

Policy Against Sex and Gender Discrimination and Sexual and Other Misconduct

I. Overview and Policy Summary

As an educational institution, Elmira College is committed to promoting a campus environment where sex and gender discrimination, including sexual harassment, sexual assault, and other inappropriate sexual contact, as well as dating violence, domestic violence and stalking, where it impacts or has the potential to impact the educational or employment environment of any member of the College community (collectively referenced for purposes of this policy as “Misconduct”) is not tolerated, and where survivors of Misconduct of all kinds are provided with support and avenues of redress. Many activities prohibited by this policy are unlawful, and all are antithetical to the mission of the College. Elmira College will take reasonable and appropriate remedial action to prevent Misconduct, eliminate a hostile environment, prevent its recurrence, and correct its discriminatory effects on the complainant and others.

Elmira’s process to address cases of alleged Misconduct is designed to:

- Consider the rights of the complainant, the rights of the respondent, the safety of the community, and applicable laws and College policies;
- Conduct a timely, fair, impartial, and equitable investigation and adjudication process with thoroughness and respect for all involved parties;
- Protect the privacy of all parties to the extent practical, while balancing the need to perform an investigation, follow the procedures outlined, comply with applicable law, and maintain campus safety;
- Hold those found to have violated Elmira College policies accountable for their actions and provide appropriate remedies to address the effects of Misconduct on the complainant and others.

As a recipient of federal funds, Elmira College is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. & 1681 et seq., which prohibits discrimination on the basis of sex in education program or activities. Pursuant to the Violence Against Women Act (“VAWA”), the College also prohibits domestic/dating violence and stalking where it impacts or has the potential to impact the educational or employment environment of a College community member. The College will advise complainants of their rights under Title IX and will take steps necessary to prevent harassment and to correct its discriminatory effects, as appropriate.

Misconduct, as defined in this policy, can violate Title IX and/or the VAWA. In compliance with Title IX and VAWA, the College provides a procedure for reporting, investigating, and adjudicating Misconduct.

This policy applies to all students, faculty, and staff of Elmira College. This policy applies to conduct on-campus and in connection with any College-sponsored program or activity, regardless of where it occurs. Additionally, off-campus conduct may violate this policy if the conduct creates a threatening or uncomfortable work or learning environment on Elmira’s campus or within any College program, or if the incident causes concern for the safety or security of the College’s campus. Non-community members (*e.g.*, alumni, family of students, vendors, etc.) visiting campus or participating in any College program or activity are expected to abide by the behavioral expectations in this policy.

Members of the campus community who experience any form of Misconduct discussed in this policy should contact one of the persons/offices identified in this policy for assistance. Some of these resources can provide confidential assistance while others will have a reporting obligation. You should carefully consider which resource you want to choose, and may choose both. These resources can assist you in recovering from the experience and in deciding among options that may be available, such as the criminal justice system and/or the College investigation and disciplinary process as described in this policy.

Any College community member who has been the victim of misconduct has the right to make a report to Campus Security or one of the College's Responsible Administrators listed below, local law enforcement, and/or the New York State Police, or choose not to report. If reported to the College under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from the College. A Students' Bill of Rights for cases involving sexual assault, domestic violence, dating violence or stalking is attached at the end of this policy.

II. Reporting to a Responsible Administrator

Any Elmira student, staff member, or faculty member who wishes to report a formal complaint of Misconduct against a member of the Elmira community may do so by contacting Campus Security, the Director of Residence Life, the Dean of Student Life, the Vice President of Enrollment Management, the Vice President of Athletics, or the Title IX Coordinator. These individuals all constitute Responsible Administrators under this policy and the impact of reporting to any of them is explained below.

Title IX Coordinator - Karen Johnson- McGraw Hall Room 114- 607-735-1827 - kajohnson@elmira.edu
Vice President of Enrollment Management - Chris Coons – Admissions, 855 College Ave - 607-735-1806 - casons@elmira.edu
Vice President of Athletics - Patricia Thompson - Emerson Hall - 607-735-1730 - pthompson@elmira.edu
Dean of Student Life - Brandon Dawson - Campus Center - 607-735-1816 - bdawson@elmira.edu
Director of Campus Security - Gary Miller - Tompkins Hall- 607-735-1777 - [gmiller@elmira.edu](mailto:gmillier@elmira.edu)
Director of Residence Life - Nathan Friesema - Campus Center 607-735-1821 - nfriesema@elmira.edu

These individuals have been trained to receive and respond to allegations of violations of this policy. Complaints can be made by those who have been the victim of a violation of this policy, by a third party on a victim's behalf or anonymously.

While certain other employees may also have a reporting obligation, if a complaint is made to anyone other than the Responsible Administrators listed above, the complainant risks the possibility that it will not come to the attention of the proper College officials and may, therefore, not be acted upon. For purposes of this policy, Faculty are NOT considered Responsible Administrators. In addition, unless a report is made to someone listed as a Confidential Resource, confidentiality cannot be assured.

Upon receiving a report, the Responsible Administrator to whom the report is made will discuss with the complainant available avenues and options. Options may include disciplinary action against the accused and remedial actions to ameliorate or correct the effects of the Misconduct. Other options may include interim changes in academic, residential, or working arrangements to separate the complainant and the accused or other measures to enhance the complainant's safety, such as escorts or increased monitoring of an area. The College will review the facts and circumstances of each case, as well the complainant's wishes, in deciding whether and what steps are reasonable and appropriate.

A Responsible Administrator will share all information reported to him/her with the Title IX Coordinator and may share with other school administrators, as needed. A Responsible Administrator will similarly report Misconduct that he or she observes firsthand or learns about in any other manner.

A Responsible Administrator is not a confidential resource. Although a person may disclose information concerning an incident to a Responsible Administrator and request that no investigation or disciplinary action be taken, the College may decide not to honor that request, depending on the circumstances. If a complainant requests that his/her identity be kept confidential but that an investigation and review for disciplinary action occur, the College's decision will depend on whether the information provided by the complainant can be acted upon without revealing the complainant's identity. If a complainant requests that no action be taken against the perpetrator, the College will consider the seriousness of the offense, whether there was a single perpetrator or multiple perpetrators, whether the circumstances suggest a risk to the campus community, and similar considerations. The College retains the right to act upon any information that comes to its attention. Requests for confidentiality will be decided by the Title IX Coordinator. Even if a complainant requests and/or is granted confidentiality, he or she may still have access to appropriate remedies on an interim or other basis. Even Elmira College offices and employees who cannot guarantee confidentiality will maintain a complainant's privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

If an anonymous report is made to a Responsible Administrator, it will be investigated and appropriate action taken, to the extent practicable. Anonymity may impact the action the College may be able to undertake in response to the complaint. In all cases, the College will take appropriate steps to protect against retaliation.

III. Confidential Resources

Students or other community members who are not sure whether they want to make a formal complaint can still seek help from the confidential resources listed in this section. Contacting any of these does not mean that the student must file an official report with the College or report the Misconduct to law enforcement, and in fact reporting to these confidential resources does not constitute reporting to the College (as a result, action by the College may not be taken) or to law enforcement. These resources are provided to offer non-judgmental support and information to help an individual decide what is best for him or her as he or she recovers.

1. On Campus Confidential Resources

Reports to the Counselors and Registered Nurses in the Clarke Health Center are confidential by law. As such, personally identifiable information should not be subject to disclosure under any circumstances. On-campus confidential services can be reached at:

- 1. Clarke Health Center - 607-735-1750**
- 2. Counseling Center - 607-735-1830**

Reports to the Office of Retention and Advocacy are also confidential, as a result of Elmira policy. Thus while personally identifiable information will not be disclosed by that office to

campus officials without consent, it is possible that that information may have to be disclosed in the course of legal proceedings and/or government investigations.

Jennifer Close, Director of Retention and Advocacy - 607-735-1147 - retention@elmira.edu
Steve Tedone, Learning and Disabilities Specialist - 607-735-1754 - retention@elmira.edu
Leslie Root, Coordinator of Tutoring Services - 607-735-1149 - retention@elmira.edu

The health and counseling services noted above are available to students free of charge. Confidential resources can provide a member of the campus community with information on medical and counseling services that may be available; academic, housing, and other support services that may be available (although some services may not be available if an individual wishes to maintain complete confidentiality); information regarding and assistance with the filing of formal complaints under this policy; and/or information regarding and assistance with contacting law enforcement.

A report to a Confidential Resource is not a report to the College and will not result in an investigation or disciplinary action.

In addition, students or other members of the campus community may contact these resources on an anonymous basis, although anonymity may impact the assistance that can be provided.

2. Off-Campus Confidential Resources

There are also confidential off-campus resources which may be available to you; contacting the resources below does not constitute notifying the College. These resources include:

- **Sexual Assault Resource Center (SARC) - 888-810-0093 – sarcst.org – sarcst@ppsfl.org**
- **Arnot Ogden Medical Center - 607-737-9194 – www.arnothealth.org/arnot-ogden-medical-center**
- **St. Joseph's Hospital - 607-737-7806 – www.arnothealth.org/st-josephs-hospital**
- **Chemung County Health Department - 607-737-2028 – www.chemungcountyhealth.org**
- **Planned Parenthood - 607-734-3313 – www.plannedparenthood.org**
- **Clinical Social Work and Counseling Services - 607-734-1447 – www.cswcsfingerlakes.com**
- **Suicide Hotline - 800-SUICIDE (734-2433)**
- **NYS Office of Victim Services - 1-800-247-8035**
- **Domestic Violence Hotline - 800-621-HOPE (4673)**

IV. **Amnesty for Students**

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

V. Protecting Students and Others Reporting Misconduct/Interim Measures

Interim measures may be made by the College in an effort to immediately respond to a situation. When a student or other member of the campus community reports Misconduct to a Responsible Administrator, that Responsible Administrator will work with the Title IX Coordinator to make sure that the reporting individual is protected (such as against further misconduct). Where non-confidential reporting has occurred, the Title IX Coordinator will also consult with the reporting party regarding interim protective measures such as changes in College housing and/or academic schedules, transportation arrangements, removing the student's information from the College directory, changes in work assignments, issuing a "no contact order," or other measures to enhance the complainant's safety, such as escorts or increased monitoring of an area. The College may also impose a suspension from the campus or part of the campus pending the outcome of an investigation and disciplinary proceeding. The Title IX Coordinator in conjunction with the Vice President of Enrollment Management will enforce protective measures under College policy. Individuals who violate a "no contact order" or other interim measures implemented by the College may be subject to conduct charges.

Any party directly affected by a no contact order or other interim measure may, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order or other interim measure, including potential modification or elimination of those measures. This request may be made by submitting a written request to the Title IX Coordinator, providing the basis for the request and submitting any evidence in support of the request. Upon receipt of such a request, the Title IX Coordinator will inform the other party of the request and allow the other party to respond, including submitting evidence if desired. This review process will occur as soon as possible, but generally no later than five business days of the request and the parties' submission of any evidence.

VI. Definitions

The learning and community living environment of Elmira College requires that individuals treat one another with respect, dignity, and fairness. In an intimate relationship, these values are of paramount importance. Sexually-related misconduct, which is a form of Misconduct defined by this policy, includes a broad range of behavior such as inappropriate physical touching, sexual exploitation, and sexual intercourse without consent and forms of sexual and/or interpersonal violence. Some forms of sexually-related misconduct may be a crime.

The College is committed to maintaining an environment that is free from sexual violence and in which the freedom to make individual choices regarding sexual behavior is respected by all. Sexual activity requires effective affirmative consent as defined below in this policy. Sexually-related misconduct by anyone is unacceptable and will be addressed in a timely fashion and with serious consequences by the College.

This policy and procedure are the College's procedures required by Title IX and VAWA. This policy and procedure are designed to provide students charged with Misconduct with the ability to present their information while ensuring a reporting party's protections under Title IX and VAWA, and providing prompt and equitable resolution.

Sexually-related misconduct, which is a form of Misconduct as defined by this policy, is a category of behavior that includes actual or attempted:

1. Sexual harassment

2. Sexual Assault (including non-consensual sexual contact and non-consensual sexual intercourse)
3. Sexual Exploitation

Sexually-related misconduct can occur between strangers or non-strangers, including people involved in an intimate or sexual relationship. Sexually-related misconduct can be committed by males or by females, and it can occur between people of the same or different sex. Sexual violence is a form of sexually-related misconduct. Any non-consensual sexual activity or contact violates this policy.

Sexual Harassment – See Policy on Harassment and Sexual Harassment for further information.

http://www.elmira.edu/campus/Offices_Resources/Student_Handbook.html

Sexual Assault – Consistent with federal law, Elmira College defines sexual assault as including:

- **Non-Consensual Sexual Intercourse-** Sexual assaults of this type can be sub-defined as including:
 - Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, forcibly or without affirmative consent or where the victim is incapable of consent due to mental or physical incapacity.
 - Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent.
- **Non-Consensual Sexual Contact:** Any intentional sexual touching, however slight, for purposes of sexual gratification, of the private body parts of another without affirmative consent. This may include non-penetrative acts, touching directly or with an object, and/or touching the private body parts of another over clothing.

Sexual Exploitation: When, without affirmative consent, one takes sexual advantage of another. Examples of sexual exploitation include but are not limited to observing or recording others engaged in sexual or private activity (such as undressing or showering) without the consent of all involved; or taking intimate pictures of another but then distributing the pictures to others without the photographed person's consent; acts of incest; engaging in sexual activity with another while knowingly infected with a sexually transmitted disease (STD) without informing the other person of such infection or exposing one's genitals in non-consensual circumstances.

Domestic Violence, Dating Violence, and Stalking

Domestic violence, dating violence, and stalking, where it impacts or has the potential to impact the educational or employment environment of a College community member, is also prohibited by this Policy.

Dating Violence is physical violence (hitting, punching, kicking, etc.) or threats of violence or acts of physical intimidation or coercion committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Domestic Violence is physical violence, threats of violence or acts of physical intimidation or coercion between spouses or former spouses, cohabitating romantic partners or individuals who were formerly cohabitating romantic partners, individuals who share a child in common, or others in a family relationship.

Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress. Stalking behavior includes but is not limited to repeated, intentional following, surveilling or observing another; or using “spyware” or other electronic means to gain impermissible access to a person’s private information.

Affirmative Consent

Elmira expects that any sexual activity or contact will be based on mutual affirmative consent to the specific sexual activity or sexual contact. All references to consent in this policy will mean affirmative consent which is defined as follows:

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent may be initially given but withdrawn at any time by expressing in words or actions that they no longer want the sexual act to continue. When consent is withdrawn or can no longer be given, sexual activity must stop.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. In New York, a person under the age of 17 is incapable of giving consent to any sexual activity. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

Complainant – The term complainant refers to the person making the complaint or report. That person is usually the person who has been the victim of an alleged act of Misconduct or other violation of this policy.

Respondent – The term respondent refers to the person alleged to have committed the alleged Misconduct or other violation of this policy.

VII. Formal Reporting, Investigation, and Disciplinary Procedures

Timing of Reports: There is no time limit to invoking this policy in cases of alleged Misconduct. However, the passage of time may make effective responsive action difficult. Further, if the Respondent is no longer a member of the College community, the College's ability to respond may be limited. Therefore, complainants are encouraged to report alleged Misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively.

When the potential violator is a degree candidate, the complainant is encouraged to consult with the Office of the Registrar concerning the potential violators intended date of graduation and to file a report in a timely manner in cases where authority over the student would otherwise be lost due to pending graduation. In no circumstances will the College permit an impending graduation to compromise its processes for resolution. The conferral of a degree may therefore be withheld, if necessary, until proper resolution of any Misconduct charges, provided that any disciplinary proceedings will be scheduled for the earliest practicable date that can accommodate the students and their witnesses.

VIII. Retaliation

It is a violation of College policy to retaliate against any person making a report of Misconduct or against any person cooperating in the investigation of (including testifying as a witness to) any allegation of Misconduct. The College will not only take steps to prevent retaliation but will take strong responsive action if retaliation occurs and anyone engaging in retaliation is subject to disciplinary action, up to and including expulsion/termination. Retaliation includes intimidation, threats, or harassment against any such reporting party or third party. Retaliation should be reported promptly to Title IX Coordinator and may result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

IX. Standard of Proof

The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate reports of alleged sexual misconduct under a "preponderance of the evidence" standard and that is the standard adopted by this Policy in connection with all allegations of Misconduct. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude that it is more likely than not that a violation has occurred and the individual accused is responsible for the violation.

X. Sanctions/Discipline

A student found to have engaged in Misconduct is subject to a range of sanctions depending on the circumstances of each case. Those sanctions can include written warnings, educational programs, education assignment, mandatory referral to the Clarke Health Center (or other appropriate healthcare provider), a fine, suspension, expulsion, referral to other disciplinary bodies, and other sanctions as may be deemed reasonable by the College under the circumstances.

Any College employee or faculty member found to have engaged in Misconduct is subject to a range of discipline depending on the circumstances of each case. That discipline can include termination, referral to other disciplinary bodies, or other sanctions as may be deemed appropriate by the College.

For those crimes of violence that the College is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and an appeal, if any, shall include the following notation:

- “Expelled after a finding of responsibility for a code of conduct violation,” or
- “Suspended after a finding of responsibility for a code of conduct violation,” or
- “Withdrew with conduct charges pending”

Transcript notations for a student suspended for violating the College’s Sexual Misconduct Policy or who chooses to withdraw pending conduct investigation will remain on a transcript for a minimum of one year. After one year’s time, a student may request to have the transcript notation removed by submitting a written request to the Title IX Coordinator describing the incident and what was learned over your time away from the College. The Title IX Coordinator shall consult with appropriate College officials to determine whether removal of the notation is appropriate under the circumstances. Transcript notations for expulsion shall not be removed.

XI. Related Misconduct

In accordance with this Policy, if it is determined that a charged student or employee has engaged in other misconduct, including in addition to Misconduct as defined in this policy, appropriate discipline for that other misconduct may be imposed under this policy. All persons participating in any investigation under this policy, whether as parties to the proceedings or as witnesses, are expected to provide truthful information.

XII. Law Enforcement and Effect of Criminal Proceedings

Because Misconduct, and especially sexually-related misconduct, may constitute both a violation of College policy and criminal activity, the College encourages persons to consider reporting alleged Misconduct promptly to local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. (If you have been a victim of sexual assault, it is important to preserve evidence. For example, in cases of rape or other forms of sexual assault, it is important not to shower, change clothes or even brush your hair, as physical evidence may be lost.) Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigations or reports are not determinative of whether Misconduct for purposes of this Policy has occurred. In other words, conduct may constitute Misconduct under this Policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute. Questions about whether incidents violate criminal laws and how the criminal process works should be directed to law enforcement officials or the local district attorney’s office.

The filing of a report of Misconduct under this policy, even in connection with sexually-related misconduct, is independent of any criminal investigation or proceeding. The criminal

process and the College's disciplinary processes are not mutually exclusive, meaning that an individual can either bring a complaint through the College or law enforcement, or both. Reporting to local law enforcement does not constitute filing a complaint under this policy, nor does filing a complaint under this policy constitute reporting to local law enforcement. Campus Security can assist individuals in making a report of a crime to local law enforcement. Any internal investigation and/or hearing process conducted by Elmira College will be conducted concurrently with any criminal justice investigation and proceeding. However, in some cases the College may temporarily delay its investigation to enable law enforcement to gather evidence and to engage in a preliminary investigation. Such delays will not last more than 10 days except when law enforcement authorities specifically request and justify a longer delay.

The Elmira Police Department, which can be reached at 607-735-8600, can assist in filing a criminal complaint and in securing appropriate examination, including by a Sexual Assault Nurse Examiner. The New York State Police Sexual Assault Hotline, which can be reached at 844-845-7269, may also be of assistance in reporting an incident to law enforcement. Orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence by a College community member or other person. In appropriate circumstances, an order of protection may be available that restricts the offender's right to enter the College's property, and Elmira College will abide by a lawfully issued order of protection. Campus Security, or other College officials, will, upon request, provide reasonable assistance to any member of the campus community in obtaining an order of protection or, if outside of New York State, an equivalent protective or restraining order, including providing that person with:

- a copy of an order of protection or equivalent when received by the College and providing that person with an opportunity to meet or speak with a College representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons;
- an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension; and
- assistance in contacting local law enforcement to affect an arrest for violating such an order of protection.

XIII. Procedures for Investigating and Resolving Alleged Violations of this Misconduct Policy

1. The College's investigation and resolution of a complaint (excluding any appeal) will normally be completed within 60 calendar days. However, the nature of a complaint and/or extenuating circumstances (such as the time of the academic year, the timing of College breaks, the effect of concurrent criminal proceedings, etc.) may require an extension of that timeframe. In the event that the investigation and/or resolution exceed the timeframes in this policy, the Title IX Coordinator will notify both parties of any scheduling delays and the expected adjustment in the time frame.

2. The complainant and respondent will be permitted to have an advisor of their choice attend any investigatory interview/ meeting with him/her (at the party's own expense if the advisor is a paid advisor). Unless the matter involves a sexual assault, domestic or dating violence, or stalking, the advisor must be a non-attorney member of the campus community. An advisor's role is to consult with and support the party and may not disrupt or distract from the interview/meeting. The advisor is not permitted to speak or otherwise make any direct statements to the investigators or during any meetings. Each party is required to speak on their own behalf if he or she wishes to be heard and not through the advisor. Any advisor who fails to comply will be required to leave the meeting, and the meeting will proceed in the advisor's absence.

3. Mediation

In some cases, a mediated resolution may be appropriate. This may be the case in instances of more minor acts of insensitivity or misunderstandings. Serious sanctions, such as suspension, expulsion or termination, are not possible as a result of the mediation process, but lesser sanctions may be agreed to. Mediation is not available in cases of sexual assault or other violence or where a student is complaining of conduct by an employee in a position of authority over that student.

A person who desires mediation should contact the Title IX Coordinator. Mediation must be agreed upon by both parties, and the Title IX Coordinator must agree that mediation is appropriate. The mediation must be conducted by a third-party; mediation between just the complainant and respondent is not acceptable. A campus mediator will begin mediation efforts promptly and will report to the Title IX Coordinator that the mediation occurred. At any time during the mediation process the complainant or the respondent has the right to terminate the process and proceed to an investigation.

The Title IX Coordinator must agree that the parties' mediated resolution is appropriate under the circumstances. If the parties reach agreement and this agreement is deemed appropriate, the mediation is considered successful. Both parties will sign a statement agreeing that the mediation was successful, and the matter will be considered resolved. If the mediation is unsuccessful, the complainant can proceed with a formal complaint. A copy of the signed statement will constitute the record of the mediation. If a party with obligations pursuant to a mediated resolution fails in his/her obligations, the other party may ask the College to enforce the terms of the resolution or may proceed with a formal complaint process.

4. Upon receipt of a complaint and a desire by the complainant to move forward with an investigation, or a determination by the College to move forward in the absence of a participating complainant, the investigation process will begin. Investigators appointed by the Title IX Coordinator will contact the complainant(s) and the respondent(s) to meet and review the investigation procedures, and outline the basis for the complaint. The investigation will normally be conducted by a team consisting of two members of Title IX Investigation Team. In extenuating circumstances the College may utilize an external team solely or in conjunction with an internal investigation team. The investigation process generally includes interviewing the persons involved, including witnesses, and gathering and considering relevant evidence. The complainant and respondent will be given an equal opportunity to present separately information in the context of the

investigation. Normally, the investigation will be completed within 14 business days of receipt of the complaint. In unusual cases, it may be apparent that an investigation should not proceed. This may be the case if the complaint is not of a nature covered by this policy; where another policy or procedure is more appropriate; or where there is indisputable proof that the allegations are not true. If an investigation is not to proceed, the complainant and respondent will be so informed. That decision is not appealable. In most instances, both parties are advised to avoid unnecessary contact with the other and, in appropriate cases, an administrative “no contact” directive may be issued to the respondent.

The complainant and respondent will have the right to have their own prior sexual history with persons other than the other party and their own mental health diagnosis and/or treatment excluded from the investigatory and disciplinary proceedings held under this policy.

Both the complainant and the respondent shall receive notice referencing the specific provision of this policy alleged to have been violated and the possible sanctions. This notice shall also include the date, time, location and factual allegations concerning the alleged violation.

The investigation team uses the preponderance of the evidence standard (i.e., it is more likely than not that a fact is true and/or that a violation of this policy occurred) in making its findings and recommendation.

The parties, upon submission of a written request to the Title IX Coordinator, may be permitted to review on campus information in the case file, subject to redaction permitted and/or required by law and consistent with College policy and applicable federal and state law, including the Family Educational Records Privacy Act. At the conclusion of the investigation, the investigation team will issue a written report of the evidence and their findings and recommended action to the person identified below.

Student Respondent: The Dean of Student Life will review the finding and recommendations of the investigatory team and make a final determination, including issuing appropriate sanctions. The Dean of Student Life may discuss the case and information provided with the investigatory team, with anyone interviewed as part of the investigation, or with any other person deemed relevant. Alternatively, the Dean of Student Life may request further investigation by the investigatory team.

Faculty Respondent: The Dean of Academic Affairs will review the findings and recommendations of the investigatory team and make a final determination, including issuing appropriate sanctions or referral to other procedures as may be required. The Dean of Academic Affairs may discuss the case and the information provided with the investigatory team, with anyone interviewed as part of the investigation, or with any other person deemed relevant. Alternatively, the Dean of Academic Affairs may request further investigation by the investigatory team.

Other Employee Respondent: The Director of Human Resources will review the findings and recommendations of the investigatory team and make a final

determination, including issuing appropriate sanctions. The Director of Human Resources may discuss the case and the information provided with the investigatory team, with anyone interviewed as part of the investigation, or with any other person deemed relevant. Alternatively, the Director of Human Resources may request further investigation by the investigatory team.

Vendor, visitor, or other non-student, non-employee Respondent: The Director of Campus Security or other College administrator (as designated by the Title IX Coordinator) will review the findings and recommendations of the investigatory team and make a final determination, including issuing appropriate sanctions. The Director may discuss the case and the information provided with the investigatory team, with anyone interviewed as part of the investigation, or with any other person deemed relevant. Alternatively, the Director may request further investigation by the investigatory team.

In all cases, the official reviewing the findings and recommendations may accept them, reject them, send the matter back for further consideration, or issue his/her own determination. Any determination is to be based on a preponderance of the evidence presented. Normally, the review of the investigatory report will be completed within 14 business days of receipt, but this timeframe may be extended if necessary under the circumstances.

In any case where a student is a Respondent or Complainant, both the Complainant and Respondent will be permitted to submit a written impact statement to the Title IX Coordinator after a finding of responsibility for violation of this policy and prior to the determination of an appropriate sanction(s). The Title IX Coordinator will provide copies of any such written impact statements to the official responsible for making a determination regarding appropriate sanctions.

If a determination is made that a violation of this policy did not occur, no sanction(s) will be issued under this policy. However, the College retains the right to address inappropriate behavior through other applicable College personnel and student life policies and procedures.

5. Each party will be notified in writing, at or about the same time, of the results of any decision by the above identified persons. In cases where a student is a party, the final outcome letter shall include factual findings supporting the determination, the decision and sanction, if any, as well as the rationale for the decision and sanction. Any record of or information obtained during the proceedings shall be protected from public release until a final determination is made. A final determination is made under this policy when no appeal of the decision is sought, or in the event of an appeal, when the decision on appeal is communicated to the complainant and respondent. Any public release of the full and fair record of the proceedings shall be made in accordance with College policy and federal and state laws.

Either party may appeal in writing within 5 business days of the decision (except that a vendor, visitor, or other non-student, non-employee does not have a right of appeal.). Where the accused is a student, the appeal will be considered by a panel consisting of the Vice President of Enrollment Management and two other College officials appointed by the Title IX Coordinator. Where the accused is a faculty member, the appeal should be sent to the Provost; and where the accused is a non-faculty employee, the appeal should be sent to the Vice President of Finance and Administration.

Appeals will be permitted only for claims of procedural error (including issues relating to the adequacy of any investigation), new evidence which was not reasonably available at the time of the investigation and decision, or because any sanction imposed (or the failure to impose a sanction) is claimed to be inappropriate. All grounds for appeal must be set forth in the written appeal statement. On appeal, the designated person(s) reviewing the appeal may accept, reject, or modify any finding and/or sanction, or may return the matter for further consideration. The designated person(s) reviewing the appeal may also, as part of this appeal process, speak directly with the investigatory team, the initial decision-maker, or otherwise directly (or through a designee) seek additional information from the parties or witnesses, if considered necessary. A written decision regarding an appeal (which will be based on a preponderance of the evidence standard) will generally be issued within 10 business days.

6. Regardless of whether discipline is imposed, the College may offer other, non-disciplinary remedies to the complainant.
7. At all steps of the process, College officials may consult with the College's legal counsel.
8. Rights of the Complainant and the Respondent.

a. Rights of the Complainant

When a member of the campus community has become the victim of an alleged act of Misconduct which violates this policy, the victim should expect that the conduct system/investigators shall respond in a caring, sensitive manner which allows the victim to utilize the policy's process unimpeded, while still maintaining the rights of the respondent person. The following rights shall be provided to victims of alleged offenses:

- The right to be fully informed of the applicable conduct codes and policies.
- The right to have complaints of Misconduct responded to quickly and with sensitivity.
- The right to preservation of confidentiality, to the extent possible and appropriate under the circumstances.
- The right to be notified of available counseling, mental health or student services for victims, both on campus and in the community.
- The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus public safety and local police.

- The right NOT to be discouraged by College officials from reporting a crime, especially crimes of sexual assault/violence, to both on and off-campus authorities.
- The right to have an advisor who, in cases which do not involve sexual assault, domestic/dating violence, or stalking, is a non-attorney member of the College community; this person has an advisory role only and may not directly participate in the investigatory/resolution process.
- The right to notification of options for and available assistance in changing academic, working, and living situations after an alleged incident, if so requested by the victim and if such changes are reasonably available (no charges or investigation, campus or criminal, need occur before this option is available).
- The right to request a campus physical restriction or “keep-away” order against the respondent.
- The right to NOT be subject to any type of retaliation. Violation of such instructions would constitute grounds for the College to take immediate and further action.
- The right to submit an appeal and receive a written response in the proscribed time frame.
- The right to participate in the investigatory/resolution process by means other than being in the same room with the respondent.
- The right to have the evidence presented be relevant, based in fact, and without prejudice, and the outcome of the complaint based solely on evidence presented during the investigatory/review process.
- The right to assert an objection to any member of the investigatory team or to any decision-maker under this policy, for reasons of demonstrated bias.
- The right to present relevant witnesses and evidence.
- The right to make a victim-impact statement and to have that statement considered in determining any sanction.
- The right to be informed in writing of the outcome and any sanctions resulting from the complaint, usually at or about the same time as the respondent.

b. Rights of the Respondent

When a member of the campus community has become the respondent of an alleged act of Misconduct which violates this policy, the respondent should expect that the conduct system shall respond in a caring, sensitive manner which allows the respondent to utilize the policy’s process unimpeded, while still maintaining the rights of the complainant. The following rights shall be provided to respondent of the alleged offenses:

- The right to be advised of the nature of the allegations against him/her.
- The right to be fully informed of the applicable conduct codes and policies.
- The right to have complaints of Misconduct responded to quickly and with sensitivity.
- The right to be presumed not in violation of College policies unless and until determined to be in violation under a preponderance of the evidence standard.
- The right to preservation of confidentiality, to the extent possible and appropriate under the circumstances.

- The right to waive the investigatory or review process by admitting responsibility. In these cases, the Dean of Student Life, Associate Dean of Faculty, or Director of Human Resources, as appropriate, may determine an appropriate sanction.
- The right to be notified of available counseling, mental health, or student services available on campus.
- The right to be treated with dignity and respect by all persons involved in the investigatory and appeal process.
- The right to have an advisor who, in cases which do not involve sexual assault, domestic/dating violence, or stalking, is a non-attorney member of the College community; in all cases this person has an advisory role only and may not directly participate in the investigatory/resolution process.
- The right to notification of options for and available assistance in changing academic working and living situations after an alleged incident, if so requested and if such changes are reasonably available.
- The right to NOT be subject to any type of retaliation. Violation of such instructions would constitute grounds for the College to take immediate and further action.
- The right to submit an appeal and receive a written response in the proscribed time frame.
- The right to participate in the process by means other than being in the same room with the complainant.
- The right to have the evidence be relevant, based in fact, and without prejudice, and the outcome of the complaint based solely on evidence presented during the investigatory/review process.
- The right to assert an objection to any member of the investigatory team, or to any decision-maker under this policy, for reasons of demonstrated bias.
- The right to present relevant witnesses and evidence.
- The right to make a statement and to have that statement considered in determining the outcome of the case.
- The right to be informed in writing of the outcome and any sanctions resulting from the complaint, usually at or about the same time as the complainant.

9. Withdrawal prior to resolution of an open conduct case

A student who withdraws from the institution prior to an outcome of a pending conduct case should understand that the investigation will continue without their participation. A student can still be found responsible in their absence.

10. Resolution of Procedural Issues

In the event procedural issues arise under this policy which are not explicitly addressed, the Title IX Coordinator shall have the authority to resolve those issues.

XIV. Public Awareness/Advocacy Events

If a victim discloses actions constituting a violation of this policy through a public awareness event such as “Take Back the Night,” a candlelight vigil, a protest, a student organization or other event or forum, or other public event, Elmira is not obligated to begin an investigation. Elmira may, however, use the information to inform the need for additional education and prevention efforts.

XV. Multiple Complainants/Respondents/Claims

In cases where there are multiple complainants and/or multiple respondents, the College reserves the right to handle the cases individually or jointly. Further, in cases where there are allegations of a violation of this Policy and collateral allegations of other policy violations (e.g., an allegation of a sexual assault and minor property damage), the College reserves the right to have allegation(s) of violations of this Policy and the collateral allegation(s) investigated and adjudicated pursuant to this Procedure. In cases where the individual has more than one status with the College (such as a student who is also employed with the College, or any employee who takes courses at the College), the College will determine in its discretion which status is primary; in such a situation, sanctions imposed may include both sanctions related to each status.

XVI. Recordkeeping

Records generated in connection with reports, investigations and resolutions are maintained in confidential files maintained by an appropriate office, which may be the Title IX Coordinator, the Dean of Student Life, Human Resources, and/or the Registrar (for records concerning disciplinary outcomes), and only those with a right and need to know are permitted access.

XVII. Training

Responsible Administrators, persons assigned as investigators, and individuals determining violations of this policy will receive annual training on relevant topics, including discrimination, harassment, sexual misconduct, stalking, domestic violence and dating violence, and how to conduct investigations and disciplinary proceedings that protect the safety and respectful treatment of all parties and promote accountability to the College community.

XVIII. Academic Freedom

Elmira College is an academic institution at which academic freedom is necessary and valued. The College will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

XIX. Clery Act Compliance

The College is required to include for statistical reporting purposes the occurrence of certain incidents in its Annual Security Report (ASR). Names of individuals involved in incidents are not reported or disclosed in ASRs. In the case of an emergency or ongoing dangerous situation, the College will issue a timely warning to the campus. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/complainant will not be disclosed.

XX. Coordination with Other Policies

A particular situation may potentially invoke one or more College policies or processes. The College reserves the right to determine the most applicable policy or process and to utilize that policy or process.

This policy does not apply to decisions relating to requests for reasonable accommodation due to a disability. Academic disability accommodations are handled by the Office of Disability Services and pursuant to that office's policies. Work-related disability accommodations are handled by the Office of Human Resources and pursuant to that office's policies.

XXI. Designation of Authority

Any College administrator or official who this policy empowers to act may delegate his/her authority to any other appropriate College official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a College official named in this policy from fulfilling his/her designated role.

XXII. Policy Compliance

Any person with a concern about the College's handling of a particular matter should contact the College's Title IX Coordinator, Karen Johnson - 607-735-1827.

The U.S. Department of Education, Office for Civil Rights is a federal agency responsible for ensuring compliance with Title IX. OCR may be contacted at 400 Maryland Avenue, SW, Washington, DC 20202-1100, (800) 421-3481.

XXIII. Amendments

This Policy may be amended, in writing, by the President and notification of Student Government.

Students' Bill of Rights In Cases Involving Sexual Assault, Domestic/Dating Violence, and Stalking

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and or criminal justice process free from pressure by Elmira College;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;

- Be protected from retaliation by the College, any student, the accused and/or the respondent, and/or their friends, family, and acquaintances within the jurisdiction of Elmira;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and

Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Elmira College.