



Empire Beauty School

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**EMPIRE BEAUTY SCHOOLS EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION
POLICY FOR ALL FACULTY, FUTURE PROFESSIONALS, CO-WORKERS, AND THIRD PARTIES
(Hereinafter, “the Policy”)**

1. Purpose

Empire Beauty Schools (hereinafter referred to as “Empire” or “the School”) is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

Empire values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, Empire has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment, or allegations of retaliation.

2. Notice of Nondiscrimination

Empire seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private post-secondary education institutions.

Empire does not discriminate against any co-worker, applicant for employment, future professional, or applicant for admission on the basis of actual or perceived:

- Sex
- Race
- Religion
- Creed
- Color
- National or Ethnic Origin
- Disability (physical or mental)
- Predisposing Genetic Characteristics
- Sexual Orientation
- Gender Identity
- Pregnancy or Related Conditions
- Age (40 years and over in the employment context)
- Veteran or Military Status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
- Any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the School community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, and/or social access, benefits, and/or opportunities of any member of the School community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy.

Empire will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Equal Opportunity, Harassment, and Nondiscrimination Procedures.

3. Nondiscrimination Team Contacts

Empire has appointed the Nondiscrimination Team, comprised of the following individual(s), to coordinate Empire's compliance with federal, state, and local civil rights laws and ordinances:

To report alleged violations of this Policy, contact:

Administrator

Cassie Rossochacy
Senior Director, Compliance & Title IX Coordinator
Compliance Department
396 Pottsville-St. Clair Highway
Pottsville, PA 17901
Phone: 570.429.4321 x2790
Email: crossochacy@empire.edu
Web: <https://www.empire.edu/consumer-information/titleix>

Sandra Mayo
Vice President for Student Services
Office of Financial Assistance
396 Pottsville-St. Clair Highway
Pottsville, PA 17901
Phone: 570.429.4321 x2258
Email: smyro@empire.edu

Beth Krause
Senior Vice President, Education
Office of Educational Services
396 Pottsville-St. Clair Highway
Pottsville, PA 17901
Phone: 570.429.4321 x2686
Email: bkrause@empire.edu

Tina Naftzinger
Director
Office of the President
396 Pottsville – St. Clair Highway
Pottsville, PA 17901
Phone: (570) 429-4321 ext. 2727
Email: tnaftzinger@empire.edu

Diane Kennedy
Vice President of People Services
Office of People Services
396 Pottsville – St. Clair Highway
Pottsville, PA 17901
Phone: (570) 429-4321 ext. 2112
Email: dkennedy@empire.edu

Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating Empire’s timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

Empire recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other Empire policies; may involve various combinations of future professionals, co-workers, and other members of the School community; and may require the simultaneous attention of multiple Empire departments. Accordingly, all Empire departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable School policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

4. External Contact Information

Concerns about Empire’s application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

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

Web: <http://www.ed.gov/ocr>

For Complaints involving co-worker-on-co-worker conduct: [Equal Employment Opportunity Commission](#) (EEOC).

5. Mandated Reporting

All Empire co-workers are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, retaliation, and/or Other Prohibited Conduct to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal Empire action.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Administrator. If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or Policy violations, and these co-workers will immediately pass Notice to the Administrator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

Failure of a Mandated Reporter, as described in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of Empire Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of discrimination, harassment, or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

A. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- The Employee Assistance Program¹
- Community-based Resources:
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources

¹ The Employee Assistance Program is available to help co-workers free of charge and may be consulted on an emergency basis during normal business hours.

- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

6. Disability-based Grievances and Complaints

Grievances related to disability status and/or provision of accommodations are addressed using the procedures in the Students with Disabilities and Reasonable Accommodation Policy or Employment of Individuals with Disabilities and Reasonable Accommodations Policy. However, allegations of discrimination on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under the procedures outlined below.

For details relating to disability accommodations in the School's Resolution Process, see [Section 30](#) of the Resolution Process for Alleged Violations of the Equal Opportunity, Harassment, and Nondiscrimination Policy.

7. Scope

This Policy is only applicable to alleged incidents that occur on or after August 1, 2024. For alleged incidents of sex discrimination or sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Administrator and accessible at: <https://www.empire.edu/consumer-information/titleix>.

This Policy applies to all co-workers, future professionals, and other individuals participating in or attempting to participate in the School's program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s), and may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

8. Jurisdiction

This Policy applies to the School's education programs and activities (defined as including locations, events, or circumstances in which the School exercises substantial control over both

the Respondent and the context in which the conduct occurred), circumstances where the School has disciplinary authority.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to Empire's education program or activities. Empire may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial Empire interest.

A substantial School interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an imminent and serious threat to the health or safety of any future professional, co-worker, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the School's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a future professional or co-worker at the time of the alleged incident. If the Respondent is unknown or is not a member of the Empire community, the Administrator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). Empire can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the School through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Administrator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Administrator may be able to assist and support a future professional or co-worker Complainant who experiences discrimination in an environment external to the School where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a future professional or co-worker's work or educational environment, those effects can often be addressed remedially by the Administrator if brought to their attention.

9. Supportive Measures

Empire will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the School's education program or activity, including measures designed to protect the safety of all Parties and/or the School's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Administrator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the School will inform the Complainant, in writing, that they may file a Complaint with the School either at that time or in the future. The Administrator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The School will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the School's ability to provide those supportive measures. The School will act to ensure as minimal an academic/occupational impact on the Parties as possible. The School will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Financial aid counseling
- Education to the School community or community subgroup(s)
- Altering work arrangements for co-workers
- Safety planning
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass orders
- [Timely warnings](#)
- Withdrawals
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Administrator

Violations of no contact orders or other restrictions may be referred to appropriate future professional or co-worker conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the School's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Administrator. An impartial co-worker other than the co-worker who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the Title IX regulatory definition of supportive measures. The School will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances materially change. The School typically renders decisions on supportive measures within five (5) business days of receiving a request and provides a written determination to the impacted party(ies) and the Administrator.

10. Online Harassment and Misconduct

Empire policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Empire's education program and activities, or when they involve the use of Empire networks, technology, or equipment.

Although Empire may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to Empire, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to Empire's education program or activity.

11. Inclusion Related to Gender Identity/Expression

Empire strives to ensure that all individuals are safe, included, and respected in their education and employment environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse future professionals and co-workers.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by Empire. If a member of Empire's community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, Empire supports the full integration and healthy development of those who are gender diverse and seeks to eliminate any stigma related to gender identity and expression.

Empire is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. Empire will administratively address issues that some

future professionals and co-workers, including those identifying as intersex, transgender, agender, nonbinary, and gender diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do Empire's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to Empire's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender diverse, their cisgender identity may be something that is in their past — dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can often be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse future professionals and co-workers, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all future professionals have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all co-workers have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for co-workers and education for future professionals on topics related to gender inclusion
- Encouraging all future professionals and co-workers to respect the pronoun usage and identities of all members of the School community

Empire uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, Empire will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, Empire will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

12. Prohibited Conduct

Future professionals and co-workers are entitled to an educational and employment environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under Empire Policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of Empire Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other Empire policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

A. Discrimination

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon the person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a School program or activity.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a School program or activity.

B. Discriminatory Harassment

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the School's education program or activity

C. Sex-based Harassment (Applicable under Title IX and Title VII)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,² including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) Quid Pro Quo:

- A co-worker, agent, or other person authorized by the School,
- to provide an aid, benefit, or service under the School's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,

² Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

- on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the School's education program or activity

The School reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under Empire Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Administrator.

3) **Sexual Assault:**³

a. **Rape:**

- Penetration, by the Respondent, no matter how slight,
- of the vagina or anus of the Complainant,
- with any body part or object, or
- oral penetration by the Respondent of a sex organ of the Complainant, or
- oral penetration of the Complainant by the Respondent's sex organ,
- without the consent of the Complainant.

b. **Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

c. **Incest:**

- Sexual intercourse,

³ This would include having another person touch you sexually, forcibly, and/or without their consent.

- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by state law.

d. Statutory Rape:

- Sexual intercourse,
- with a person who is under the statutory age of consent.⁴

3) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - b) Dating violence does not include acts covered under the definition of domestic violence.

4) Domestic Violence,⁵ defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state or
- g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the state.

⁴ Empire operates schools in 21 states. Age of consent for each School location follows: Arizona-18, Colorado-17, Florida-18, Georgia-16, Illinois-17, Indiana-16, Kentucky-16, Massachusetts-16, Maryland-16, Maine-16, Michigan-16, Minnesota-16, North Carolina-16, New Jersey-16, New York-18, Ohio-16, Pennsylvania-16, Rhode Island-16, Tennessee-18, Virginia-18, and Wisconsin-16.

⁵ To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 5) **Stalking**, defined as:
- a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at the Complainant, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Sexual Misconduct

- 7) **Sexual Exploitation:**⁶
- a person taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above,
 - for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) a person's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or

⁶ This offense is not classified under Title IX as "Sex-based Harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)

D. Other Prohibited Conduct

1) Bullying:⁷

- repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant.

2) Endangerment:

- threatening or causing physical harm;
- extreme verbal, emotional, or psychological abuse; or
- other conduct which threatens or endangers the health or safety of any person or damages their property.

⁷ For Bullying, Hazing, and Endangerment, these offenses can be applied when the conduct is on the basis of protected characteristics but is not a form of Sex-based Harassment.

3) Hazing:

- any act or action
- which does or is likely to endanger the mental or physical health or safety of any person
- as it relates to a person's initiation, admission into, or affiliation with any Empire group or organization.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the future professional group or future professional organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
- The actions of alumni, active, new, and/or prospective members of a future professional group may be considered hazing.
- Hazing is not confined to the future professional group with which the person subjected to the hazing is associated.

4) Retaliation:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by Empire, a future professional, co-worker, or a person authorized by the School to provide aid, benefit, or service under Empire's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Equal Opportunity, Harassment, and Nondiscrimination Procedures, including an Informal Resolution process, or in any other appropriate steps taken by the School to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the School to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Equal Opportunity,

Harassment and Nondiscrimination Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

5) **Unauthorized Disclosure:**⁸

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the School; or
- publicly disclosing institutional work product that contains personally identifiable information without authorization or consent.

6) **Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of Administrator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an Informal Resolution agreement
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Resolution Process, including, but not limited to:
 - Destruction of or concealing of evidence
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - Intimidating or bribing a witness or party

E. Sanction Ranges

The following sanction ranges apply for Prohibited Conduct under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Discrimination:** coaching/warning through termination.
- **Discriminatory Harassment:** coaching/warning through termination.
- **Quid Pro Quo Harassment:** coaching/warning through termination.
- **Hostile Environment Harassment:** coaching/warning through termination.
- **Rape:** suspension through termination.

⁸ Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

- **Fondling:** coaching/warning through suspension (termination for co-workers).
- **Incest:** coaching/warning through suspension.
- **Statutory Rape:** coaching/warning through suspension (termination for co-workers).
- **Stalking:** suspension through termination.
- **Dating/Domestic Violence:** suspension through termination.
- **Sexual Exploitation:** coaching/warning through termination.
- **Bullying:** coaching/warning through termination.
- **Endangerment:** coaching/warning through termination.
- **Hazing:** coaching/warning through termination.
- **Retaliation:** coaching/warning through termination.
- **Unauthorized Disclosure:** coaching/warning through termination.
- **Failure to Comply/Process Interference:** coaching/warning through termination.

F. Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) Consent

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on either party involved in a Complaint. Instead, the burden remains on the School to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.⁹

2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or

⁹ Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual.

’ll hit you,” which elicits the response, “Okay, don’t hit me. I’ll do what you want.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Incapacitation is determined through consideration of all relevant indicators of a person’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

13. Standard of Proof

Empire uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the School will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

14. Reports/Complaints of Discrimination, Harassment, and/or Retaliation

A Report provides notice to Empire of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Administrator to provide information, resources, and supportive measures. A Complaint provides notice to Empire that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Administrator or to any member of the Nondiscrimination Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Administrator or any other Nondiscrimination Team member listed in this Policy.
- 2) Report online, by sending an email to TitleIX@empire.edu or completing the grievance form located at <https://www.empire.edu/consumer-information/grievance>. Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits Empire's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

Reporting carries no obligation to initiate a Complaint, and in most situations, Empire is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where Empire may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, Empire will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows Empire to discuss and/or provide supportive measures, in most circumstances.

15. Time Limits on Reporting

There is no time limitation on providing Notice/Complaints to the Administrator. However, if the Respondent is no longer subject to the School's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Notice/Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Administrator's discretion; they may

document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

16. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate School policies.

17. Confidentiality/Privacy

Empire makes every effort to preserve the Parties' privacy. Empire will not share the identity of any individual who has made a Complaint of discrimination, harassment, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.^{10,11} Additional information regarding confidentiality and privacy can be found in [Appendix C](#).

Unauthorized Disclosure of Information

Parties and Advisors are prohibited from disclosing information obtained by the School through the Resolution Process, to the extent that information is the work product of the School (meaning it has been produced, compiled, or written by the School for purposes of its investigation and resolution of a Complaint), without authorization. It is also a violation of Empire Policy to publicly disclose institutional work product that contains a party or witness's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

18. Emergency Removal/Interim Actions/Leaves

Empire can act to remove a future professional Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent and serious threat to the health or safety of any future professional or other

¹⁰ 20 U.S.C. 1232g

¹¹ 34 C.F.R. § 99

individual justifies removal. This risk analysis is performed by the Administrator/Title IX Coordinator and may be done in conjunction with the relevant senior School officials using its standard objective violence risk assessment procedures. Co-workers are subject to existing procedures for interim actions and leaves.

19. Federal Timely Warning Obligations

Empire must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of Empire's community.

Empire will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

20. Amnesty

Empire encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to School officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Empire community that Complainants choose to give Notice of misconduct to School officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, Empire offers Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the School, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution. Empire also maintains an amnesty policy for future professionals in addition to witnesses who offer help to others in need.

21. Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. Empire will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.

- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- Seeking medical treatment can be essential, even if it is not for the purpose of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take time-stamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and Administrator, the importance of taking these actions will be discussed, if timely.

22. Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking¹²
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

¹² 42 U.S.C. Sections 13701 through 14040.

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Clery Compliance Coordinator for publication in the Annual Security Report and daily campus crime log. The Executive Directors at each of the School's locations serve as the School's Campus Security Authorities.

23. Independence and Conflicts of Interest

The Administrator manages the Nondiscrimination Team and acts with independence and authority, free from bias and conflicts of interest. The Administrator oversees all resolutions under this Policy and these procedures. The members of the Resolution Pool are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Administrator, contact the Vice President for Student Services. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Administrator.

24. Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Administrator reviews and updates these policies and procedures regularly. Empire reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change or court decisions alter the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

Implementation of this Policy is suspended in the states of Florida, Georgia, Indiana, Kentucky, North Carolina, Ohio, Tennessee, and Virginia, pending resolution of the federal injunctions issued against the 2024 Title IX rule.

This Policy is effective September 23, 2024.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY

1. Overview

Empire will act on any Notice, Complaint, or Knowledge of a potential violation of the Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that the Administrator¹³ or any other Mandated Reporter receives by applying the Resolution Process for Alleged Violations of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“Resolution Process”) below.

The procedures below apply to all allegations of discrimination on the basis of an actual or perceived protected characteristic, harassment, retaliation, or Other Prohibited Conduct involving future professionals, co-workers, or third parties.

2. Notice/Complaint

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Administrator will initiate a prompt initial evaluation to determine the School’s next steps. The Administrator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

3. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other School policies not incorporated into the Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Administrator may consult with School officials who typically oversee such conduct (e.g., People Services, Executive Director, Student Services) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Administrator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in future professional and co-worker handbooks.

¹³ Anywhere this procedure indicates “Administrator,” the School may substitute a trained designee.

4. Initial Evaluation

The Administrator conducts an initial evaluation, typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct.¹⁴ The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
 - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the [dismissal provision](#) in these procedures. It may then be referred to another process, if applicable.
- Determining whether Empire has jurisdiction over the reported conduct, as defined in the Policy.
 - If the conduct is not within Empire jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate School office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to initiate a Complaint.
- Notifying the Respondent of the available resolution options, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

Helping a Complainant to Understand Resolution Options

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Administrator will help to facilitate the Complaint, which will include working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:

- a supportive and remedial response, and/or
- Informal Resolution, or
- the Resolution Process described below.

The Administrator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

¹⁴ If circumstances require, the Vice President for Student Services or Administrator will designate another person to oversee the Resolution Process should an allegation be made about the Administrator or the Administrator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

If the Complainant elects for the Resolution Process below, and the Administrator has determined the Policy applies and that the School has jurisdiction, they will route the matter to the appropriate Resolution Pool member, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Administrator will assess whether the matter is suitable for Informal Resolution and refer the matter accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Administrator), though the Complainant can elect to initiate one later, if desired.

Administrator Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Administrator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Administrator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the School cannot ensure equal access without initiating a Complaint. The Administrator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of discrimination would occur if a Complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
- The age and relationship of the Parties, including whether the Respondent is employed by the School;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether the School could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Administrator may consult with appropriate School co-workers, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the Administrator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

5. Dismissal

The School **may** dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- 1) The School is unable to identify the Respondent after taking reasonable steps to do so
- 2) The School no longer enrolls or employs the Respondent
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Administrator declines to initiate a Complaint
- 4) The School determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

In addition to other members of the Nondiscrimination Team, as authorized by the Administrator, a Decision-maker can recommend dismissal to the Administrator if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, the School will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the School will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

6. Appeal of Dismissal

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Administrator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Administrator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the School will:

- Implement dismissal appeal procedures equally for the Parties.
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint.

- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal.
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided.
- 3) The Administrator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Administrator will share the petition with all other Parties and provide three (3) business days for other Parties and the Administrator to respond to the request. At the conclusion of the response period, the Administrator will forward the appeal, as well as any response provided by the other Parties and/or the Administrator to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Administrator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Administrator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has ten (10) business days to review and decide on the appeal, though extensions can be granted at the Administrator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Administrator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Administrator will maintain documentation of all such consultation.

7. Emergency Removal/Interim Suspension of a Future Professional

The School may emergency remove a future professional accused of Sex Discrimination or Sex-based Harassment upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an emergency removal, Empire will conduct an individualized risk assessment and may remove the future professional if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any future professionals, co-workers, or other persons arising from the allegations of sex discrimination justifies such action. Future professionals accused of other forms of discrimination (not sex) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected future professional will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Administrator will meet with the future professional (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or interim suspension is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal or interim suspension will be deemed waived. A future professional can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Administrator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Administrator for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Administrator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

8. Placing a Co-Worker on Leave

When the Respondent is a co-worker accused of misconduct in the course of their employment, existing provisions for interim action, as outlined in the Co-Worker Handbook are typically applicable instead of the above emergency removal process.

9. Counter-Complaints

The School is obligated to ensure that the Resolution Process is not abused for retaliatory purposes. Although the School permits the filing of counter-complaints, the Administrator will use an initial evaluation, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Administrator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

10. Advisors in the Resolution Process

A. Who Can Serve as an Advisor?

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings and interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁵

The School cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the School is not obligated to provide an attorney to advise that party.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Administrator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The School may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Administrator. The decision to grant this request is at the Administrator's sole discretion and will be granted equitably to all Parties.

¹⁵ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. The Advisor cannot have institutionally conflicting roles, such as being an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker.

B. Advisor's Role in the Resolution Process

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

C. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the School shares with them, per [Section 17](#) of the Policy addressing Confidentiality. Advisors may not disclose any School work product or evidence the School obtained solely through the Resolution Process for any purpose not explicitly authorized by Empire.

Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The School may decline to share materials with any Advisor who has not executed the NDA. Empire may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the School's confidentiality expectations.

D. Advisor Expectations

The School generally expects an Advisor to adjust their schedule to allow them to attend School meetings and interviews when planned, but the School may change scheduled meetings or interviews to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The School may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting or interview by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same Empire policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings.

E. Advisor Policy Violations

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the School's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting or interview may be ended, or other appropriate measures implemented, including the School requiring the party to use a different Advisor. Subsequently, the Administrator will determine how to address the Advisor's non-compliance and future role.

11. Resolution Options Overview

This Resolution Process, consisting of Informal Resolution or Administrative Resolution is the School's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Conduct under the Policy. The process considers the Parties' preferences but is ultimately determined at the Administrator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with Empire Policy.

A. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Administrator at any time prior to a final determination, or the Administrator may offer the option to the Parties, in writing. The School will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

When a Complaint has been filed, before initiation of an Informal Resolution process, Empire will provide the Parties with a NOIA that explains:

- The allegations.
- The requirements of the Informal Resolution process.
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the School's Resolution Process.
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the Resolution Process arising from the same allegations.
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties.

- What information the School will maintain, and whether and how it could disclose such information for use in its Resolution Process.

Empire offers four categories of Informal Resolution:

- 1) Supportive Resolution.** When the Administrator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) Educational Conversation.** When the Administrator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and Empire are agreeable to the resolution terms.
- 4) Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Administrative Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution Process, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Administrator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Categories of Informal Resolution

(1) Supportive Resolution

The Administrator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the School's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Administrator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Administrator does not initiate a Complaint.

(2) Educational Conversation

The Complainant(s) may request that the Administrator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Administrator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of the recurrence of any behaviors that may not align with Policy.

(3) Accepted Responsibility¹⁶

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Administrator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Administrator will determine whether all Parties and the School are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Administrator implements the accepted finding that the Respondent is in violation of Empire Policy, implements

¹⁶In [Section 20](#) below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section 20, in contrast, is unilateral. Neither the Complainant nor the Administrator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. Under Section 20, the outcome involves sanctioning imposed by the School, rather than an agreement to self-sanction, as outlined in this section.

agreed-upon restrictions and remedies, and determines the appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the discrimination or harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

(4) Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Administrator or other appropriate School officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Administrator may consider the following factors to assess whether alternative resolution is appropriate, or which form of alternative resolution may be most successful for the Parties:

- The Parties' amenability to alternative resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the alternative resolution facilitator with this type of Complaint
- Complaint complexity
- Emotional investment/capability of the Parties
- Rationality of the Parties

- Goals of the Parties
- Adequate resources to invest in alternative resolution (e.g., time, staff)

The Administrator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Administrator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Administrator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). The results of Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the School will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

B. Administrative Resolution Process (see [Section 22](#) below)

12. Resolution Process Pool

The Resolution Process relies on a pool of administrators ("the Pool") to carry out the process.¹⁷

A. Pool Member Roles

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Administrator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator

¹⁷ External, trained third-party neutral professionals may also be used to serve in Pool roles.

- Hearing Facilitator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

B. Pool Member Appointment

The Administrator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, the School can also designate permanent roles for individuals in the Pool.

C. Training (see [Appendix D](#) for details of training for Pool Members)

13. Notice of Investigation and Allegations (“NOIA”)

Prior to an investigation, the Administrator will provide the Parties with a detailed written NOIA. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name of the Investigator, along with a process to notify the Administrator of any conflict of interest that the Investigator may have in advance of the interview process,
- A statement that the School presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited

- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share Empire work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that the School's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations or other support assistance during the Resolution Process
- A link to the School's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address(es) as indicated in official School records, or emailed to the Parties' School-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

14. Resolution Timeline

The School will make a good faith effort to complete the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which the Administrator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the School reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

The School may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The School will promptly resume its Resolution Process as soon as feasible. During such a delay, Empire will implement and maintain supportive measures for the Parties as deemed appropriate.

Empire action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

The School will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

15. Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process, including the Administrator, Investigator, and Decision-maker, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Administrator will vet the assigned Investigator, Decision-maker, and Appeal Decision-maker for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Administrator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Administrator, concerns should be raised with the Vice President for Student Services.

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

16. Investigator Appointment

Once an investigation is initiated, the Administrator appoints an Investigator to conduct it. This Investigator may be a member of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the School community.

17. Witness Role and Participation in the Investigation

Co-workers (not including Complainant and Respondent) are required to cooperate with and participate in the School's investigation and Resolution Process. Future professional witnesses and witnesses from outside the School community cannot be required to participate but are encouraged to cooperate with the School's investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The School will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator, though not preferred.

18. Interview Recording

It is standard practice for Investigators to create record of all interviews pertaining to the Resolution Process. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

19. Evidentiary Considerations

The Investigator and the Decision-maker will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant Evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact of prior consensual sexual conduct occurred between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

Within the limitations stated above, the investigation and determination can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

20. Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would waive the Respondent's right to appeal. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion. The Complainant retains their right to appeal a determination when a Respondent admits responsibility.

21. Investigation

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviewing all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The School may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator typically takes the following steps, if not already completed and not necessarily in this order:

- Determine the identity and contact information of the Complainant.
- Identify all offenses implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Administrator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Administrator, as necessary, to prepare the initial NOIA. The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.

- When the participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator to ask of another party and/or witnesses. Document which questions were asked with a rationale for any changes or omissions in the investigation report.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of five (5) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Administrator and/or legal counsel for their review and feedback.

22. Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Behaviors (as defined in Policy) or when Informal Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Administrator, the assigned Decision-maker will be an individual drawn from the Resolution Process Pool, or other trained individual either internal or external to the institution. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Administrator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be regularly updated on the timing and any significant deviation from this typical timeline.

Investigator-led Questioning Meetings

- The Administrator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.
- The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
 - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.
 - The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.
- The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.
 - For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an appendix to the Final Investigation Report).
- Typically, within three (3) business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have five (5) business days to review these recordings or transcripts and propose any follow-up questions for the Investigator to ask.
- The Investigator will review the proposed questions with the Decision-maker to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last round permitted, unless permission is granted to extend by the Decision-maker.

- The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
- The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
- The Investigator will then share the Final Investigation Report with the Administrator and/or legal counsel for their review and feedback.
- The Investigator will then provide the Administrator with the Final Investigation Report and investigation file.

The Decision-maker's Determination

- The Administrator will provide the Decision-maker, the Parties, and their Advisors with the Final Investigation Report (FIR) and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.
- The Decision-maker will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informal meetings with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
 - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings. These meetings will be recorded, and the recording or transcript will be shared with the Parties.
- The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any associated sanctions.
- **Timeline.** The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables. The Parties will be notified of any delays.
- **Impact Statements.** Prior to a determination, the Administrator will also provide the Parties with an opportunity to submit a written impact and/or mitigation statement. The Administrator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements

from the Administrator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.

- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

23. Sanctions

Factors the Decision-maker may consider when determining sanctions and responsive actions include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- The Respondent's acceptance of responsibility
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

A. Future Professional Sanctions

The following are the common sanctions that may be imposed upon future professionals singly or in combination:

- *Coaching*: A formal statement that the conduct was unacceptable and a warning that further violation of any School policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Suspension*: Termination of future professional status for a definite period of time not to exceed two years and/or until specific criteria are met.
- *Termination*: Permanent termination of future professional status and revocation of rights to be on campus for any reason or to attend School-sponsored events.

- *Other Actions:* In addition to or in place of the above sanctions, the School may assign any other sanctions as deemed appropriate.

B. Co-Worker Sanctions/Responsive/Corrective Actions

Responsive actions for a co-worker who has engaged in, discrimination, harassment, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Training or Education*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to New Supervisor*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the School may assign any other responsive actions as deemed appropriate.

24. Notice of Outcome

Within ten (10) business days of the conclusion of the Resolution Process, the Administrator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, all applicable sanctions that the School is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the School is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Administrator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the Parties' local or permanent address as indicated in official School records, or emailed to the Parties' School-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

25. Withdrawal or Resignation Before Complaint Resolution

A. Future Professionals

Should a future professional Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a future professional Respondent withdraws from the School, the Resolution Process may continue, or the Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, Empire will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, the School will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a future professional withdraws or leaves while the process is pending, the future professional may not return to the School in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the future professional indicates they will not return, the Administrator has discretion to dismiss the Complaint. Appropriate School officials will be notified, accordingly.

If the future professional Respondent takes a leave for a specified period of time, the Resolution Process may continue remotely. If found in violation, that future professional is not permitted to return to Empire unless and until all sanctions, if any, have been satisfied.

B. Co-Workers

Should a co-worker Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a co-worker Respondent leaves their employment with the School with unresolved allegations pending, the Resolution Process may continue, or the Administrator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the School may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When a co-worker resigns and the Complaint is dismissed, the co-worker may not return to the School in any capacity. Such exclusion applies to all School locations. Appropriate School officials will be notified, accordingly. A note will be placed in the co-worker's file that they resigned with allegations pending and are not eligible for academic admission

or rehire with the School. The records retained by the Administrator will reflect that status.

26. Appeal of the Determination

The Administrator will designate an Appeal Decision-maker – an individual chosen from the Pool, or another trained internal or external individual, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure challenge or dismissal appeal that may have been decided earlier in the process.

A. Appeal Grounds

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility was made.
- 3) The Administrator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the specific Complainant or Respondent that would change the outcome.

B. Request for Appeal

Any party may submit a written request for appeal (“Request for Appeal”) to the Administrator within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the Request for Appeal meets the grounds in this Policy, then the Appeal Decision-maker will notify all Parties and their Advisors, the Administrator, and, when appropriate, the Investigator and/or the original Decision-maker.

All other Parties and their Advisors, the Administrator, and, when appropriate, the Investigator and/or the Decision-maker will be provided a copy of the Request for

Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Administrator, and the Investigator and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-maker, who will promptly render a decision.

C. Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Administrator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Administrator will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator and/or Decision-maker or the Administrator

(as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter (“Appeal Outcome”) will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the School is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the School is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, mailed to the Parties’ local or permanent address s indicated in official institutional records, or emailed to the Parties’ School-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the three (3) available appeal grounds.

E. Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) business days of implementation.

27. Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Administrator may implement additional long-term remedies or actions with respect to the Parties and/or the School community that are

intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

These remedies/actions may include, but are not limited to:

- Referral to external counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of work arrangements for co-workers
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Administrator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Administrator will address any remedies the School owes the Respondent to ensure no effective denial of educational access.

The School will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the School's ability to provide these services.

28. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker, including the Appeal Decision-maker or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or for any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the School.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their co-workers.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Administrator's satisfaction.

29. Recordkeeping

For a period of at least seven (7) years following the conclusion of the Resolution Process, the School will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation.
- 2) Any disciplinary sanctions imposed on the Respondent.
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the School's education program or activity.
- 4) Any appeal and the result therefrom.
- 5) Any Informal Resolution and the result therefrom.
- 6) All materials used to provide training to the Administrator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the School's Resolution Process, or who has the authority to modify or terminate supportive measures. Empire will make these training materials available for review upon request.
- 7) All materials used to train all co-workers consistent with the requirements in the Title IX Regulations.

The School will also maintain any and all records in accordance with federal and state laws.

30. Accommodations and Support During the Resolution Process

Disability Accommodations

Empire is committed to providing reasonable accommodations and support to qualified future professionals, co-workers, or others with disabilities to ensure equal access to the School's Resolution Process.

Anyone needing such accommodations or support should contact the Administrator, who will work with Executive Directors and/or People Services, as appropriate, to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Other Support

Empire will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process

- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

31. Revision of these Procedures

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Administrator will regularly review and update these procedures. Empire reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent governing laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background federal and state laws that frame such policies and codes, generally.

These procedures are effective September 23, 2024.

APPENDIX A: DEFINITIONS

The following definitions apply to the Equal Opportunity, Harassment, and Nondiscrimination Policy:

- **Advisor.** Any person chosen by a party who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- **Administrator.** The person with primary responsibility for overseeing and enforcing the Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures. As used in these policies and procedures, the “Administrator” also includes their designee(s).
- **Appeal Decision-maker.** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- **Complainant.** A future professional or co-worker who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, or Other Prohibited Conduct under the Policy; or a person other than a future professional or co-worker who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in the School’s education program or activity at the time of the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct.
- **Complaint.** An oral or written request to the School that can objectively be understood as a request for the School to investigate and make a determination about the alleged Policy violation(s).
- **Co-Worker.** A person employed by Empire either full- or part-time when acting within the scope of their employment.
- **Day.** A business day when the School is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person who reviews evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where the School exercises substantial control over the context in which the discrimination, harassment, retaliation, and/or Other Prohibited Conduct occurs and also includes any building owned or controlled by a future professional organization that the School officially recognizes.

- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Finding.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Future Professional.** Any person who has gained admission.
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Administrator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person authorized by Empire to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When Empire receives Notice of conduct that reasonably may constitute harassment, discrimination, retaliation, or Other Prohibited Conduct in its Education Program or Activity.
- **Mandated Reporter.** A School co-worker who is obligated by Policy to share Knowledge, Notice, and/or reports of discrimination, harassment, retaliation, and/or Other Prohibited Conduct with the Administrator.
- **Nondiscrimination Team.** The Administrator, any deputy coordinators, and any member of the [Resolution Process Pool](#).
- **Notice.** When a co-worker, future professional, or third party informs the Administrator of the alleged occurrence of discriminatory, harassing, retaliatory, and/or Other Prohibited Conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristic.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or Empire Policy.

- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, retaliation, or Other Prohibited Conduct occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the School's Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution or Administrative Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy, or Other Prohibited Conduct.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Title IX Coordinator.** At least one official designated by Empire to ensure ultimate oversight of compliance with Title IX and the School's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the Coordinator for specific tasks.

APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and procedures, the Parties have the right to:

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Conduct, when reported in good faith to Empire officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any School public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from the School's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by Empire officials.
- Have Empire Policy and procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without Empire pressure, if Informal Resolution is approved by the Administrator.
- Not be discouraged by School officials from reporting discrimination, harassment, retaliation, and Other Prohibited Conduct to off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including local police, and the option(s) to be assisted by the School in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by Empire officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, financial aid, and/or other services, both on-campus and in the community.
- A School-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of discrimination, harassment, retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
 - Changing a co-worker's work environment (e.g., reporting structure, office/workspace relocation)
 - Academic adjustments

- Transferring locations
- Temporary withdrawal
- Campus safety escorts
- Have the School maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the School's ability to provide the supportive measures.
- Receive sufficiently advanced written notice of any Empire meetings or interviews involving another party, when possible.
- Identify and have the Investigator and/or Decision-maker question relevant available witnesses, including expert witnesses.
- Provide the Investigator/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator/Decision-maker, may be asked of any party or witness.
- Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
- Access the relevant evidence obtained and respond to that evidence.
- A fair opportunity to provide the Investigator with their account of the alleged misconduct and have that account be on the record.
- Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given five (5) business days to review and comment on the evidence.
- The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed.
- Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- Regular status updates on the investigation and/or Resolution Process.
- Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
- Preservation of confidentiality/privacy, to the extent possible and permitted by law.
- Meetings, interviews, and/or hearings that are closed to the public.
- Petition that any School representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any live hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility

was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).

- Be informed in writing of when a School decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the School's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms *privacy*, *confidentiality*, and *privilege* have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of School co-workers who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All co-workers who are involved in the School’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors.
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege.

Empire reserves the right to determine which School officials have a legitimate educational interest in being informed about future professional-related incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the institution’s unauthorized disclosure policy.

Empire may contact future professionals’ parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the future professional prior to doing so.

APPENDIX D: TRAINING FOR MEMBERS OF THE RESOLUTION PROCESS POOL

Resolution Process Pool members receive annual training related to their respective roles. This training may include, but is not limited to:

- The scope of Empire’s Equal Opportunity, Harassment, and Nondiscrimination Policy
- Empire’s Resolution Process
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and confirmation bias
- Treating Parties equitably
- Disparate treatment
- Disparate impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all prohibited conduct
- How to conduct an investigation and grievance process, including administrative resolutions, hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Issues of relevance of questions and evidence
- Issues of relevance and creating an Investigation Report that fairly summarizes relevant and not impermissible evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Additional Training Elements Specific to Title IX

All investigators, Decision-makers, and other persons who are responsible for implementing Empire’s Title IX policies and procedures will receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part,

and annually thereafter. Materials will not rely on sex stereotypes. Training topics include, but are not limited to:

- How to conduct a sex discrimination resolution process consistent with the Resolution Procedures, including issues of disparate treatment, disparate impact, sex-based harassment, quid pro quo, hostile environment harassment, and retaliation
- The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under the Title IX Regulations
- Training for Informal Resolution facilitators on the rules and practices associated with Empire’s Informal Resolution process
- The role of the Title IX Coordinator
- Supportive Measures
- Clery Act/VAWA requirements applicable to Title IX
- Empire’s obligations under Title IX
- How to apply definitions used by the School with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- Reasonable modifications and specific actions to prevent discrimination and ensure equal access for pregnancy or related conditions
- Any other training deemed necessary to comply with Title IX