Preamble

Elizabeth City State University (ECSU) is committed to fostering a safe campus environment where sexual misconduct is unacceptable and is not tolerated. ECSU is committed to providing a safe learning and working environment. In compliance with federal laws, policies and procedures, this policy has been adopted to prevent and respond to incidents of sexual assault, domestic violence, dating violence, and stalking involving members of our campus community. More specifically, the policy incorporates Title IX, Clery Act, Violence Against Women Act (VAWA), and the Campus SaVe Act and comports with the guidance in the April 2011 Dear Colleague Letter. These guidelines apply to all students, faculty, staff, contractors, visitors, and third parties.

In keeping with this commitment, ECSU has implemented this Policy, the purpose of which is to protect the rights of the person making a complaint, as well as the rights of the accused, while also ensuring the complainant’s protections under Title IX. Faculty and staff with knowledge of an incident of sexual misconduct committed are required to report the incident to the University’s Police Department and the Title IX Coordinator. In any case involving a complaint of sexual misconduct or sexual harassment, the University shall adjudicate the complaint in a prompt, fair, and equitable manner.

1. Title IX Coordinator

A. ECSU has a designated Title IX Coordinator who oversees the University’s administrative response to all reports of Sexual or Gender-Based Harassment, Sexual Violence, Interpersonal Violence, and Stalking. The Title IX Coordinator is:

i. Responsible for overseeing the administrative investigation and resolution of all reports of Sexual Violence, Interpersonal Violence, and Stalking involving students, faculty, and staff members;

ii. Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
iii. Available to advise any individual, including a Reporting Party, a Responding Party or a third party, about University and community resources and reporting options;

iv. Available to provide assistance to any University employee regarding how to respond appropriately to a report of Sexual or Gender-Based Harassment, Sexual Violence, Interpersonal Violence and Stalking;

v. Responsible for the effective implementation of this Policy, including monitoring compliance with all procedural requirements, record keeping and timeframes; and

B. Responsible for overseeing training, prevention and education efforts and annual reviews of climate and culture.

C. Ensure compliance with University Title IX Complaint Process

2. Sexual Harassment & Retaliation

A. Harassment: A type of Discrimination that occurs when verbal, physical, electronic and/or another form of conduct based upon an individual’s Protected Status interferes with that individual’s educational environment (e.g., admission, academic standing, grades, assignment); work environment (e.g., hiring, advancement, assignment), participation in a University program or activity (e.g., campus housing) or receipt of legitimately-requested services (e.g., disability accommodations), thereby creating Hostile Environment Harassment or Quid Pro Quo Harassment, as defined below.

B. Hostile Environment Harassment: Unwelcome conduct by an individual against another individual based upon Protected Status that is so severe, persistent or pervasive that it alters the conditions of education (e.g., admission, academic standing, grades, assignment), employment (e.g., hiring, advancement, assignment), participation in a University program or activity (e.g., campus housing) or receipt of legitimately-requested services (e.g., disability accommodations) and creates an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, offensive or abusive. An isolated incident, unless sufficiently serious, will usually not amount to Hostile Environment Harassment.

C. Quid Pro Quo Harassment: Unwelcome conduct by an individual against another individual based upon Protected Status where submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual’s education (e.g., admission, academic standing, grades, assignment), employment (e.g., hiring, advancement, assignment), participation in
a University program or activity (e.g., campus housing) or receipt of legitimately-requested services (e.g., disability accommodations).

Sexual or Gender-Based Harassment, a particular form of Harassment, is addressed in greater detail in the policy against Sexual Harassment.

D. **Retaliation** is expressly prohibited under this policy. Retaliation is defined as any action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual’s complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

3. **Sexual Misconduct**

Sexual misconduct is defined as any act of a sexual nature perpetrated against an individual without effective consent (see definition below of “effective consent”) or when an individual is unable to freely give consent. Sexual misconduct includes, but is not limited to:

A. **Attempted** or completed intercourse or penetration (anal, oral or vaginal), however slight, with any body part or any object, by a man or a woman upon a man or a woman, without effective consent. This may include, but not be limited to vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue or finger; and oral copulation (mouth to genital contact or genital to mouth contact).

B. **Sexual touching** (including disrobing or exposure) by a man or a woman upon a man or a woman, without effective consent which may include, but not be limited to any contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch any of these body parts, when such touching would be reasonably and objectively offensive.

C. **Sexual exploitation** defined as taking non-consensual, unjust or abusive sexual advantage of another, for one’s own advantage or benefit; or to benefit or advantage anyone other than the one being exploited. Sexual exploitation encompasses a wide range of behaviors which may include, but are not limited to:

i. Non-consensual video or audio-recording of sexual activity;
Inducing incapacitation by the use of drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent (as “consent” is defined in this policy) to sexual contact with the intent to rape or sexually assault another student;

ii. Allowing others to observe a personal act of consensual sex or non-consensual without knowledge or consent of the partner;

iii. Engaging in peeping tommy (voyeurism); or

iv. Knowingly transmitting a sexually transmitted disease, including HIV, to another student or employee.

D. **Sexual intimidation** involving the following:

   i. Threatening to commit a sexual misconduct upon another person;

   ii. Stalking;

   iii. Cyber-stalking; or

   iv. Engaging in indecent exposure.

E. **Sexual Violence** is defined as physical sexual acts engaged without the consent of the other person or when the other person is unable to consent to the activity. Sexual violence includes sexual assault, rape, battery, and sexual coercion; domestic violence; dating violence; and stalking.

F. **Domestic Violence** is defined as abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant, or someone with whom the abuser has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship.

G. **Dating Violence** is any violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined on a case-by-case basis of the following factors: (a) reporting party's statement, (b) length of relationship, (c) type of relationship, (d) frequency of interaction between the persons involved in the relationship.

H. **Stalking** is behavior in which a person is repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

4. **Effective Consent**

Effective consent is freely and actively given when both parties agree to engage in a specific sexual activity. In the absence of mutually understandable words or actions it is the responsibility of the initiator, that is, the person who wants to engage in the specific
sexual activity, to make sure that they have consent from his/her partner(s). Consent is mutually understandable when a sober, reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same act, in the same way, at the same time, with each other. Consent must be knowing, active, voluntary, and present and ongoing.

The following should also be considered in determining consent:

i. Consent may not be inferred from silence, passivity or lack of active resistance alone.

ii. A current or previous dating or sexual relationship (or the existence of such a relationship with anyone else) may not, in itself, be taken to imply consent.

iii. Consent cannot be inferred by an individual’s manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, or going on a date.

iv. Consent to one type of sexual act may not, in itself, be taken to imply consent to another type of sexual act.

v. Consent may be withdrawn at any time.

Consent must be freely given and cannot be the result of force (violence, physical restraint, or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), intimidation (extortion, menacing behavior, bullying), coercion (undue pressure) or fraud (misrepresentation or material omission about oneself or the situation in order to gain permission for sexual or intimate activity), or the fear of any of the above.

i. Consent may never be given by any of the following:
   a. Minors (under the age of 16 in North Carolina);
   b. Mentally disabled persons;
   c. Individuals who are incapacitated as a result of alcohol or other drugs, or who are unconscious, asleep or otherwise physically helpless. Incapacitation means being in a state where an individual lacks the capacity to appreciate the nature of giving consent to participate in sexual activity;
   d. An individual may not engage in sexual activity with another whom one knows, or should reasonably have known, is incapacitated as a result of alcohol or other drugs. The perspective of a reasonable person will be the basis for determining whether an individual should have known about the impact of the use of alcohol or drugs on another’s ability to give consent. Being intoxicated or high does not diminish an individual’s responsibility to obtain consent and is never an excuse for sexual misconduct.
Reporting Prohibited Conduct

A. PROCEDURES VICTIMS SHOULD FOLLOW TO PRESERVE EVIDENCE

If an incident of sexual misconduct occurs it is important to preserve evidence to aid in the possibility of a successful criminal prosecution. The victim of a sexual assault should not wash, douche, use the toilet, or change clothing prior to a medical exam. Any clothing removed should be placed in a paper bag. Evidence of violence, such as bruising or other visible injuries, following an incident of domestic or dating violence should be documented including through the preservation of photographic evidence. Evidence of stalking including any communication, such as written notes, voice mail or other electronic communications should be saved and not altered in any way.

The length of time between an incident and making a report of sexual misconduct or sexual assault will not affect the willingness of ECSU to investigate the allegations or to provide support and other services to the student reporting an incident of sexual misconduct. However, a prompt report will significantly improve the ability of University officials to conduct a full investigation and enhance the effectiveness of any criminal and/or University investigation. Individuals are therefore strongly encouraged to report incidents of sexual misconduct immediately following the occurrence.

B. REPORTING ON-CAMPUS CONDUCT TO UNIVERSITY OFFICIALS

If a student, employee, or visitor has been the victim of an incident of sexual violence, they should immediately report it to the University Police. In the case of an emergency or ongoing threat, get to a safe location, if possible, and report the incident by calling 911. The University encourages students to report incidents of sexual misconduct to the appropriate local law enforcement agency; however, victims do have the right not to report the incident to law enforcement. If the incident occurred on University owned or leased property, the University’s Police Department is the appropriate agency with which to file a report.

Once a complaint is made to University Police, their office shall notify the complainants of their right to file a sexual misconduct complaint with the University in addition to filing a criminal complaint. These complaints may be filed concurrently at the election of the complainant. Section IV provides the necessary information for filing a University complaint. Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decide to investigate the matter is determinative of whether a violation of this policy occurred. Regardless of the option chosen, ECSU will initiate an administrative investigation under Title IX. The University has an obligation to investigate the complaint whether or not the victim decides to formally file a complaint with the Title IX office. Upon receipt of such information, the Title IX Investigator will conduct an administrative investigation, which will be considered distinct from the criminal investigation conducted by a law enforcement agency. The Title IX Investigator
will not wait for the conclusion of a criminal investigation or criminal proceeding to begin the University’s administrative investigation.

A University no contact order will be prepared by the Dean of Students and provided to both the complainant and the alleged perpetrator in writing promptly after a complaint is filed with the University Police or the Title IX Office. The University Police will assist students in obtaining a judicially imposed restraining order.

Information obtained through the criminal investigation may be used by the Title IX Investigator for consideration in the University disciplinary process. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of the Code of Student Conduct, criminal investigations or reports are not determinative of whether sexual misconduct, for purposes of this Policy, has occurred. Conduct may constitute sexual misconduct under this Policy even if a law enforcement agency lacks sufficient evidence of a crime and therefore declines to prosecute.

The following information should be used when reporting an incident to a University official:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Contact Number</th>
<th>Email</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>James Dockery</td>
<td>Title IX Coordinator</td>
<td>(252) 335-3785</td>
<td><a href="mailto:jcdockery@ecsu.edu">jcdockery@ecsu.edu</a></td>
<td>250 Marion D. Thorpe Admin. Bldg.</td>
</tr>
<tr>
<td>Lisa Little</td>
<td>Title IX Investigator</td>
<td>(252) 335-3936</td>
<td><a href="mailto:lmlittle@ecsu.edu">lmlittle@ecsu.edu</a></td>
<td>243 Marion D. Thorpe Admin. Bldg.</td>
</tr>
<tr>
<td>John Manley</td>
<td>Chief of Police</td>
<td>(252) 335-2973</td>
<td><a href="mailto:jhmanley@ecsu.edu">jhmanley@ecsu.edu</a></td>
<td>142 Thomas-Jenkins Bldg.</td>
</tr>
</tbody>
</table>

The incident may also be reported confidentially to Albemarle Hopeline (252-338-3011; off-campus) or the Women’s Center (252-335-8535; on-campus) and/or the Counseling & Testing Center (252-335-3273; on-campus) in order for the individuals involved to receive counseling and other services.

C. REPORTING OFF-CAMPUS CONDUCT TO LOCAL LAW ENFORCEMENT

Sexual misconduct that occurs off-campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy. If the incident occurred off University owned or leased property, University Police will assist the victim with reporting the incident to the appropriate local law enforcement agency. Because sexual misconduct constitutes a violation of University policy, the University encourages individuals to report alleged sexual misconduct promptly to campus officials whether or not they have been reported to a law enforcement agency.
D. MANDATORY REPORTING

i. Sexual Misconduct Involving Students:
In order to proactively enable the University to respond effectively and to stop instances of sex-based discrimination, sexual harassment and sexual misconduct involving students at the University, all University employees must immediately report information they have about alleged or possible sex-based discrimination, sexual harassment, and sexual misconduct involving students to the Title IX Coordinator.

Making a report to the University means telling a Responsible Employee what happened, in person, by telephone, in writing, by e-mail or anonymously. In general, an individual can make a report to any University employee, but the University encourages a Reporting Party to make a report directly to the Title IX Coordinator, the Title IX Investigator, The Dean of Students, and/or the Police Department. All individuals are encouraged to make a report, regardless of when or where the incident occurred, or to seek help from campus or community resources.

Upon receipt of a report, the University will make an immediate assessment of any risk of harm to the parties, any other individual or to the broader campus community and will take the necessary steps to address those risks. These steps may include Interim Protective Measures to provide for the safety of the parties and the campus community.

ii. Reporting by Responsible Employees:
Employees with supervisory and leadership responsibilities on campus are considered Responsible Employees. This includes all faculty, coaches, administrators, Resident Advisors, Teaching Assistants, supervisors and other employees with a responsibility for student welfare.

Responsible Employees will safeguard an individual’s privacy, but are required by the University to share a report of misconduct (including the known details of the incident and the names of the parties) with the Title IX Coordinator or University Police. It is important to understand that any University employee designated as a Responsible Employee under this Policy is required to share a report of Sexual or Gender-Based Harassment, Sexual Violence, Interpersonal Violence or Stalking with the University’s Title IX Coordinator. The Title IX Coordinator or Investigator will conduct an initial assessment of the incident or behavior at issue, the Reporting Party’s desired course of action, and the necessity for any Interim Protective Measures or accommodations to protect the safety of the Reporting Party, any other individual or the community.

The Title IX Coordinator will take steps, either directly with the complainant or through a reporting employee, to provide information about the University’s grievance process, as well as
available health and advocacy resources and options for criminal reporting. Employees who are statutorily prohibited from reporting such information are exempt from these reporting requirements, including licensed health-care professionals. Please note that this policy does not reach curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

iii. **Victims Accommodations**
If the University determines that sexual misconduct creating a hostile environment has occurred, we will take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. The University may also take interim measures to assist or protect the parties during the grievance process, as necessary and with the Complainant’s consent. Whether or not a student or employee reports to law enforcement and or pursues any formal University action, the University is committed to providing them as safe learning or working environment as possible and will take steps to prevent recurrence of any misconduct and correct its discriminatory effects on the complainant and others. Upon request, the University will make any reasonably available change to a victim’s academic, living, transportation, and or working situation. Students may contact the Title IX Coordinator for assistance. Employees who are victims may also contact the Title IX Coordinator for assistance in ensuring they receive the proper accommodation.

If a victim reports to University Police or local law enforcement, University Police will provide reasonable assistance to the victim in obtaining a North Carolina no-contact/restraining order from a criminal court. The University is committed to ensuring that any such order is fully upheld on all institutionally owned and controlled property. The University is also committed to protecting victims from any further harm, and University Police or the Title IX Coordinator may issue a University temporary no-contact order pending the outcome of any conduct proceeding or investigation.

iv. **On-Campus and Off Campus Resources**
Both ECSU and the City of Elizabeth City offer important resources to the victims, alleged perpetrator, and witnesses of sexual violence including medical treatment, counseling and advocacy they may wish to utilize. At ECSU, the Office of Student Affairs and the Counseling and Testing Center are available to assist any student free of charge. The Office of Human Resources is available to help any employee also free of charge. These offices will help victims consider their options and navigate through any resources or recourse they elect to pursue. A victim or witness need not make a formal report to law enforcement or ECSU to access these resources that include the following:
v. Sexual Assault Amnesty
The University shall grant amnesty to students who may have violated the University’s prohibition against having alcohol on campus or under-age drinking at the same time of the incident when he or she became a victim of sexual misconduct. Therefore, the University shall not file charges against a student who reports that the student was under the influence of alcohol at the time the student became a victim of sexual misconduct. Amnesty shall also be granted to students who initiate and seek assistance and/or medical aid on behalf of another student or friend experiencing an emergency related to sexual assault.

ECSU TITLE IX COMPLAINT PROCESS

UNIVERSITY COMPLAINT PROCESS

A. UNIVERSITY’S OBLIGATION UNDER TITLE IX
Before starting an investigation the University will inform the complainants of their rights, the investigation process, and obtain consent from the complainant acknowledging that they wish to proceed with an investigation. If the complainant does not wish to pursue a resolution and/or requests that the complaint remain confidential, the Title IX Investigator shall inform the complainant that the University is under an obligation to investigate and take reasonable action in response to the complaint; thus the University cannot ensure confidentiality as it proceeds to investigate the matter. If the complainant

<table>
<thead>
<tr>
<th>Resource</th>
<th>Contact Number</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ON CAMPUS RESOURCES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Counseling and Testing Center</td>
<td>252-335-3273</td>
<td>500 Griffin Hall</td>
</tr>
<tr>
<td>Student Health Services</td>
<td>252-335-3267</td>
<td>Cardwell-Hoffler Infirmary</td>
</tr>
<tr>
<td>Women’s Center</td>
<td>252-335-8535</td>
<td>502 Griffin Hall</td>
</tr>
<tr>
<td><strong>OFF CAMPUS RESOURCES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sentara Albemarle Hospital</td>
<td>252-335-0531</td>
<td>1144 N. Road St. Elizabeth City, NC</td>
</tr>
<tr>
<td>Albemarle Hopeline</td>
<td>Business hours:</td>
<td>P.O. Box 2064, Elizabeth City, NC</td>
</tr>
<tr>
<td></td>
<td>252-338-5338</td>
<td></td>
</tr>
<tr>
<td></td>
<td>24-hour crisis hotline &amp; advocacy services: 252-338-3011</td>
<td></td>
</tr>
<tr>
<td>North Carolina Coalition Against Sexual Assault</td>
<td>919-871-1015</td>
<td>811 Spring Forest Road, Suite 900 Raleigh, NC</td>
</tr>
</tbody>
</table>
insists that his or her name not be disclosed to the alleged perpetrator, the University’s ability to respond to the incident may be limited. In such a case, the Title IX Investigator shall evaluate the request(s) that the complaint not be adjudicated or remain confidential in the context of the University’s commitment to provide a reasonably safe and non-discriminatory environment for all students. In order to make such an evaluation, the Title IX Investigator may conduct and weigh the complainant's request(s) against the following factors:

i. The seriousness of the alleged sexual misconduct;

ii. the Complainant’s and/or alleged victim’s age;

iii. whether there have been other complaints of sexual misconduct against the accused;

iv. the accused right to receive information about the allegation if the information is maintained by the University as an “education record under FERPA; and

v. the applicability of any laws mandating disclosure.

Sexual Misconduct complaints shall not be subject to any type of mediation proceeding.

B. INVESTIGATION AND STANDARD OF PROOF

The Title IX Investigator shall begin the process of investigating the sexual misconduct complaint. In doing so, the Title IX Investigator shall be authorized to interview the complainant, the alleged offender and any witnesses. The investigation shall also include a review of relevant documentary evidence. Meetings with the parties and witnesses shall be conducted individually and shall not take the form of a hearing. Both parties shall be provided with the opportunity to present relevant witnesses and other evidence to the Title IX Investigator to ensure a thorough investigation.

In determining whether or not there is a violation of University policy or the Code of Student Conduct the preponderance of the evidence standard (i.e., it is more likely than not that sexual misconduct occurred) shall be used when weighing the evidence.

At a minimum, the investigation report compiled by the Title IX Investigator shall contain the following information:

i. the name and sex of the alleged victim and, if different, the name and sex of the person reporting the allegation;

ii. a statement of the allegation, a description of the incident(s), and the date(s) and time(s) (if known) of the alleged incident(s);

iii. the date that the complaint or other report was made;

iv. the date the accused was interviewed;

v. the names and sex of all persons alleged to have committed the alleged harassment;
vi. the names and sex of all known witnesses to the alleged incident(s);

vii. the dates that any relevant documentary evidence (including cell phone and other records as appropriate) was obtained;

viii. any written statements of the complainant (or victim, if different from the Complainant);

ix. the date on which the University deferred its investigation and disciplinary process because the complainant filed a law enforcement complaint and, as applicable, the date on which the University resumed its investigation and disciplinary process;

x. the outcome of the investigation and, if any,

xi. Findings and a determination as to whether or not there was a violation of university policy

C. RESOLUTION OF COMPLAINT

Investigations shall be conducted within 60 days or less unless there are mitigating circumstances in which case the Reporting Party and Responding Party shall be notified, providing an explanation, and the amount of additional time required. Throughout the process the Reporting Party or Responding Party has the right to ask the Title IX Investigator to examine additional evidence. If disciplinary action is to be taken against an employee the employee shall have the rights outlined in the grievance process.

D. FINDINGS AND CONCLUSIONS

Following the conclusion of the investigation, the Title IX Investigator shall prepare a written report as outlined above and submit that report to the Title IX Coordinator. The complainant and the Responding Party will receive written notification of the outcome and disposition of the complaint at the same time.

Upon review of the written report the Title IX Coordinator shall review the findings and make one of the following determinations:

i. Forward to Human Resources for disposition pursuant to applicable university policies pertaining to employees;

ii. Forward to the Dean of Students for disposition consistent with the Student Code of Conduct for students;

iii. Return the report to the Investigator for further investigation.

E. FINDING OF A VIOLATION (Student)

If there is a finding that a policy violation occurred the Dean of Students shall determine an appropriate sanction and notify, in writing, the accused student and the complainant of the sanction. If the sanction is agreed upon by both parties, the complaint shall be
considered resolved. If either party rejects the Sanction, a formal hearing shall be convened for the sole purpose of determining a Sanction.

F. FINDING OF A VIOLATION (Employee)

If there is a finding that a violation occurred, the Director of Human Resources, in consultation with the appropriate manager, shall determine an appropriate sanction and notify, in writing, the accused and the complainant.

IMPOSITION OF SANCTIONS

This policy prohibits a broad range of behavior, all of which is serious in nature. In keeping with the University’s commitment to foster an environment that is maximally safe, inclusive and free of Discrimination, Harassment (including Sexual or Gender-Based Harassment and Sexual Violence), Interpersonal Violence, Stalking, Complicity and Retaliation, the Policy provides the investigator and/or Hearing Panel with wide latitude in the imposition of sanction tailored to the facts and circumstances of each report, the impact of the misconduct on the Reporting Party and surrounding community and accountability for the Responding Party. The imposition of sanction is designed to eliminate prohibited conduct under this policy, prevent its recurrence, and remedy its effects, while supporting the University’s educational mission and federal obligations. Sanctions may include educational, restorative, rehabilitative and punitive components. Some behavior, however, is so egregious in nature, harmful to the individuals involved or so deleterious to the educational process that it requires severe sanctions or interventions, including expulsion from the University system, suspension from the ECSU campus, removal from specific courses or activities, and removal from University housing.

The Dean of Students, and/or the Hearing Panel is responsible for determining the appropriate sanction. In reaching this determination, the Dean of Students will review the report of investigation, may discuss the findings and conclusions with the Title IX Coordinator and Investigator and ask for additional inquires.

In determining the appropriate sanction, the Dean of Students or Hearing Panel shall consider the following factors:

1. the nature and violence of the conduct at issue;
2. the impact of the conduct on the Reporting Party;
3. the impact or implications of the conduct on the community or the University;
4. prior misconduct by the Responding Party, including the Responding Party’s prior discipline history, both at the University or elsewhere, including criminal arrests or convictions;
5. whether the Responding Party has accepted responsibility for the conduct;
6. maintenance of a safe and respectful environment conducive to learning;
7. protection of the University community; and,
8. any other mitigating, aggravating or compelling circumstances in order to reach a just and appropriate resolution in each case.
The Dean of Students or Hearing Panel may also consider restorative outcomes that, taking into account the safety of the community as a whole, allow a Responding Party to develop insight about their responsibility for the behavior, learn about the impact of the behavior on the Reporting Party and the community, and identify how to prevent or change the behavior.

The Dean of Students shall notify both the Reporting Party and the Responding Party of the outcome of any University disciplinary proceeding involving sexual misconduct. The Dean of Students shall advise the parties of the following:

1. the name of the accused;
2. the violation charged or committed;
3. the essential findings supporting the conclusion that the violation was committed;
4. the sanction if any that is imposed and the duration of the sanction; and
5. the date the sanction was imposed.

**STUDENT CONDUCT HEARING**

**A. Review of Recommended Sanction or Remedy Only**

Within three business days from the imposition of Sanctions, either the Reporting Party or the Responding Party may submit a written request to the Dean of Students objecting to the proposed sanctions and request a hearing to determine the appropriateness of the sanction.

**B. Hearing Panel**

In consultation with the Title IX Coordinator the Dean of Students will convene a Hearing Panel. A Hearing Panel will be comprised of three (3) individuals, selected by the Chancellor or his/her designee, from a pool of trained and/or experienced panelists. Any individual designated by the University to serve on a Hearing Panel must have sufficient training or experience to serve in this capacity. Panelists may include University faculty or staff members or an outside expert from the surrounding community. A University student will not serve as a panelist. A Hearing Panel will select a member to serve as Chair. The Chair is responsible for signing all documents and communicating on behalf of the panel.

Both parties have the ability to challenge a Hearing Panel member on the basis of actual conflict, bias or lack of impartiality. The request must be submitted in writing and must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. All objections must be raised at least five (5) business days prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one’s ability to appeal the outcome based upon perceived or actual bias.
C. Hearing Process

Upon receipt of a Notice of Hearing, a Hearing Panel will be designated to review all relevant information. The Hearing Panel will make a determination, by a preponderance of the evidence, regarding the appropriateness of the Sanction. In reaching a determination, the Hearing Panel may solicit information from the investigator, the Reporting Party, the Responding Party, and other individuals as appropriate to ensure a full assessment of the Sanctions. Neither the Reporting Party nor the Responding Party will be permitted to question each other or witnesses. This information shall be provided in the presence of the parties, unless the party waives their right to be present. Upon request, a party or witness may participate by telephone or videoconference from a different physical location or may request that a visual barrier be placed to limit the individual’s exposure to other hearing participants. During the hearing, each party may be accompanied by a Support Person, a University-provided Advisor and/or an Attorney or Non-Attorney Advocate.

The Hearing panel may recommend the Title IX Coordinator consider additional facts or conduct a further investigation prior to making a final determination on the appropriateness of the Sanction. If such a request is made, the Title IX Coordinator shall respond to the Panel within three (3) calendar days. After considering all of the relevant information, the Hearing Panel Notice of Outcome in which the committee will either affirm the Sanction imposed or imposes other Sanction(s).

D. Appeals

Either party may appeal the Hearing Panel’s decision to the Provost/Vice Chancellor for Academic Affairs (Appeals Officer) within five (5) calendar days of the receipt of the Hearing Panel’s decision. The appeal must be submitted in writing to the Title IX Coordinator. The appeal shall consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. Receipt of the written appeal will be acknowledged in writing.

Each party will be given the opportunity to review the written appeal submitted and respond in writing to the Appeals Officer. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt of the appeal. If both parties file an appeal, the appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the Outcome will be presumed to have been decided reasonably and appropriately. Appeals are not intended to be a de novo rehearing of the matter. Appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. The Appeals Officer may speak to the investigator and the Title IX Coordinator. The
Appeals Officer should be deferential to the original Hearing Panel, making changes to the Sanction(s) only where there is clear error.

Grounds for appeal include the following:

i. demonstration of a significant procedural error; or

ii. the availability of compelling new evidence; or

iii. demonstration of bias on the part of a member of the Panel involved in the case; or

iv. demonstration that the rights of the complainant or accused were violated according to the Code of Student Conduct and/or this Policy.

The Appeals Officer shall notify both parties of the final decision within five (5) calendar days of the receipt of the appeal. A decision by the Appeals Officer is final. If the Appeals Officer determines that a student should be expelled, the Appeals Officer must forward a recommendation for expulsion to the Chancellor. The Chancellor shall notify the parties involved of his or her decision regarding the expulsion within ten (10) calendar days of the receipt of the Appeal Officer’s written decision.

Both the complainant and the accused shall be provided, in writing, the results of any appeal.

E. Remedies for Victim

The Title IX Coordinator, in concert with the Dean of students or Hearing Panel will identify remedies to address the effects of the conduct on the Victim, restore the Victim’s safety and well-being and maximize the Victim’s educational and employment opportunities. Such remedies should restore to the Victim, to the extent possible, all benefits and opportunities lost as a result of the prohibited conduct.

The University will consider the appropriateness of remedies, including Interim Protective Measures, and accommodations on an ongoing basis to assure the safety and well-being of the parties throughout process. Remedies may include extending or making permanent any Interim Protective Measures or implementing additional measures tailored to achieve the goals of this Policy. Examples of remedies may include:

i. Counseling services

ii. Rescheduling of exams and assignments

iii. Providing alternative course completion options

iv. Change in class schedule, including the ability to drop a course without penalty or to transfer sections

v. Change of grade to an incomplete or withdrawal
vi. Opportunity to complete missed work in a course or to retake a course without charge
vii. Change in work schedule or job assignment
viii. Reimbursement for lost wages
ix. Restitution for property damage by the Responding Party
x. Change in student’s University housing accommodations or reimbursement for housing costs
xi. Assistance from University support staff in completing housing relocation
xii. Voluntary leave of absence or return from leave of absence
xiii. Escort to ensure safe movement between classes and activities
xiv. Medical services obtained as a result of the prohibited conduct
xv. Academic support services and resources
xvi. Assistance in obtaining accommodations such as tutoring
xvii. Reinstatement to a fraternity, sorority, athletic team or other extracurricular activity

F. Confidentiality

The University recognizes the importance of confidentiality and University officials shall respect the confidentiality and privacy of individuals reporting or accused of sexual misconduct to the extent reasonably possible. Confidentiality may not be able to be maintained in circumstances where the law requires disclosure of information or when disclosure required by the University outweighs protecting the rights of others.

If the University cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, the University will pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

G. False Claims

An individual who knowingly makes false allegations or who knowingly provides false information in a sexual misconduct investigation or proceeding shall be subject to disciplinary action.

H. Records

The Title IX Coordinator shall maintain all records related to investigations into allegations of sexual misconduct until the process has been concluded. The Dean of Students shall maintain all records related to the formal (judicial) process, which may include written findings of facts, transcripts, or audio recordings.

I. Campus Training and Education

ECSU is committed to increasing the awareness of and preventing violence. All incoming students and new employees shall be provided with programming and
strategies intended to prevent rape, acquaintance rape, sexual assault, domestic violence, bystander intervention training, dating violence, and stalking before it occurs through the changing of social norms and other approaches; that includes a clear statement that ECSU prohibits such acts, their definitions, the definition of consent, options for bystander intervention, information about risk reduction, and our policies and procedures for responding to these incidents. Ongoing prevention and awareness campaigns are also offered throughout the year.

These programs include:

i. Poster Campaign
ii. Think About It
iii. New Student Orientation
iv. New Employee Orientation
v. Training for students, faculty and staff
vi. Vikings Against Violence Website
vii. Bystander intervention training
viii. Law enforcement and judicial board trainings on sexual violence

J. External Complaints

As a student or employee, if you filed a complaint with the University and believe the University’s response was inadequate, or you otherwise believe you have been discriminated against by the University on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Equal Employment Opportunity Commission, or the Department of Education at:

United States Department of Education
Office for Civil Rights
(800) 421-3481
Email: ocr@ed.gov

K. Annual Review

The members of the Title IX Committee, the Office of the General Counsel and Title IX Coordinator will review this Policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review will include the opportunity for individuals affected by the Policy to provide feedback and will incorporate an aggregate view of reports, resolution and climate. The Title IX Coordinator will prepare an annual report, publicly available, which will include recommendations and/or steps taken to improve the delivery of services and the effectiveness of the Policy and procedures.