Supportive Measures, which will be reviewed and evaluated on an ongoing basis and will be provided information regarding their right to report a crime to campus or local law enforcement and with assistance if they wish to do so.

D) Supportive Measures:

Promptly after receipt of a Report, the Title IX Coordinator will inform the college President

about it and will contact the Complainant and Respondent (if identified or identifiable based upon the Report) to discuss the availability of Supportive Measures. Supportive Measures are available with or without the filing of a Formal Complaint. In evaluating the Supportive Measures to be provided, the Title IX Coordinator with the president will make an individualized determination, considering Complainant's wishes and other relevant factors, of the non-disciplinary, non-punitive measures that will be provided to the Complainant and Respondent to restore or preserve equal access to EBIC Education programs or Activities, to protect the safety of the Parties, and/or to deter Title IX Sex Discrimination. All Supportive Measures will be provided without fee or charge and without unreasonably burdening the other Party. Supportive Measures will be maintained as confidential by EBIC to the extent that confidentiality will not impair the ability to provide the Supportive Measures. Examples of Supportive Measures that may be implemented by EBIC include but are not limited to:

- i) Academic extensions or adjustments
- ii) Campus escort services
- iii) Changes in housing
- iv) Counseling recommendations
- v) Increased security or monitoring of certain areas of the campus
- vi) Modifications of class or work schedules
- vii) Mutual restrictions on contact between the Parties

Appropriate Supportive Measures will also be available to Employees.

EBIC may implement emergency removal of a Respondent, whether or not a Formal Complaint has been submitted, if there is an immediate threat to the physical health or safety of any student or other individual that arises from allegations of conduct that could constitute a violation of this Policy.

E) Emergency Removal of a Respondent:

Prior to implementing an emergency removal, EBIC will first gather information to undertake an individualized safety and risk analysis. The analysis will be conducted by at least two individuals who are free from bias or conflict of interest; who have relevant knowledge and experience; and who will not be involved in any later Grievance Process related to the student who is being evaluated for potential removal.

i) Factors to be Considered:

The emergency removal analysis will focus on the specific Respondent at issue and examine the specific circumstances arising from the allegations of Title IX Sex Discrimination that potentially pose an immediate threat to a person's physical health or safety. To evaluate the presence of an "immediate threat," EBIC will consider a Complainant's stated subjective fear and will apply an objective reasonable person standard. EBIC will consider the student's propensity, opportunity, and ability to carry out a stated or potential threat. The analysis will evaluate whether Supportive Measures are a more appropriate and less restrictive means to negate or sufficiently minimize the likelihood of a threat being carried out. As part of its analysis, EBIC may rely on objective evidence and current medical knowledge and may consult with a licensed evaluator to analyze the information gathered. EBIC shall also consider Respondent's rights, if any, under applicable federal and/or state disability laws. In addition, the relationship between a threat and the physical health or physical safety of any student or other individual will also be carefully evaluated. In some but not all cases, threatening speech or virtual interactions without an associated action may rise to the level of a threat to physical health or physical safety. If the threat a Respondent poses is in the nature

of potential emotional impact only, EBIC will instead focus on identifying appropriate Supportive Measures. EBIC will also closely examine whether the emergency created by the immediate threat arises from the allegations of conduct that could constitute Title IX Sex Discrimination under this Policy. As an example, an immediate threat to Complainant's physical safety is likely present when a Respondent threatens physical violence against the Complainant in response to the Complainant's allegations of verbal harassment by the Respondent. Threats of physical self-harm will be addressed under separate, applicable policies. If the individualized safety and risk analysis results in a determination that a Respondent's actions pose an immediate and identified threat, but do not arise from allegations of Title IX Sex Discrimination, EBIC will respond pursuant to other applicable policies and/or procedures. EBIC assessment of the appropriateness of emergency removal will account for its multiple potential impacts, including: whether providing the Complainant Support Measures will be sufficient to ensure equal educational access; the adverse impacts of separating a Respondent from educational opportunities and benefits; and the protection of the health and safety of EBIC's community. When assessing an emergency removal, EBIC will also consider the anticipated timeline of an investigation and hearing. Given these evaluations are necessarily fact specific, in some cases EBIC may determine that restricting a Respondent's participation in specific programs or activities will adequately address the situation.

ii) Emergency Removal is Not Discipline nor a Determination of Responsibility:

At all stages of the process, EBIC will ensure that the emergency removal will not impose a premature sanction on the Respondent or circumvent the Grievance Process. An emergency removal does not equate to a Determination of Responsibility for a policy violation and will not result in a presumption of responsibility in any subsequent grievance process.

iii) Ongoing Evaluation:

EBIC will continually evaluate whether the presence of an immediate threat to physical health or safety of a student or another individual has remained the same or changed such that the removed student can be safely returned to programs or activities in a partial or complete manner.

iv) Notice of Emergency Removal and Opportunity to Request Review:

In the event EBIC determines that emergency removal of a Respondent is appropriate, the Respondent will be notified in writing within 2 Business Days of the removal decision. This written notice will include details about the specifically identified emergency threat of physical safety or harm underlying the decision, as well as information about the Respondent's immediate opportunity to request review of the Emergency Removal decision.

F) Placement of Employee on Administrative Leave

In the event a formal complaint alleges conduct that could constitute Title IX Sex Discrimination and identifies an Employee as Respondent, EBIC may decide to place the Respondent on administrative leave, in emergency and non-emergency situations. The purpose of such an administrative leave is to allow a temporary separation of the Employee while the Grievance Process is ongoing. EBIC will determine the terms and conditions of the leave on a case-by-case basis. The decision process for placing an Employee-Respondent on leave will respect their rights under Title VII, Americans with Disabilities Act, and all other applicable employment laws. EBIC may place a student-employee on administrative leave from on-campus employment in a non-emergency situation in order to provide Supportive Measures to a Complainant. EBIC will make its best efforts not to unreasonably burden the Respondent with placement on leave and will fully evaluate whether there are alternative and less restrictive measures that would be more appropriate. In most situations, a student-employee placed on administrative leave from on-campus employment as a supportive measure will continue to receive pay until the conclusion of

the Grievance Process.

## **2. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS**

### **A) Overview:**

All entitlements established in this section apply equally to both Parties. This process applies when a Formal Complaint is signed and submitted, whether by a Complainant or the Title IX Coordinator on behalf of EBIC. This process is grounded in a presumption that a Respondent is not responsible unless and until a Determination of Responsibility at the conclusion of this process. The standard of review for determinations regarding responsibility at the conclusion of this process is PREPONDERANCE OF EVIDENCE. Formal Complaints are resolved either through Live Hearing or Informal Resolution, briefly described as follows:

#### **i) Live Hearing:**

The Live Hearing process, and the investigation process that precedes the Live Hearing, are described in the Investigations section and Live Hearing section. The standard of review for determinations regarding responsibility at the conclusion of this process is PREPONDERANCE OF EVIDENCE.

#### **ii) Informal Resolution:**

A voluntary process for resolution of Formal Complaints. The Title IX Coordinator or any Party may propose or request consideration of Informal Resolution. During the Informal Resolution process, a designated Facilitator(s) will attempt to help the Parties come to an agreement about how to resolve a Formal Complaint. The Informal Resolution process is available to the Parties any time after a Formal Complaint is filed and before the Written Determination is issued by the Hearing Board, except in matters in which a student Complainant alleges Title IX Sex Discrimination by an Employee. Participation in the Informal Resolution process is entirely voluntary and all parties must agree to participate. The Informal Resolution process is more fully described in Section F) ii) below.

### **B) Length of Process:**

EBIC seeks to resolve all Reports of Title IX Sex Discrimination promptly, thoroughly, fairly, and equitably. The timeframes which EBIC strives to meet can be found in Section 5. EBIC will inform the Parties at regular intervals of the status of the Grievance Process. Circumstances may arise that require the extension of anticipated time frames. Such circumstances may include the complexity of the allegations, the number of Witnesses involved, the availability of the Parties, Witnesses, or others involved, the effect of a concurrent criminal investigation, breaks or other closures of campus, faculty sabbatical, approved employee leave, or unforeseen circumstances. In the event timelines are modified, EBIC will provide written notification to the Parties.

### **C) Privacy of Process:**

EBIC will keep confidential the identity of any individual who has made a Report or Formal Complaint, and the identity of any Complainant, Respondent, and Witness except as permitted by FERPA, required by law, or as necessary for the Institution to take action under this Policy.

### **D) Participation in Grievance Process is Voluntary:**

Neither Parties nor Witnesses are required to participate in the Grievance Process, but without their live testimony at the hearing, the Hearing Board cannot rely upon their Statements. EBIC may not threaten, coerce, or intimidate a Party or Witness into participating, nor may EBIC retaliate against a Party or Witness for declining to participate in any part of the Grievance Process.

### **E) Right to an Advisor and Advisor Role:**

Each Party has the right to choose an Advisor to assist and advise them (at the Party's own expense, if the Advisor is paid). Each Party has the right to be accompanied by their Advisor

throughout the Grievance Process, including during all related meetings and hearings. Parties are encouraged to identify an Advisor as soon as practical, as Advisors play an important role. Advisors:

- i) provide support to the Party but do not serve as a proxy voice for the Party;
- ii) can confer quietly with their advisee as needed, but if there is a need for an extended discussion, the Party should ask for a break in the meeting, interview, or Live Hearing;
- iii) may not make statements or arguments or answer questions on behalf of Parties during meetings, interviews, or during the Live Hearing;
- iv) may not speak during the hearing process, except in connection with Cross-examination Questions.
- v) cannot direct the Party how to answer a question; and
- vi) must conduct themselves quietly and professionally, must not disrupt any meeting, interview or proceeding, and must comply with any rules of decorum imposed by EBIC.

An Advisor who does not follow the guidelines above may be removed from the meeting, interview, or Live Hearing.

Each Party must notify the Title IX Coordinator promptly of the name, title, and contact information for their Advisors and any change with their Advisor. If a Party does not select an Advisor and the matter proceeds to a Live Hearing, an Advisor will be appointed by EBIC at no fee to the Party, to ask cross-examination questions on that Party's behalf.

F) After a Formal Complaint is Accepted:

Once a Formal Complaint is signed, submitted, and approved to proceed by the Title IX Coordinator and another EBIC executive, EBIC will take one of the following actions:

i) Initiate an Investigation:

In these circumstances, the Title IX Coordinator will issue a Notice of Investigation to known Parties sufficiently in advance of any request to meet with the Investigator and no more than five (5) Business Days after acceptance of a signed Formal Complaint. This written Notice of Investigation will include:

- (1) Notice of these grievance procedures, including the Informal Resolution process, and a copy of this policy.
- (2) The conduct alleged to violate this policy, and the date and location of the alleged incident, if known.
- (3) Known Parties involved in the alleged incident.
- (4) A statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the process.
- (5) Notice of the Parties' right to an Advisor of choice, who will be permitted to accompany them to investigation meetings, interviews, and any hearing and to review materials provided to their advisee throughout the process.
- (6) Notice of and citation to EBIC's prohibition on knowingly making false Statements or submitting false information during an EBIC process.
- (7) The name(s) and title(s) of the Investigator(s).
- (8) If during the course of an investigation, new or additional allegations arise that require investigation, EBIC will send the Parties an updated Notice of Investigation revising the scope of the Investigation. A request to remove an Investigator, should be submitted in

writing to the Title IX Coordinator reports, within (2) Business Days of receipt of the receipt of the Notice of Investigation. If the Investigator is not removed, Title IX Coordinator will notify the requesting Party of the decision. If the Investigator is removed and replaced, the Title IX Coordinator will send written notification to the Parties of the name of the new Investigator.

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ii) Informal Resolution:

The Informal Resolution process will be followed when a signed Title IX Formal Complaint has been accepted, the college President is made aware and: (a) the Title IX Coordinator suggests that an Informal Resolution may be an appropriate course of action and the Parties agree to that approach, or (b) a Party requests that the Title IX Coordinator consider allowing an attempted resolution of the Formal Complaint through the Information Resolution process, the Title IX Coordinator finds the matter appropriate for Informal Resolution, and the Parties agree to proceed in that manner. The Informal Resolution process is available to the Parties any time after a Formal Complaint is filed and before the Written Determination is issued by the Hearing Board. Participation in the Informal Resolution process is entirely voluntary and all Parties must agree to participate. Information Resolution is not available when a Formal Complaint alleges that an EBIC employee engaged in Title IX Sex Discrimination toward a student.

- (1) Notice: Prior to beginning the Informal Resolution process, EBIC will provide the Parties notice of the allegations of the Formal Complaint and will direct the Parties' attention to this provision of the Policy for an understanding of the requirements of this process and the consequences of participating in this process. The notice will also advise of the requirement that each Party must sign the "Consent to Informal Resolution Process" form and submit it to the Title IX Coordinator before the Informal Resolution process can begin.
- (2) Commencement of Informal Resolution Process and Its Effect on the Grievance Process: When all Parties to a Formal Complaint have submitted the consent forms, EBIC will pause the Grievance Process, including any ongoing investigation or hearing, for a period of 15 business days (unless a shorter or longer time is set by the Title IX Coordinator), to allow the Parties to proceed with the Informal Resolution Process. The time period during which the Grievance Process is paused for the Informal Resolution process shall not count toward the time periods. In the event that the Parties are unable to reach an agreement through the Informal Resolution process, the Grievance Process will be resumed. The Facilitator(s) of an Informal Resolution Process may not be called to serve as a witness to information learned during the Informal Resolution in the Grievance Process.
- (3) The Process: The Facilitator(s) will decide the process and procedures to be used in the Informal Resolution process but shall not take actions inconsistent with this Policy. The Facilitator(s) will treat the Parties fairly and equitably. Each Party may be accompanied by their Advisor during the Informal Resolution process. The Facilitator(s) may meet with the Parties separately, may share information obtained during the course of any investigation with the Parties, may make suggestions about the terms of an Informal Resolution, and may take other reasonable steps to assist the Parties in determining if they can reach an Informal Resolution. The Facilitator(s) shall not require the Parties to meet together, in person; the Parties will meet together only if they choose to do so.
- (4) Informal Resolution: Agreements If the Parties reach an agreement, the Facilitator(s) shall create a written agreement that lists the terms of the Informal Resolution for the

Parties to sign. A Party may withdraw from the Informal Resolution process at any time before they sign a written document agreeing to an Informal Resolution of a Formal Complaint.

- (5) Title IX Coordinator Approval of Agreement: The Title IX Coordinator will notify the college President of the Agreement and will defer to the Parties' agreement unless the Title IX Coordinator determines that it is impractical, unduly burdensome or inconsistent with EBIC's obligations under this Policy, Title IX or another applicable law or policy. If the Title IX Coordinator declines to approve the Parties' written agreement on one of these bases, they will notify the college President and, with the assistance of the Facilitator(s), the Parties may agree to modify and resubmit the agreement. If they do not agree to do so and/or do not submit a modified written agreement, EBIC shall resume the Grievance Process.
  - (6) Recordkeeping: When a Formal Complaint is resolved through an approved written agreement after Informal Resolution, EBIC shall retain the Formal Complaint, any documents prepared in the course of the Grievance Process, any documents prepared in the course of the Informal Resolution process, the final approved written agreement documenting the Informal Resolution, and any documentation of the implementation of the Informal Resolution. Those documents shall be retained in accordance with the Recordkeeping requirements set forth in this Policy.
- G) Concurrent Law Enforcement Activity:
- When EBIC receives a Report or Formal Complaint alleging Title IX Sex Discrimination to which it has determined it must respond through its Grievance Process EBIC's process continues regardless of whether a Complainant has made or decides to make a report to law enforcement. The filing of a report with law enforcement, or an ongoing law enforcement investigation or proceeding, does not relieve EBIC of its obligation to address the Complaint through its Grievance Process. At EBIC's discretion, EBIC may temporarily pause its investigation at the request of law enforcement. In that circumstance, the Title IX Coordinator will send written notice to both Parties explaining the reason for pausing the investigation. Extension of timelines at the request of law enforcement typically will not exceed ten (10) days unless law enforcement specifically requests and justifies a longer extension. EBIC and law enforcement may coordinate their investigations, including sharing information to the extent it is prudent and feasible.
- H) Consolidation of Certain Formal Complaints:
- EBIC may consolidate its processing of Formal Complaints in appropriate circumstances, such as when allegations arise out of the same facts or circumstances and multiple Complainants allege misconduct by one Respondent, multiple Complainants allege misconduct by more than one Respondent, one Complainant makes multiple allegations against one Respondent or a Respondent makes a cross-complaint against the Complainant. All parties will be notified in writing of a decision to consolidate Formal Complaints.
- I) Investigation:
- EBIC's investigation process is designed to (1) allow for the thorough, impartial, and reliable gathering of information and (2) result in a comprehensive investigation report summarizing relevant, admissible evidence. EBIC strives to assemble and share with the Parties all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint within sixty (60) Business Days of receipt of Notice of Investigation, understanding that numerous issues arise during investigations that may justify a good cause extension of the timeline.

i) Assignment of Investigator:

The Title IX Coordinator will oversee the investigation along with the college President and may serve as an Investigator. The Investigator may be: an EBIC Employee or Employees; an external Investigator or Investigators; or a team of Investigators that pairs an external Investigator with an EBIC Employee.

ii) Process Overview:

All Investigators will conduct the investigation with a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process and will investigate free of bias or any conflict of interest. The Investigator(s) will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any Witnesses. The Investigator(s) will provide advance written notice to Parties of the date, time, location, participants, and purpose of any requested meeting(s).

Interviews will be supplemented by the gathering of any physical, documentary, and other evidence, as appropriate and available. The burden of proof and the gathering of evidence rests on EBIC not the parties. The Parties will have an equal opportunity to submit evidence and suggest Witnesses (including fact and expert Witnesses). Investigation interviews will be conducted in a thorough, impartial, and fair manner; all involved individuals will be treated with appropriate sensitivity and respect.

The Investigator(s) will decide which individuals to interview based on the information the Investigator(s) gathers as part of the investigation and, with respect to Witnesses offered by a Party, the Investigator may ask the Witnesses to describe the information the Party expects the Witness to provide. EBIC may also direct that additional interviews be conducted.

The Investigator(s) will not ask questions or gather information or documents protected by a legally recognized privilege, including treatment records of a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in a professional capacity, without written consent to use such documents in the Grievance Process from the person protected by the privilege. Further, the Investigator(s) will not seek information about a Complainant's sexual predisposition and will only allow submission of or pursue information about a Complainant's prior sexual behavior if such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged misconduct or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to establish Consent.

(1) Confidentiality Cannot be Promised: The investigation will be conducted in a manner that is respectful of individual privacy concerns. To be clear, however, confidentiality cannot be promised during an investigation because, for example, the Investigator may need to speak with Witnesses and others to gather evidence.

(2) Parties' Rights to Discuss the Allegations and Consequences for Providing False or Manipulated Information: The Parties are not restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence. However, where the investigation reveals intentional efforts by a Party to fabricate or alter information they submit or to influence the information a Witness provides to the Investigator, conduct charges may result.

(3) Parties' Review of and Response to Information Gathered as Part of Investigation: At the conclusion of the investigation, the Investigator will assemble all inculpatory and exculpatory information gathered during the investigation that is directly related to the allegations of the Formal Complaint, including information upon which EBIC does not intend to rely in reaching a determination regarding responsibility. The information

gathered during the investigation and directly related to the allegations of the Formal Complaint will be provided to the parties in hard copy or electronic format within sixty-five (65) Business Days of issuance of the Notice of Investigation. The Investigator will redact information that is unrelated to the allegations of the Formal Complaint or otherwise not admissible in the Grievance Process (i.e., (a) because it is subject to an unwaived legally recognized privilege, (b) it relates to Complainant's sexual predisposition or (c) constitutes prior sexual history not offered to establish: (i) Consent or (ii) that Respondent did not engage in the alleged misconduct). EBIC will create a list describing information it has redacted or removed as irrelevant, inadmissible or not directly related to the allegations of the Formal Complaint, which it may allow the Parties to inspect.

The assembled information will then be shared with the Parties and their Advisors in hard copy or an electronic format with at least ten (10) Business Days to review and submit a written response. Depending on the nature of the information shared, EBIC may require Parties and their Advisors to agree to restrictions or sign a non-disclosure agreement prohibiting dissemination of any of the information provided for inspection and review or use of such evidence for any purpose unrelated to this Grievance Process.

The Investigator will review the Parties' responses to evaluate whether further investigation may be required to ensure the investigation is thorough and complete. In consultation with the Title IX Coordinator, the Investigator will determine any further action indicated by the Parties' responses and develop a plan to complete the investigation.

- (4) Investigation Report: After considering the Parties' responses and conducting any additional investigation indicated by those responses, the Investigator will prepare a report summarizing all of the relevant, admissible information obtained during the investigation, including Inculpatory Evidence and Exculpatory Evidence. The Investigator will incorporate the Parties' responses to the report, as well as an explanation of any additional steps taken after receipt of Party responses and include any related materials. All of these written submissions and all relevant, admissible information gathered during the investigation will collectively be considered the investigation report. To the extent that the investigation report includes an assessment of Party and Witness Credibility, Credibility determinations may not be based upon a person's status as a Complainant, Respondent or Witness.
  - (5) Parties' Review of and Response to Investigation Report: EBIC will share the investigation report with the Parties and their Advisors either in hard copy or an electronic format, and each Party will have at least ten (10) days to review and respond to the investigation report in writing. Upon receipt of the Parties' responses after review of the investigation report and a determination by the Title IX Coordinator (in consultation with the Investigator) that the investigation is complete, EBIC will notify all Parties that the investigation is complete and provide information about next steps in the process.
- J) Determination After Investigation
- i) Proceed to Live Hearing:  
At the conclusion of the investigation, EBIC will review the investigation report to determine whether the conduct, if proved, falls within this Policy. When the alleged conduct, if proved, falls within this Policy, the Title IX Coordinator will prepare a Notice of Live Hearing based on information contained in the investigation report.
  - ii) Dismissal of Formal Complaint:  
If the conduct, even if proved, does not fall within this Policy because it would not constitute

Title IX Sex Discrimination, the conduct did not occur within EBIC's Education Program or Activity or did not occur within the United States, EBIC must dismiss the Formal Complaint. EBIC may also dismiss a Formal Complaint if it is determined that there is not sufficient cause to believe the alleged conduct may have occurred; the Respondent is no longer enrolled or employed by EBIC; or specific circumstances prevent EBIC from gathering sufficient evidence to reach a Determination of Responsibility or No Responsibility. In either instance, the Title IX Coordinator will issue a Notice of Dismissal, including the reasons for the dismissal, to the Parties simultaneously within ten (10) Business Days of the Title IX Coordinator's determination. If the alleged conduct would potentially violate a different EBIC Policy, the Notice of Dismissal will include information about the referral and immediate next steps. The Parties have a right to submit an Appeal from a dismissal of a Formal Complaint.

K) Live Hearings

i) Written Notice of Live Hearing:

The Live Hearing process begins with the issuance of a written Notice of Live Hearing. The Notice of Live Hearing will be sent to the Parties simultaneously within 10 Business Days of the conclusion of the investigation, which occurs after receipt of the Parties' response to the Investigation Report and when EBIC determines no further investigation is warranted. The Live Hearing will begin no sooner than fourteen (14) Business Days and no more than twenty-one (21) Business Days of issuance of the Notice of Live Hearing. The Notice of Live Hearing will include the following information:

- (1) the date, time, and location of the Live Hearing;
- (2) a brief factual summary of the conduct alleged to have violated the Policy, including date, time, and location;
- (3) the specific Policy provision(s) at issue;
- (4) possible sanctions associated with a finding of responsibility for the alleged Policy violation(s);
- (5) the composition of the Hearing Board empaneled by the Title IX Coordinator;
- (6) the Parties' right to be accompanied by an Advisor at the Live Hearing and the obligation to notify the Title IX Coordinator within five (5) days of receipt of the Notice of Live Hearing of: (1) the name, title, and contact information for their Advisors, (2) whether they will continue to be advised by the same Advisor as during the investigation (if applicable) or (3) that they do not intend to select an advisor;
- (7) a statement that there is a presumption of No Responsibility on the part of the Respondent until a determination regarding responsibility is made at the conclusion of the Grievance Process;
- (8) information regarding the Informal Resolution process (as applicable);
- (9) and notification that a Party has within two (2) Business Days of receipt of the Notice of Live Hearing to make a written request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. In addition, the Notice of Live Hearing will attach a copy of this Policy or include a web link to this Policy.

ii) Title IX Coordinator as Hearing Board Chair:

Hearings are convened by the Title IX Coordinator. The Title IX Coordinator oversees all hearings. In rare circumstances when the Title IX Coordinator is unavailable or ineligible to do so, the Title IX Coordinator will appoint a delegate to convene and oversee the Hearing

Board process. The Title IX Coordinator will be the non-voting chair of all Hearing Boards during Live Hearings, serving as a process and policy advisor to the Hearing Board. The Title IX Coordinator is never a Decision-maker, whether in connection with a Live Hearing or an Appeal, but may be an Investigator.

iii) Hearing Board Prior to the Live Hearing

The Hearing Board will have read all of the information in the file. The Parties will have the same information as the Hearing Board. In Formal Complaints in which the Respondent is an employee, the Hearing Board decision-maker will be the Associate Director of Human Resources. In Formal Complaints in which the Respondent is a student, the Hearing Board decision-maker will be the Dean of Students. The Title IX Coordinator is able to designate an alternate Hearing Board decision-maker in the event of a substantiated conflict of interest.

- (1) Gathering Information: The Hearing Board will focus its questions on those areas where it needs clarification or more information. The Hearing Board will not necessarily need or want Parties or Witnesses to repeat everything they shared during the investigation, but as the Decision-maker, the Hearing Board is obligated to come to its own Findings of Fact. The Hearing Board has the right and responsibility to ask questions and elicit information from Parties and Witnesses on the Hearing Board's own initiative to aid the Hearing Board in obtaining relevant information, both inculpatory and exculpatory. Only members of the Hearing Board may ask questions of any person testifying, except in connection with Cross-examination Questions asked by Advisors. The Hearing Board is responsible for ensuring that it has sought and probed all information necessary to make an informed decision. At times, the Hearing Board will need to ask difficult or sensitive questions in order to understand the allegations, related information, and to gain a full understanding of the context. If at any time a Party does not understand a question or why the Hearing Board is asking a question, the Party should let the Hearing Board know. The Hearing Board will explain and modify its question at its discretion. The Parties have equal rights to present information in front of the Hearing Board, which ensures that the Hearing Board has the benefit of each Party's perspectives about the evidence. Parties have no right to self-representation and may not ask questions directly of the other Party or Witnesses.
- (2) Evaluating Information: The Hearing Board must objectively evaluate all admissible, relevant evidence for weight or Credibility, including both Inculpatory Evidence and Exculpatory Evidence. The Hearing Board must focus on evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true. Determinations of Credibility must be based on objective evaluation of relevant evidence, not on a person's status as a Complainant, Respondent or Witness or inferences from Party or Witness status. Factors related to Credibility are set forth in the definition of Credibility. Credibility determinations are based on a number of factors, including demeanor (but never only demeanor); opportunity and capacity to observe the event; contradiction or consistency with other evidence; availability of corroboration (where it should logically exist, noting that corroborating evidence is not required); level of detail in Statement or testimony; motive to be untruthful; and inherent plausibility or implausibility.<sup>2</sup> The evaluation of Credibility also takes into account the normal fallibility of human memory. <sup>2</sup> U.S. Equal Employment Opportunity Commission: Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999). <https://www.eeoc.gov/laws/guidance/enforcement-guidancevicarious-liability-unlawful-harassment-supervisors> A Party's answers to Cross-examination Questions will be evaluated by the Hearing Board in context, taking into account that a Party may experience stress while answering Cross-examination Questions. Parties will

not be unfairly judged if they are unable to recount every specific detail in sequence, whether such inability is due to trauma, the effects of drugs or alcohol or simple fallibility of human memory. These factors will also be considered as part of the Credibility assessment.

iv) Role and Obligations of Advisors During Hearings:

The Advisor's role and consequences for exceeding that role are set forth in the policy with the following important additions relevant to the Live Hearing:

- (1) Advisors may not speak during the hearing process, except in connection with Cross-examination Questions. Therefore, in all instances other than Cross-examination Questions, Advisors may not speak to the Hearing Board, make statements or arguments, or answer questions on behalf of a Party.
- (2) Advisors conducting Cross-examination must be capable of understanding the purpose or scope of Cross-examination. Equal competency between the Parties' Advisors is not required.
- (3) When conducting Cross-examination, Advisors need not be advocates for Parties, but simply may be individuals who ask questions.
- (4) Advisors cannot direct the Party how to answer a question. Parties should provide their own responses to questions, not the responses their Advisor believes would be best.

v) Location of the Live Hearing:

Live Hearings may be conducted with all Parties physically present in the same geographic location or, at EBIC's discretion, any or all Parties, Witnesses, and other participants may appear virtually at the Live Hearing, with the Parties being able to see and hear each other and Witnesses live. EBIC reserves the right to conduct all or part of the Live Hearing (including Cross-examination) with the Parties located in separate rooms with technology enabling the Parties to see and hear each other. Unlike Parties, Witnesses may be asked to testify in person with both Parties and their Advisors, but EBIC in its discretion, may permit any participant to appear remotely.

vi) Scope of the Live Hearing:

The Live Hearing will relate solely to charges set forth in the Notice of Live Hearing received by the Parties. If the Parties or any Witnesses share information that goes beyond these charges, the Hearing Board will redirect the speaker to the charges at hand. Parties may be accountable for additional violations discovered through the Grievance Process even if they do not appear in the Notice of Charge/Notice of Live Hearing. In this instance, a separate Grievance Process under this Policy or under other applicable policies will commence.

vii) Attendance at the Hearing:

The Live Hearing is closed, meaning it is not open to the public. Witnesses may be present only for their individual meeting with the Hearing Board. Advisors and Parties may be present throughout the proceeding. If a Party, after having been given notice, does not appear at the Live Hearing, the Live Hearing will be conducted in their absence, and the Party's Advisor may appear and conduct Cross-examination. In the event neither a Party nor their Advisor appear at the hearing, EBIC will provide an Advisor to appear on behalf of the non-appearing Party.

viii) Expectation of Honesty:

Parties and other individuals who offer information at a Live Hearing are expected to respond honestly and to the best of their knowledge. The Hearing Board reserves the right to recall any Party or Witness for further questions and to seek additional information as it deems

necessary. A Party or Witness who intentionally provides false or misleading information may be subject to discipline under this Policy or other applicable policies.

ix) Cross-examination Questions and Effect of Failure to Submit to Cross-examination

- (1) **Advisors Conduct Cross-examination** Advisors are allowed, on behalf of the Party they are advising, to cross-examine the other Party and Witnesses by asking relevant questions and follow-up questions, including questions challenging Credibility.
- (2) **Relevance Determination Before Answering:** Before a Party or Witness answers a Cross-examination question, the Hearing Board must determine if the question is relevant. If a question is deemed irrelevant, the Hearing Board must explain why. The requirement of relevancy applies throughout the hearing, including during Cross-examination, and will be determined by the EBIC Hearing Board. Parties should understand that the process of Cross-examination may be difficult and may feel uncomfortable because its purpose is to promote the perspective of the other Party. Cross-examination Questions may not be submitted in writing in advance of the Live Hearing or during the Live Hearing for purposes of seeking an evaluation of Relevance. EBIC has the right to the presence of legal consultation regarding questions of relevance; however, each decision related to relevance rests solely with the Hearing Board.
- (3) **Effect of Not Submitting to Cross-examination\*** In accordance with a Department of Education Office of Civil Rights decision letter of August 24, 2021, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process. For example, a decisionmaker at a postsecondary institution may now consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing.

\*In his July 28, 2021 decision in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass.), United State District Court Judge Young struck down as arbitrary and capricious the provision of the 2020 TIX regulations that prohibits reliance on statements of parties and witnesses who do not submit to cross-examination as part of live hearings required by the regulations, and remanded that provision to the DOE for further review.

A decision-maker at a postsecondary institution may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

- (a) "Submit to Cross-examination" means answering those Cross-examination Questions that are relevant, as determined by the Hearing Board in real time during the Live Hearing. If a Party or Witness disagrees with the Hearing Board's Relevance determination, they may either (a) abide by the Hearing Board's determination and answer the question or (b) refuse to answer the question.

x) Breaks:

The Hearing Board may need to take breaks during testimony to ensure that it can confer regarding the information that has been offered and can determine whether further questions are necessary. The Hearing Board will take as few breaks as possible, but breaks are needed

and help to avoid having to call individuals back to meet with the Hearing Board at a later date. At any time, a Party may request a break to talk with their Advisor or for another reason. In almost all instances, a break will be allowed.

xi) Rape Shield Protections

All questions and evidence about Complainant's sexual predisposition or prior sexual behavior are irrelevant unless offered to prove that someone other than the Respondent committed the alleged misconduct or offered to prove Consent.

xii) Order of the Live Hearing

- (1) The Chair will call the Live Hearing to order and will explain the hearing process, which will include a reading of the charge(s) at issue and will provide an opportunity for all Parties to ask procedural questions prior to opening statements.
- (2) The Parties shall be informed that the hearing is being recorded. The recording is the sole official verbatim record of the Live Hearing and is the property of the college.
- (3) The Complainant will have 5 minutes to present an opening statement related to the charges.
- (4) The Respondent will have 5 minutes to present an opening statement related to the charges.
- (5) The Hearing Board will ask the Complainant questions relevant to the charges.
- (6) The Respondent's Advisor may ask Complainant relevant questions and follow-up questions, including those challenging Credibility (Cross-examination Questions).
- (7) The Hearing Board will ask the Respondent questions relevant to the charges.
- (8) The Complainant's Advisor may ask Respondent relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions).
- (9) The Hearing Board may call Witnesses individually to provide relevant information to the Hearing Board.
- (10) At the conclusion of each Witness, Complainant and Respondent's Advisors may ask each Witness relevant questions and follow up questions, including those challenging Credibility (Cross-examination Questions). The Parties may never ask questions directly of the Witnesses.
- (11) For each of the witnesses, the order of questioning will proceed as follows:  
Complainant's Advisor will ask questions of the Witness and then Respondent's Advisor will ask questions of the Witness. Complainant's Advisor will then have one more opportunity to ask questions of the Witness and Respondent's Advisor will have one more opportunity to ask questions of the Witness.
- (12) Before a Witness answers a Cross-examination Question from an Advisor, the Hearing Board must first determine whether the question is relevant.
- (13) At the conclusion of the testimony of the Parties and the Witnesses, the Parties will be given 5 minutes to make a closing statement, with the Complainant going first and the Respondent going next.
- (14) The Chair announces that the Live Hearing is concluded.

xiii) Hearing Board Deliberations and Written Determination

- (1) Deliberations When the Live hearing concludes, the Hearing Board will privately deliberate and make its decision in accordance with the Preponderance of the Evidence

standard of evidence.

- (2) Delivery and Contents of Written Determination: The Hearing Board will issue a Written Determination, which will be sent to the Parties simultaneously within fourteen (14) Business Days of the conclusion of the Live Hearing, which will include:
  - (a) Procedural History;
  - (b) Summary of allegations in Notice of Charge/Notice of Live Hearing;
  - (c) Policy provisions at issue;
  - (d) Findings of Fact related to each allegation potentially constituting Title IX Sex Discrimination, made by the applicable standard of evidence;
  - (e) Rationale (or evidentiary basis) for the Findings of Fact related to each allegation, which should include an evaluation of the weight or Credibility of admissible, relevant evidence;
  - (f) A determination of whether the conduct found to have occurred violates this Policy (Determination of Responsibility) or not (Determination of No Responsibility);
  - (g) Rationale (or evidentiary basis) for the Determination of Responsibility or No Responsibility;
  - (h) A statement of any disciplinary sanctions imposed on the Respondent and the rationale for the sanctions;
  - (i) Whether Remedies will be provided to the Complainant, using the phrase: “Remedies designed to restore or preserve equal access to EBIC’s Education Program or Activity will be provided by EBIC to the Complainant, and include [Remedies to be filled in here].”; and
    - (i) The nature of such Remedies will not appear in the Written Determination.
    - (ii) Remedies that do not directly affect the Respondent must not be disclosed to the Respondent.
  - (j) Information about how to file an Appeal and how to access the [transcript or recording] before the time to file an Appeal lapses.

xiv) Implementation of Remedies in Written Determination:

The Title IX Coordinator is responsible for the effective implementation of Remedies.

L) Sanctions

i) Possible Sanctions:

The following sanctions and/or conditions may be imposed following a Determination of Responsibility for a violation of this Policy. Title IX requires that EBIC provide notice of a range of sanctions; the list below is intended as notice of possible Remedies and disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

(1) Students:

- (a) Expulsion (permanent separation)
- (b) Suspension
- (c) Deferred Suspension
- (d) Disciplinary Probation
- (e) Disciplinary Probation with deferred removal from the residence halls

- (f) Loss of housing
  - (g) Residence hall probation
  - (h) Conduct warning
  - (i) Title IX Sex Discrimination education or other relevant education
  - (j) Parent or guardian notification (subject to privacy restrictions)
  - (k) Financial restitution
  - (l) Organizational sanctions including probation and rescinding recognition or other organizational restrictions
  - (m) Fine
  - (n) Community restoration and/or community service hours
  - (o) Loss of campus privileges
  - (p) Loss of campus employment and/or opportunities for campus employment
  - (q) Withholding records or degree
  - (r) Revocation of admission and/or degree
  - (s) Bar against registration
  - (t) Discretionary action
  - (u) Substance abuse education and/or evaluation
- (2) Employees
- (a) Termination of employment
  - (b) Revocation or denial of tenure
  - (c) Suspension
  - (d) Demotion
  - (e) Progressive discipline
  - (f) Warning
  - (g) Loss of pay or other pay adjustments
  - (h) Job transfer
  - (i) Change or restrictions in work location and/or job responsibilities
  - (j) Title IX Sex Discrimination education
  - (k) Restrictions on the Employee's communications
  - (l) Limitations on the Employee's movement in or on EBIC's campus, programs, and activities

ii) Factors in Determining Sanctions:

In considering the appropriate sanction within the recommended outcomes, the Hearing Board may consider the following factors:

- (1) Respondent's prior discipline history;
- (2) how EBIC has sanctioned similar incidents in the past;
- (3) the nature of the conduct at issue, including whether there was violence or other use of force;

- (4) the impact of the conduct on the Complainant;
- (5) the impact of the conduct on EBIC's community, its members or EBIC's property;
- (6) whether the Respondent accepted responsibility;
- (7) whether the Respondent is reasonably likely to engage in the conduct in the future;
- (8) any other mitigating or aggravating circumstances, including EBIC's values; and
- (9) EBIC's obligation to eliminate Prohibited Conduct, prevent its recurrence, remedy its effects, and to maintain an environment free from Title IX Sex Discrimination.

Respondent's lack of comprehension that conduct constituting Title IX Sex Discrimination violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may, in EBIC's discretion, factor into the sanction decision.

iii) Remedial Action:

The Hearing Board may consider other remedial actions that may be taken to address and resolve any incident of Title IX Sex Discrimination and to prevent its recurrence, including: strategies to protect the Complainant and any Witnesses from retaliation; provide counseling for the Complainant; other steps to address any impact on the Complainant, any Witnesses, and the broader campus community, and any other necessary steps reasonably calculated to prevent future occurrences of harassment.

iv) Failure to Comply with Sanctions:

Failure to comply with the sanctions or conditions imposed by the Hearing Board will result in action under EBIC's student code of conduct or Faculty or Employee Handbooks, as applicable.

M) Effective Date of the Written Determination and Possible Notice to Parents:

The Written Determination becomes final only after the time period to file an Appeal has expired or after the Appeal decision has been sent to the Parties. The Written Determination will identify to whom any Appeal must be addressed. EBIC reserves the right to notify parents of dependent students when student conduct has resulted in serious disciplinary sanctions.

### 3. APPEALS

A) Filing an Appeal from a Written Determination:

The Parties have equal rights to file an Appeal. Appeals must be submitted to the individual identified in the Written Determination on or before the date specified in the Written Determination, which shall be seven (7) Business Days after the delivery of the Written Determination.

B) Appeal Grounds:

An Appeal is not intended to be a rehearing of the information presented at the Live Hearing. An Appeal may only be based upon one or more of the following grounds:

- i) Procedural Irregularity that affected the outcome of the matter;
- ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or,
- iii) 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.

C) Actions upon Receipt of Appeal

- i) When the Title IX Coordinator receives an Appeal, he/she will provide the request to the Appeal Decision-makers, who are different decision-makers that reached the decision being appealed.
- ii) Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant will be given notice of the receipt of the Appeal, which will also serve as notice to the non-appealing Party of the Appeal and notice to the Parties of the Appeal Decisionmakers.
- iii) The Parties will have two (2) days after notice of receipt of the Appeal to request that the Title IX Coordinator remove an Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial. EBIC will determine whether to remove an Appeal Decision-maker member. If the Appeal Decision-maker is not removed, the Title IX Coordinator will notify the requesting Party of the decision. If an Appeal Decision-maker is removed and replaced, the Parties will be sent simultaneous written notification of the name of the new Appeal Decision-maker.
- iv) When the time to request removal of an Appeal Decision-maker has run, the Appeal Decision-makers will be provided with the entire file provided to the Hearing Board, together with the Written Determination.
- v) The Appeal Decision-makers will first determine whether the Appeal will be accepted, based upon whether one or more of the Appeal Grounds set forth above has been properly alleged by the Appellant. Within seven (7) Business Days of the receipt of the Appeal, the Appeal Decision-makers will send written notice to the Parties simultaneously:
  - (1) That the Appeal has been rejected due to insufficient grounds, with the Appeal Decision-makers' rationale, or
  - (2) That the Appeal has been accepted.
- vi) The non-appealing Party will be entitled to submit a response to the Appeal, which must be sent to the Title IX Coordinator within five (5) Business Days of receipt of notice that the Appeal was accepted.
- vii) The Appeal Decision-makers will then analyze all of the materials related to the Appeal and will take one of the following actions:
  - (1) Uphold the original decision.
  - (2) Send the matter back to the Hearing Board for further consideration.
  - (3) Refer the matter to the Title IX Coordinator for further investigation or a new hearing with a new Hearing Board.
- viii) The written Appeal decision, which will include the Appeal Decision-makers' rationale, will be sent to the Parties simultaneously.
- ix) The Appeal Decision-makers will issue its written decision on Appeal within fourteen (14) Business Days of the notice to the Parties that the Appeal was accepted (step 5 (b) above).

D) Appeal Decisions are Final:

A decision denying the entitlement to an Appeal and all decisions made by the Appeal Decision-makers are final.

E) When an Appeal is not Filed

The Parties will be notified if the time to file an Appeal has expired without any Appeal having been submitted.

#### **4. TRANSCRIPT NOTATIONS**

New York law requires EBIC to make specific notations on the transcripts of Respondents found responsible for the following conduct prohibited by this Policy: Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

- A) Students suspended after a finding of responsibility will receive the following notation on their transcript: “suspended after a finding of responsibility for a code of conduct violation.” Such notations will remain for at least one year after the conclusion of the suspension, at which point a suspended student can seek removal of the notation by appealing to the Executive Vice President and Provost. Students seeking removal of the notation should contact the Office of the Executive Vice President and Provost.
- B) Students expelled after a finding of responsibility will receive the following notation on their transcript: “expelled after a finding of responsibility for a code of conduct violation.” Such notation shall not be eligible for removal.
- C) Students who withdraw pending resolution of alleged violations of this Policy will receive the following notation on their transcript: “withdrew with conduct charges pending.” Such notation shall not be eligible for removal unless the charges are later resolved.
- D) If EBIC vacates a finding of responsibility for any reason, any such transcript notation shall be removed.

#### **5. GRIEVANCE PROCESS TIME FRAMES:**

EBIC strives to meet the following timeframes for the Grievance Process. All days are measured in Business Days with the Grievance Process commencing as of date of acceptance of a signed Formal Complaint.

- A) Notice of Investigation:  
Within five (5) Business Days of acceptance of signed Formal Complaint.
- B) Investigation:  
The investigation process will typically be completed within sixty (60) Business Days of issuance of the Notice of Investigation.
- C) Opportunity to Review/Respond to Information Gathered During Investigation and Directly Related to Allegations of the Formal Complaint:  
The information gathered during investigation and directly related to the allegations of the Formal Complaint will be provided to the parties in hard copy or electronic format within sixty-five (65) Business Days of issuance of the Notice of Investigation. Parties and their Advisors have ten (10) days to review and respond.
- D) Opportunity to Review/Respond to Investigation Report:  
Parties and their Advisors have ten (10) Business Days from the delivery of the Investigation Report to review and respond to the Investigation Report.
- E) Notice of Live Hearing:  
As applicable, a Notice of Live Hearing will be sent the Parties simultaneously within ten (10) Business Days of the conclusion of the investigation, which occurs after receipt of the Parties’ response to the Investigation Report and when {Institution} determines no further investigation is warranted.

F) Challenge to Hearing Board Member:

Within two (2) Business Days of receipt of the Notice of Live Hearing, Parties have the right to make a written request that the Title IX Coordinator remove a member of the Hearing Board based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.

G) Live Hearing:

The Live Hearing will begin no sooner than fourteen (14) Business Days and no more than twenty-one (21) Business Days of issuance of the Notice of Live Hearing.

H) Written Determination following a Live Hearing:

Following a Live Hearing, the Written Determination will be sent to the Parties simultaneously within fourteen (14) Business Days of the conclusion of the Live Hearing. A Live Hearing is not concluded until Hearing Board deliberations have ended.

I) Appeals:

- i) Parties must file an Appeal within seven (7) Business Days of receipt of the Written Determination
- ii) Within five (5) Business Days of the receipt of the Appeal by the Title IX Coordinator, the Appellant and non-appealing Party/ies will receive written notice that an Appeal has been submitted and the identity of the Appeal Decision-makers.
- iii) The Parties will have two (2) days after notice of receipt of the Appeal to request that the Title IX Coordinator remove a member of the Appeal Decision-maker based on reasonable and articulated grounds of bias, conflict of interest or an inability to be fair and impartial.
- iv) Within seven (7) Business Days of the receipt of the Appeal, the Appeal Decisionmakers will send written notice to the Parties either accepting or rejecting the Appeal.
- v) The Appeal Decision-makers will issue its written decision on the Appeal within fourteen (14) Business Days of the notice to the Parties that the Appeal was accepted.

## 6. RECORDKEEPING

EBIC will maintain the records for a period of seven (7) years. The records maintained shall be kept confidential and not disclosed, except as permitted or required by law. The records may be maintained on paper or digital files. In connection with each Report and each Formal Complaint, EBIC will maintain the following records, to the extent they exist:

- A) documentation of any Report of alleged Title IX Sex Discrimination;
- B) documentation of any Supportive Measures or if no Supportive Measures are provided, the reasons why and an explanation of how EBIC's response was not clearly unreasonable;
- C) the Formal Complaint;
- D) Notice of Dismissal of Formal Complaint and any associated documents;
- E) documentary evidence gathered in the course of an investigation and photographs or descriptions of nondocumentary evidence gathered in the course of an investigation;
- F) written responses of the parties provided prior to the finalization of the Investigation Report; 7. the Investigation Report;
- G) the audio recording, audiovisual recording, or transcript of any Live Hearing;
- H) the Written Determination;

- I) any Appeal and Written Appeal Decision;
- J) records of the sanctions and/or remedies;
- K) records of any other steps taken to restore or preserve equal access to EBIC's Education Program or Activity,
- L) any written agreement of an Informal Resolution; and
- M) a statement documenting the basis for EBIC's conclusion that its response to a report or formal complaint was not deliberately indifferent. EBIC shall also maintain all materials used to train its Title IX Coordinators, Investigators, Decision-makers, and Facilitators and a copy of each version of its Title IX Policy on Sex Discrimination.

## **7. MODIFICATIONS TO THIS POLICY**

This Policy may be modified from time-to-time, during an academic year or otherwise, in EBIC's discretion and as may be required by law. EBIC Employees and Students will be notified whenever this Policy is modified.

## **8. GLOSSARY OF DEFINED TERMS**

- Advisor: A person selected by a Complainant or Respondent to assist them during the Grievance Process; or appointed by EBIC to support Complainant or Respondent pursuant to this Policy.
- Administrative Leave: Temporary separation from a person's job, with or without pay and benefits intact, as determined by EBIC and any relevant obligations binding EBIC.
- Appeal: An objective review of the prior process (including Dismissal of a Formal Complaint) and outcome, unless new evidence must be considered.
- Appeal Decision-maker: An individual or a group of people that makes decisions when Parties submit an Appeal. An Appeal Decision-maker cannot be the Investigator, the Title IX Coordinator or members of the Hearing Board.
- Amnesty: EBIC recognizes that students who have been drinking or engaging in consensual sexual behavior at the time of an incident of sex discrimination, including sexual and relationship violence, may be hesitant to report the incident for fear of the potential consequences for their own conduct. A bystander reporting in good faith to EBIC officials or law enforcement will not be subject to campus conduct action for violations of relevant policies occurring at the time of the violation.
- Appellant: A person who files an Appeal.
- Business Days: Any day, excluding Saturday, Sunday, and federal and state holidays.
- Bystander: An individual who witnesses or learns of violations of this Policy but who is not directly impacted as a survivor of the violation.
- Campus Official: An Employee of EBIC who has authority to institute corrective measures on behalf of EBIC. Also referred to as a "Responsible Employee" to distinguish this person from a Confidential Resource.
- Complainant: An individual who is alleged to have been the target of conduct that could constitute Title IX Sex Discrimination under this Policy, whether or not the individual has filed a Formal Complaint.
- Confidential Resources: Complainants and bystanders are encouraged to access Confidential Resources for support in the aftermath of a violation of this Policy to address any medical, legal or emotional needs resulting from the violation. Individuals who are Confidential Resources will

not report violations to law enforcement or to college officials without the complainant's written permission, except when exceptions to confidentiality are required by law.

- **Consent:** Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When Consent is withdrawn or can no longer be given, sexual activity must stop. This definition is required by New York State Education Law Article 129B.
- **Credibility:** The worthiness of belief of information shared by a Party or a Witness.
- **Cross-examination Questions:** Relevant questions and follow-up questions, including questions challenging Credibility. Cross-examination Questions are intended to give both Parties equal opportunity to meaningfully challenge the plausibility, reliability, Credibility, and consistency of the information provided by the other Party and Witnesses so that the outcome of each individual case is more likely to be factually accurate.
- **Dating Violence:** Violence committed by a person: (a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and, (b) where the existence of such a relationship shall be determined by (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Title IX requires that EBIC use this definition, from 34 U.S.C. 12291(a)(10)
- **Decision-maker:** A person or persons designated to conduct Live Hearings, to decide whether or not a violation of this Policy has or has not occurred, to determine disciplinary sanctions and Remedies when a violation has occurred, and/or to decide Appeals. Decision-makers may or may not be Employees of EBIC. Decision-makers are trained on the definition of Title IX Sex Discrimination, the scope of EBIC's program or activity, the Grievance Process, Relevance, the technology to be used at a hearing, how to conduct hearings and Appeals, and how to serve impartially. Decision-makers are never Title IX Coordinator or Investigator.
- **Determination of Responsibility or No Responsibility:** A determination by the Hearing Board regarding whether or not the Respondent violated this Policy.
- **Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state. Title IX requires that EBIC use this definition, from 34 U.S.C. 12291(a)(8).
- **Education Program or Activity:** Locations, events or circumstances over which EBIC exercised

substantial control over the Respondent and the context in which the conduct allegedly constituting Title IX Sex Discrimination occurred. Education program or Activity includes any building owned or controlled by EBIC and/or by a student organization that is officially recognized by EBIC.

- **Emergency Removal:** A decision to remove a Respondent after an individualized analysis concluding that there is an immediate threat to the physical health or safety of any student or other individual arising from allegations of Title IX Sex Discrimination. Respondents can request review of an Emergency Removal.
- **Employee:** Faculty, staff, administrator, and any other individual employed by EBIC in any capacity or role, except an Employee does not include an EBIC Employee who is also enrolled as a full-time student of EBIC.
- **Exculpatory Evidence:** Evidence that shows or suggests that a Respondent did not engage in the alleged Title IX Sex Discrimination.
- **Facilitator:** A person or persons designated to facilitate an Informal Resolution of a Formal Complaint. Facilitators may or may not be Employees of EBIC. Facilitators are trained on the definition of Title IX Sex Discrimination, the scope of EBIC's program or activity, how to conduct an Informal Resolution process, and how to serve impartially.
- **Formal Complaint:** A document signed by a Complainant or a Title IX Coordinator alleging Title IX Sex Discrimination against a Respondent(s) and requesting that the allegation(s) be investigated.
- **Findings of Fact:** A Hearing Board's decision regarding what occurred.
- **Grievance Process:** The process for investigating and resolving a Formal Complaint.
- **Hearing Board:** A single Decision-maker or group of Decision-makers who conduct the Live Hearing. Regardless of a Hearing Board's composition, the Decision-makers will be referred to as the Hearing Board. The Hearing Board cannot be the same person(s) as the Title IX Coordinator or the Investigator.
- **Inculpatory Evidence:** Evidence that shows or suggests that a Respondent engaged in the alleged Title IX Sex Discrimination.
- **Informal Resolution:** A voluntary process that allows the Parties and EBIC to engage in discussions in an attempt to come to an agreement to resolve a Formal Complaint that does not involve a full investigation and/or hearing and adjudication. This process is not available when a Formal Complaint alleges that an Employee has engaged in Title IX Sex Discrimination toward a student.
- **Investigator:** A person or persons, internal or external to EBIC, designated by EBIC to investigate the allegations of a Formal Complaint. An Investigator may also be the Title IX Coordinator, but may not be a member of the Hearing Board or the Appeal Decision-maker. Investigators are trained on the definition of Title IX Sex Discrimination, the scope of EBIC's program or activity, the Grievance Process, Relevance, how to conduct an investigation, how to create an investigation report, and how to serve impartially. • **Live Hearing:** A hearing where all Parties can see and hear each other in real time, whether in the same location or connected via technology.
- **Non-Title IX Sexual Harassment Violations, including Domestic Violence, Dating Violence, Sexual Assault and Stalking:** EBIC has additional policies that may apply to an allegation of sexual harassment even if the alleged violation does not qualify under Title IX. For information, contact the Offices of Student Life and Human Resources.
- **Notice of Dismissal:** Written notice of the Title IX Coordinator's decision to dismiss a Formal

Complaint, including the basis of the decision. A Complainant may submit an Appeal of a dismissal of a Formal Complaint.

- Notice of Informal Resolution: As applicable, a Notice of Informal Resolution will be sent to the Parties simultaneously following receipt of each Party's completed Consent to Informal Resolution form.
- Notice of Investigation: A written notice to the Parties commencing the Grievance Process.
- Notice of Live Hearing: The letter sent to the Parties detailing and providing notice of the allegations falling within the scope of this Policy that will proceed to a Live Hearing.
- Party or Parties: Individuals who are Complainants and Respondents in a Grievance Process. When referencing the Complainant, the Respondent may be referred to as the "other Party" and when referencing the Respondent, the Complainant may be referred to as the "other Party."
- Procedural History: A section of the Written Determination describing the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the Parties; the date Respondent received the Notice of Investigation; the investigation process; and hearings held. Regarding the description of the investigation process, the Procedural History section should include: which Parties and Witnesses were interviewed and when; site visits; methods used to gather evidence; what type of evidence was reviewed; and the process undertaken to inspect and review the evidence and to disseminate the investigation report, including timelines. The Written Determination should include any actual or perceived procedural issues. For example, if a process was delayed for good cause, that delay should be explained in the Written Determination. Likewise, if the Parties requested that the Investigator follow certain "leads" that the Investigator was not reasonably able to pursue based on a lack of time, resources, or the unavailability of Witnesses that should be addressed in the timeline.
- Procedural Irregularity: A failure to follow EBIC's own procedures.
- Prohibited Conduct: Five types of Title IX Sex Discrimination that violate Title IX and this Policy: (1) Title IX Sexual Harassment; (2) Sexual Assault; (3) Dating Violence; (4) Domestic Violence; and (5) Stalking.
- Rape Shield Protections: Protects Complainants from questions about or submission of evidence regarding the Complainant's sexual predisposition or, except in very limited circumstances, Complainant's prior sexual behavior.
- Relevance: Information that is relevant directly relates to the allegations in dispute, and, therefore, is probative of a material fact concerning the allegations. Information that is not relevant includes: information protected by a legally recognized privilege; evidence about a Complainant's prior sexual predisposition; evidence about a Complainant's prior sexual behavior unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or offered to prove Consent, where Consent is at issue (and it concerns specific instances of sexual behavior with Respondent); any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; Party or Witness Statements that have not been subjected to Cross-examination at a Live Hearing; and evidence duplicative of other evidence.
- Remedies: Measures taken by EBIC following a Determination of Responsibility on the part of Respondent designed to restore or preserve equal access to EBIC's Education Program or Activity. Remedies may be disciplinary or punitive and may burden the Respondent; such Remedies are referred to as Sanctions.
- Report: The submission of information to the Title IX Coordinator or a Campus Official regarding a potential violation of this Policy. A Report is not a Formal Complaint and, therefore,

does not trigger the Grievance Process.

- Respondent: Any individual who has been alleged to have engaged in conduct that could violate this Policy.
- Responsible Employees: All staff and faculty who are not bound by professional ethics guaranteeing confidentiality for their clients. EBIC Responsible Employees include faculty; staff; Board of Trustee members; administrators; Student Life personnel, including Resident Directors and Resident Assistants; coaches, the Title IX Coordinator and all Deputy Coordinators; and contracted workers such as Metz dining and Sodexo facilities staff.
- Retaliation: Intimidation, threats, coercion or discrimination, including charges against an individual for code of conduct violations that do not involve Title IX Sex Discrimination, but arise out of the same facts or circumstances as a Report or Formal Complaint of Title IX Sex Discrimination, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- Sanctions: Disciplinary or punitive measures imposed on a Respondent by EBIC following a Determination of Responsibility on the part of Respondent.
- Sexual Assault: Any conduct that would constitute a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sexual Assault includes the following Prohibited Conduct: 1. Rape (Except Statutory Rape) - the carnal knowledge of a person, without the Consent of the person, 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. "Carnal knowledge" means contact between the penis and the vulva or the penis and the anus, including penetration of any sort, however slight. 2. Sodomy - oral or anal sexual intercourse with another person, without the Consent of the person, 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. 3. 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 person, 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. 4. Fondling - touching of the private body parts of another person for the purpose of sexual gratification without the Consent of the person, 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. 5. Incest – non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. 6. Statutory Rape – non-forcible sexual intercourse with a person who is under the statutory age of consent. Title IX requires that EBIC use this definition, from 20 U.S.C. 1092 (f)(6)(A)(v). Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress. Title IX requires that EBIC use this definition, from 34 U.S.C. 12291(a)(30).
- Standard of Evidence: The Standard of Evidence reflects the degree of confidence that a Decision-maker has in the correctness of the factual conclusions reach. EBIC will apply the PREPONDERANCE OF EVIDENCE Standard of Evidence to matters falling under the Policy.
- Statement: Evidence that constitutes a person's intent to make factual assertions.
- Supportive Measures: Non-disciplinary and non-punitive services that are offered, without fee or charge, by EBIC on an individualized basis to a Complainant or Respondent that are designed to restore or preserve equal access to EBIC's Education Program or Activity without unreasonably burdening the other Party.

- Title IX Coordinator: The person or persons designated by EBIC as a Title IX Coordinator, including any persons designated as an “acting,” “deputy” or “interim” Title IX Coordinator. In the event that special circumstances require the Title IX Coordinator to delegate responsibilities, the term also includes the Title IX Coordinator’s delegate.
- Title IX Sex Discrimination or Discrimination: Discrimination on the basis of sex prohibited by Title IX (20 USC 1681, et seq.), Title 34 CFR Part 106, and this Policy in the form of (1) Title IX Sexual Harassment; (2) Sexual Assault; (3) Dating Violence; (4) Domestic Violence; and (5) Stalking. See also Prohibited Conduct.
- Title IX Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following: 1. An Employee of EBIC conditioning the provision of an aid, benefit, or service of EBIC on an individual’s participation in unwelcome sexual conduct; or 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to EBIC’s Education Program or Activity.
- Witness: A person who has seen, heard or otherwise has knowledge or information relevant to an alleged violation of this Policy, but not including the Investigator. The Investigator and Hearing Board meet with Witnesses at their request and at the suggestion of the Parties.
- Written Determination: A letter delivered simultaneously to the Parties that describes the Hearing Board’s decision regarding responsibility, which must be supported by evidence. See Students’ Bill of Rights Policy<sup>5</sup>.

See the Title IX Handbook for additional New York State Education Law 129-B information.

Resources for those who experienced sexual violence:

**Intervention and Counseling**

Agape Counseling  
 21 Willow Pond Way, Suite 103, Rochester, NY 14526  
 585-385-6030  
<https://www.agaperoc.org/>  
 Mon-Fri 9am-4:30pm  
 Rate: \$55-\$105 dependent on income

Family Counseling & Mediation Services, Inc.  
 24 West Ave, Spencerport, NY 14559  
 585-739-3715  
<http://fcmsrochester.com/about-counselors.html>  
 Hours are Flexible Mon-Fri  
 Rates are flexible

**Health and Sexual Disease Resources**

Monroe County STD/HIV Disease Control Program  
 111 Westfall Road, Rochester, NY 14692  
 585-753-5391  
<https://www.monroecounty.gov/health-nursing-STD-HIV>  
 Open to Monroe County residents  
 Free

Monroe County Sexually Transmitted Disease Clinic  
 855 West Main Street, Rochester, NY 14611

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<sup>5</sup> Per New York State Education Law 129-B

585-753-5481

<https://www.monroecounty.gov/health-nursing-STD-HIV>

Mon, Thu 9:00AM-3:30PM; Tue, Wed 8:00AM-3:30PM; Fri 7:30AM-11:30AM

No appointment necessary

Open to Monroe County residents

Free

New York State Department of Health (Rochester Regional Office)

355 East Main Street, Rochester, NY 14604

800-962-5063

<https://211midyork.org/detail.php?id=31463125>

Mon-Fri 8:30AM-4:45PM

No appointment necessary

Open to New York State residents

Free

#### Obtaining Sexual Assault Forensic Examination

Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital.

- Highland Hospital 1000 South Ave, Rochester, NY 14620 [\(585\) 473-2200](tel:5854732200)
- Strong Memorial Hospital, 601 Elmwood Ave, Rochester, NY 14642 [\(585\) 275-2100](tel:5852752100)

While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: [http://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf), or by calling **1-800-247-8035**. Options are explained here: <https://ovs.ny.gov/>

To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

## R10. Campus Climate Assessments (6445 – NYSED Article 129-B)

|                      |               |                              |                           |
|----------------------|---------------|------------------------------|---------------------------|
| <b>Applies to:</b>   | <b>EBIC</b>   | <b>Overseer:</b>             | Campus Safety Coordinator |
| <b>Published in:</b> | Policy Manual | <b>Additional Reviewers:</b> | IE Director               |
| <b>Created on:</b>   | 7/1/2016      | <b>By:</b>                   | Jacob Smales              |
| <b>Revised on:</b>   | 6/6/2022      | <b>By:</b>                   | Emily Cependa             |

### **Policy Statement:**

Elim Bible Institute and College shall conduct, no less than every other year, a campus climate assessment to ascertain general awareness and knowledge of the various degrees of sexual assault and harassment. This assessment shall be distributed to students via a survey to be completed online.<sup>6</sup> Elim ensures that students who participate in this survey will remain completely anonymous.

The results from these surveys are published on Elim's website under Student Right to Know and provide no personally identifiable information or information which can reasonably lead a reader to identify an individual.

Information obtained from these assessments shall not be subject to discovery or admitted into evidence in any federal or state court proceeding. Nor are they considered for other purposes in any action for damages brought by a private party against Elim, unless, at the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

### **Procedure:**

**The assessment shall include questions covering, but not be limited to, the following:**

- a. The Title IX Coordinator's role;
- b. campus policies and procedures addressing sexual assault;
- c. how and where to report domestic violence, dating violence, stalking or sexual assault as a victim, survivor, or witness;
- d. the availability of resources on and off campus, such as counseling, health, and academic assistance;
- e. the prevalence of victimization and perpetration of domestic violence, dating violence, stalking, or sexual assault on and off campus during a set time period;
- f. bystander attitudes and behavior;
- g. whether reporting individuals disclosed to the institution and/or law enforcement, experiences with reporting and institution processes, and reasons why they did or did not report;
- h. the general awareness of the difference, if any, between the institution's policies and the penal law; and
- i. general awareness of the definition of affirmative consent.

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ts. Note that such complaints are addressed by the State Portal Entity, which in New York is OCUE.

<sup>6</sup> Per 34 CFR 106.45

<sup>6</sup> Per New York State Education Law 129-B

<sup>6</sup> The law neither requires that the survey be given to all nor limits the survey to representative samples. These decisions are to be made by each institution.

## R11. Confidentiality Options for Disclosing Sexual Violence and Amnesty (6442 and 6446 – NYSED Article 129-B)

|                      |                                |                              |   |
|----------------------|--------------------------------|------------------------------|---|
| <b>Applies to:</b>   | <b>Everyone on EBIC Campus</b> | <b>Overseer:</b>             | Campus Safety Coordinator                 |
| <b>Published in:</b> | Policy Manual                  | <b>Additional Reviewers:</b> | Title IX Coordinator<br>Deans' Department |
| <b>Created on:</b>   | 7/13/2016                      | <b>By:</b>                   | Jacob Smales                              |
| <b>Revised on:</b>   | 11/5/2024                      | <b>By:</b>                   | Ashley Allen                              |

### Policy Statement:

The State of New York and Elim Bible Institute and College want you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

### Privacy versus Confidentiality:

Elim Bible Institute and College offices and employees who cannot guarantee *confidentiality* will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. Elim Bible Institute and College will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### Privileged and Confidential Resources:

#### On Campus Confidential Resources

Individuals who are *confidential* resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At Elim Bible Institute and College, this includes:

Title IX Coordinator

#### Off Campus Confidential Resources

Off-campus options to disclose sexual violence *confidentially* include (note that these outside options do not provide any information to the campus):

### Rape:

Rape Crisis Center, Rochester, NY: Monroe County 24-hour Hotline 585-546-2777

Nationwide RAINN National Rape Crisis Hotline: 800-656-4673

New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906

### Domestic Violence:

Alternatives for Battered Women, Rochester NY: Call 585-232-1741 for 24/7 confidential services.

Domestic Violence Hotline: 800-829-1122

Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation.

More information may be found here: <https://ovs.ny.gov/>, or by calling 1-800-247-8035.

Options are explained here: <https://ovs.ny.gov/help-crime-victims>.

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

**Non-Professional Counselors and Advocates:**

Non-professional counselors and advocates can also assist you without sharing information that could identify you. At Elim Bible Institute and College, this would be the Dean's Department. These individuals will report the nature, date, time, and general location of an incident to Elim Bible Institute and College's Title IX Coordinator but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are not considered confidential resources as discussed above.

**Requesting Confidentiality: How Elim Bible Institute and College Will Weigh the Request and Respond:**

If you disclose an incident to a Elim Bible Institute and College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. Reporting individuals may request accommodations through the Title IX Coordinator and Dean's Department. We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless Elim Bible Institute and College's failure to act does not adequately mitigate the risk of harm to you or other members of the Elim community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, Elim Bible Institute and College will consider many factors to determine whether to proceed despite that request.

These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking,
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and

- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

**Public Awareness/Advocacy Events:**

If you disclose a situation through a public awareness event such as “Take Back the Night,” candlelight vigils, protests, or other public event, Elim Bible Institute and College is not obligated to begin an investigation. Elim Bible Institute and College may use the information you provide to inform the need for additional education and prevention efforts.

**Institutional Crime Reporting:**

Reports of certain crimes occurring in certain geographic locations will be included in the Elim Bible Institute and College Clery Act and Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor. If you wish to report such a crime contact:

- Safety Coordinator: Gabriel Cepeda 585-582-8206 [campussafety@elim.edu](mailto:campussafety@elim.edu)
- Title IX Coordinator – Ashley Allen 585-582-8210 [ashleyallen@elim.edu](mailto:ashleyallen@elim.edu)

Elim Bible Institute and College is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when

- (1) There is a health or safety emergency, or
- (2) When the student is a dependent based on parents most recent income tax statement.

**Amnesty:**

The health and safety of every student at Elim Bible Institute and College is of utmost importance. EBIC recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents for fear of potential consequences for their own conduct. EBIC strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to school officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to school officials or law enforcement will not be subject to the school’s code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## R12. Student Onboarding and Ongoing Education (6447 – NYSED Article 129-B)

|                      |                 |                              |   |
|----------------------|-----------------|------------------------------|---|
| <b>Applies to:</b>   | <b>Students</b> | <b>Overseer:</b>             | Campus Safety Coordinator                 |
| <b>Published in:</b> | Policy Manual   | <b>Additional Reviewers:</b> | Title IX Coordinator<br>Dean's Department |
| <b>Created on:</b>   | 7/4/2016        | <b>By:</b>                   | Jacob Smales                              |
| <b>Revised on:</b>   | 6/7/2022        | <b>By:</b>                   | Emily Cepeda                              |

### **Policy Statement:**

Elim Bible Institute and College has adopted a comprehensive student onboarding and ongoing education campaign to educate members of the institution's community about domestic violence, dating violence, stalking, and sexual assault, in compliance with applicable federal laws, including the Clery Act as amended by the Violence Against Women Act reauthorization of 2013, 20 U.S.C. 1092(f).

### **Procedure:**

#### Onboarding Initiative to Educate Students

Elim Bible Institute and College provides a series of programs during the first semester for first year students (including transfer and mid-term students) making them aware of, at minimum, the topics below. The training is given using a method and manner appropriate to Elim's practices and culture. The training will take place during the first month of the fall and spring semesters. It will include:

- Elim's stance of prohibiting sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of Elim Bible Institute and College;
- Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
- The role of the Title IX Coordinator, campus security, Dean's Department in addressing domestic violence, dating violence, stalking, and sexual assault prevention and response;
- Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
- Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
- Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
- Consequences and sanctions for individuals who commit these crimes and code of conduct violations.

This training is for all new students, regardless of whether they may be a first-year, transfer, undergraduate, graduate, or professional student.

#### Ongoing Initiatives to Educate Students

Elim Bible Institute and College in compliance with Article 129 B offers to all students general and specific training in domestic violence, dating violence, stalking and sexual assault prevention and shall conduct a campaign that complies with the Violence Against Women Act, 20 U.S.C. 1092(f), to educate

the student population. Elim Bible Institute and College shall, as appropriate, provide or expand specific training to include groups such as international students, students that are also employees, leaders, and officers of registered or recognized student organizations, and online and distance education students. Elim Bible Institute and College shall also provide specific training to members of groups that the institution identifies as high- risk populations.

Elim Bible Institute and College shall educate students in a variety of methods including but not limited to:

1. Through classroom teaching- Mandatory courses such as Ethics and Marriage and the Family each cover various parts of the problems of domestic violence, dating violence, stalking and sexual assault and how alcohol and psychology can affect behavior. These classes increase awareness of sexual violence, its impact on victims/ survivors their friends and family.
2. Through a special Title IX training conducted by the Title IX Coordinator and the Safety Coordinator.
3. RAs will be trained on sexual assault and will be required to talk with their cadre on sexual assault. This is to educate the students on a peer level and allow a greater degree of discussion and sharing that can take place in other mandated trainings.
4. Elim Bible Institute and College's Advisory Committee will conduct a review of all incidents reported in that year or any issues that may have arisen and make their recommendations based on any issues relating to sexual assault to the Title IX Coordinator.

#### Requirements for Student Leaders and Athletes

Elim Bible Institute and College shall require that each student leader and officer of student organizations recognized by or registered with the institution, as well as those seeking recognition by the institution, complete training offered by the Title IX Coordinator and Safety Coordinator on domestic violence, dating violence, stalking, or sexual assault prevention prior to receiving recognition or registration. If intercollegiate athletics is offered at any time all athletes will be to complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to participating in intercollegiate athletic competition.

#### Annual Assessments

Elim Bible Institute and College shall regularly assess programs and policies established pursuant to this article to determine effectiveness and relevance for students in compliance with Article 129 B.