

The Evergreen State College
Title IX Policy and Procedures

A. Purpose

The Evergreen State College (Evergreen) is committed to maintaining and strengthening an educational and employment environment founded on civility and mutual respect without regard to a person’s sex, sexual orientation, gender identity or gender expression. While Evergreen’s ultimate goal is to prevent sexual harassment through education and the development of a sense of community, Evergreen acknowledges that these prohibited behaviors can occur.

Evergreen recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Educational Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington State’s Law Against Discrimination, and their implementing regulations. To this end, Evergreen has enacted this Title IX Policy and Procedure for receiving and investigating Sexual Harassment allegations arising during education programs and activities. Any individual found responsible for violating Evergreen’s Title IX Policy is subject to disciplinary action up to and including dismissal from Evergreen’s education programs and activities and/or termination of employment.

Application of this Title IX Policy and Procedure is restricted to allegations of “Sexual Harassment,” as that term is defined in 34 C.F.R. §106.30. Nothing in this Policy and Procedure limits or otherwise restricts Evergreen’s ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other College policies prohibiting gender discrimination through processes set forth in Evergreen’s Code of Student Rights and Responsibilities (WAC 174-123), Evergreen’s Non-Discrimination Policy and Procedure, employment contracts, employee handbooks, and collective bargaining agreements.

This Policy and Procedure applies to all Evergreen employees (faculty and staff), students, volunteers, and individuals who are contractually obligated to comply with Evergreen’s policies. This policy and procedure applies to Evergreen’s education program and activities (as defined in Section B of this Policy and Procedure), within the United States. For purposes of clarity and consistency, the definitions of students, faculty, staff, and community members contained in the Code of Student Rights and Responsibilities, WAC 174-123-140, apply to this Policy and are incorporated by reference.

B. Definitions

For purposes of this Title IX Policy and Procedure, the terms below are defined as follows:

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1. **“Consent”** means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

2. **“Complainant”** means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
3. **“Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
4. **“Formal Complaint”** means a writing submitted by the Complainant or signed by the Title IX coordinator alleging Sexual Harassment against a Respondent and requesting that Evergreen conduct an investigation.
5. **“Education Program or Activity”** includes locations, events, or circumstances over which Evergreen exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by Evergreen.

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6. **“Grievance Procedure”** is the process Evergreen uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.
7. **“Determination of Responsibility”** means a decision of the Decision Maker(s) regarding whether the Respondent is responsible for the alleged violation(s) of this Title IX policy. If the Respondent is found responsible for the alleged violations, the Determination of Responsibility will include discipline and sanctions, as appropriate.
8. **“Supportive Measures”** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent regardless of whether the Complainant or the Title IX Coordinator has filed a Formal Complaint. Supportive Measures restore or preserve a party’s access to Evergreen’s education programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX Coordinator and the party. Supportive Measures include measures designed to protect the safety of all parties and/or Evergreen’s educational environment and/or to deter Sexual Harassment or retaliation. Supportive measures may include, but are not limited to, (i) counseling and other medical assistance, (ii) extensions of deadlines or other course-related adjustments, (iii) modifications of work or class schedules, (iv) leaves of absence, (v) increased security or monitoring of certain areas of campus, (vi) modifications to on-campus housing and/or the housing contracts, and (vii) imposition of orders prohibiting the parties from contacting one another in housing or work situations. Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided or a specific request was denied, the Title IX Coordinator must document in writing why this was clearly reasonable under the circumstances.
9. **“Interim Suspension”** means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a Respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200(2).
10. **“Sexual Harassment,”** for purposes of this Title IX Policy and Procedures, Sexual Harassment occurs when a Respondent engages in the following discriminatory conduct on the basis of sex:
 - a. **Quid pro quo harassment.** An Evergreen employee conditioning the provision of an aid, benefit, or service of Evergreen on an individual’s participation in unwelcome sexual conduct.
 - b. **Hostile environment.** Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively

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denies a person equal access to Evergreen's education programs or activities or Evergreen employment.

c. **Sexual assault.** Sexual assault includes the following conduct:

- (i) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without Consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.
- (ii) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without Consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
- (iii) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren, and adopted children under the age of eighteen (18).
- (iv) **Statutory rape.** Consensual intercourse between a person who is eighteen (18) years of age or older, and a person who is under the age of sixteen (16).
- (v) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Washington, RCW 26.50.010.
- (vi) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:

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- (a) The length of the relationship;
- (b) The type of relationship; and
- (c) The frequency of interaction between the persons involved in the relationship.

(i) **Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others; or (ii) suffer substantial emotional distress.

11. **“Title IX Administrators”** are the Title IX Coordinator, Title IX investigators, Affirmative Action and Equal Opportunity Officer, the Senior Student Conduct Official, Title IX Decision Makers, Hearing Panel members, and Evergreen provided Procedural Advisors assigned to the parties by Evergreen during Title IX disciplinary proceedings.

12. **“Title IX Coordinator”** is responsible for processing Title IX complaints and conducting and/or administering formal investigations and informal resolution processes under this Policy and Procedure. Among other things, the Title IX Coordinator is responsible for:

- a. Accepting and processing all Title IX reports, referrals, and Formal Complaints.
- b. Executing and submitting a Formal Complaint when appropriate and necessary.
- c. Handling requests for confidentiality.
- d. Determining during the Grievance Procedure (i) whether a Formal Complaint should be dismissed either in whole or in part, and if so, (ii) providing notice to both parties about why dismissal was necessary or desirable, and (iii) referring the complaint to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.
- e. Maintaining accurate records of all complaints, reports, and referrals, and retaining investigation files, complaints, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.
- f. Conducting investigations or assigning and administering investigations.
- g. Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to education programs and activities and are protected from further discrimination or retaliation.
- h. Upon completion of an investigation, issuing or administering the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this Title IX Policy and Procedure.

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- i. Assigning a Decision Maker or Decision Makers for the grievance procedure, if applicable.
- j. Recommending non-disciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other Evergreen administrators.
- k. Serving as Steward to the Title IX Policy and Procedure, disseminating it to the larger campus community, and updating it as needed and applicable.

C. Prevention and Training

Evergreen will regularly provide education and training aimed to: (1) promote student and employee awareness about and prevent sexual harassment (2) to equip those responsible to respond, report, and address sexual harassment. A notice will be disseminated annually to the campus community with information on the Title IX Policy and Procedure, Non-Discrimination Policy, Code of Student Rights and Responsibilities, and information on how to file a complaint.

D. Responsible Employees and Officials with Authority

Under this policy, Evergreen designates all staff (with the exception of temporary hourly employees and those confidential resources identified below), all faculty, and student resident assistants as Responsible Employees.

All Responsible Employees have a mandatory duty to immediately report, as indicated in Section E, all details known to them regarding behaviors that might constitute Sexual Harassment or Retaliation. Information to report includes, but is not limited to, the identities of the parties, and knowledge of the events. Failure to immediately report shall be deemed a violation of this policy. Responsible Employees may report knowledge to any Official with Authority.

Officials with Authority are individuals designated by Evergreen to receive complaints of alleged Title IX violations. Under this policy, Evergreen designates an Official with Authority as three individuals on campus: the Title IX Coordinator, the Affirmative Action and Equal Opportunity Officer, and the Senior Student Conduct Official. Any person wishing to make a complaint of sexual harassment should report to any of the three individuals, or report via the options in Section E.

E. Reporting and Filing a Complaint

Anyone experiencing, witnessing, or having knowledge of a potential Title IX violation can report in the following ways:

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- a. In person, via email, or telephone to an Official with Authority.
 - a. Title IX Coordinator: Connie Gardner
Library Building 3216
titleixcoordinator@evergreen.edu
360-867-5224
 - b. Affirmative Action and Equal Opportunity Officer
Lorie Mastin
Library Building 3102
mastinl@evergreen.edu
360-867-5371
 - c. Senior Student Conduct Official/Director of Student Rights and Responsibilities
Lori Johnson
Library Building 3009
johnslo@evergreen.edu
360-867-6298
- b. Police Services: If there is an immediate threat of safety, please contact Police Services or 9-1-1. Police Services are located in Seminar 1, 2150. Their non-emergency line: 360-867-6832.
- c. Online Incident Report Form: The online reporting form allows for anonymous reporting. Please note that Responsible Employees must provide their own contact information when reporting knowledge. The Title IX Report Form can be found on the Title IX website at evergreen.edu/titleix, or through the direct link: https://evergreen-advocate.symplicity.com/titleix_report/index.php/pid034332?

Confidential Resources: Evergreen has designated several individuals on-campus as confidential, meaning they are not Responsible Employees and are not obligated to report any knowledge of an alleged Title IX violation to an Official with Authority. For individuals not wishing to receive Supportive Measures or make a report, Confidential Resources are available for support for any party. Confidential Resources include:

1. Office of Sexual Violence Prevention and Response
Seminar 1, 4119
osvpr@evergreen.edu
360-867-5221
2. Student Wellness Services (Health and Counseling)
Seminar 1, 2100
studentwellnessservices@evergreen.edu
360-867-6200
3. Safe Place Olympia (Off-campus)
314 Legion Way, Olympia WA 98501

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24 Hour helpline: 360-754-6300

Office: 360-786-8754

www.safeplaceolympia.org

4. Rebuilding Hope Sexual Assault Center for Pierce County (off-campus)

24 Hour helpline: 253-474-7273

Office: 253-597-6424

5. Washington State Employee Assistance Program (off-campus)

1222 State Ave NE, Ste. 201, Olympia, WA 98504

360-407-9490

<https://des.wa.gov/services/hr-finance/washington-state-employee-assistance-program-eap>

F. Principles for Title IX Grievance Procedure

1. The Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.
2. Before imposing discipline, Evergreen is responsible for gathering and presenting evidence to a neutral and unbiased Decision Maker(s) establishing responsibility for a Title IX violation by a preponderance of the evidence.
3. Evergreen shall treat both the Complainant and Respondent equitably by providing Complainant with remedies against Respondent who has been found responsible for Sexual Harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing Respondent with Title IX procedural safeguards contained in this Title IX Policy and Procedure and in the applicable Title IX disciplinary procedures.
4. The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.
5. Formal and informal resolutions will be pursued within reasonably prompt timeframes with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include, but are not limited to: federal/school holidays and breaks; cooperation with a separate legal process; reasonable requests from parties; delay in obtaining evidence as applicable; multiple Complainant(s) and/or Respondent(s) and coordination of the process. Good cause supporting a request for an extension includes, but is not limited to: a party, a party's advisor, or a witness being unavailable, concurrent law enforcement activity, and the need for language assistance or accommodation of disabilities. Parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

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6. A Respondent found responsible for engaging in Sexual Harassment may receive discipline up to and including dismissal from Evergreen. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 174- 123-240.

An employee found responsible for Sexual Harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in Evergreen’s Non-Discrimination Policy and Procedure and/or the applicable Collective Bargaining Agreement for represented employees.

7. In proceedings against a student Respondent, the parties may appeal the Hearing Panel’s ruling to the President or their designee pursuant to WAC 174-123-4520 and pursuant to Appendix A of this Policy and Procedure. In proceedings against an employee Respondent, the parties may appeal the Decision Maker’s decision to the President or their designee pursuant to Appendix B of this Policy and Procedure.
8. Title IX Administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to information subject to the following:
 - a. Spousal/domestic partner privilege;
 - b. Attorney-Client and attorney work product privileges;
 - c. Privileges applicable to members of the clergy and priests;
 - d. Privileges applicable to medical providers, mental health therapists, and counselors;
 - e. Privileges applicable to sexual assault and domestic violence advocates; and
 - f. Other legal privileges identified in RCW 5.60.060.

G. Title IX Administrators – Free from bias – Training requirements

1. Title IX Administrators shall perform their duties free from bias or conflicts.
2. Title IX Administrators shall undergo training on the following topics:
 - a. The definition of Sexual Harassment under these procedures,
 - b. The scope of Evergreen’s education programs and activities,
 - c. How to conduct an investigation,
 - d. How to serve impartially without prejudgment of facts, conflicts of interest, or bias,

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- e. Use of technology used during an investigation or hearing,
 - f. The relevance of evidence and questions, and
 - g. Effective report writing.
3. All Title IX Administrator training materials shall be available on Evergreen's Title IX webpage at www.evergreen.edu/titleix.

H. Filing a Complaint

Any employee, student, applicant, or visitor who believes that they have been the subject of Sexual Harassment should report the incident or incidents to Evergreen's Title IX Coordinator identified below. If the complaint is against that Title IX Coordinator, the Complainant should report the matter to the President's office for referral to an alternate designee.

Name: Connie Gardner

Title: Title IX Coordinator

Office: Library Building 3216

Email: titleixcoordinator@evergreen.edu

Telephone: 360.867.5224

I. Confidentiality

1. Evergreen will seek to protect the privacy of the Complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Evergreen policies and procedures. Although Evergreen will attempt to honor Complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX Coordinator.
2. The Title IX Coordinator will inform and attempt to obtain consent from the Complainant before commencing an investigation of alleged Sexual Harassment. If a Complainant asks that their name not be revealed to the Respondent or that Evergreen not investigate the allegation, the Title IX Coordinator will inform the Complainant that maintaining confidentiality may limit Evergreen's ability to fully respond to the allegations and that retaliation by the Respondent and/or others is prohibited. If the Complainant still insists that their name not be disclosed or that Evergreen not investigate, the Title IX Coordinator will determine whether Evergreen can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the Evergreen community, including the Complainant. Factors to be weighed during this determination may include, but are not limited to:
 - a. The seriousness of the alleged Sexual Harassment;

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- b. The age of the Complainant;
 - c. Whether the Sexual Harassment was perpetrated with a weapon or other dangerous means;
 - d. Whether the Respondent has a history of committing acts of Sexual Harassment or violence or has been the subject of other Sexual Harassment or violence complaints or findings;
 - e. Whether the Respondent threatened to commit additional acts of Sexual Harassment or violence against the Complainant or others; and
 - f. Whether relevant evidence about the alleged incident can be obtained through other means (*e.g.*, security cameras, other witnesses, physical evidence).
3. If Evergreen is unable to honor a Complainant's request for confidentiality, the Title IX Coordinator will notify the Complainant of the decision and ensure that the Complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this Procedure.
 4. If Evergreen decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX Coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence, and implement such measures if reasonably feasible.

J. Complaint Resolution

The Title IX resolution processes are initiated when the Title IX Coordinator's Office receives a written complaint alleging that a Respondent(s) sexually harassed a Complainant and requesting that Evergreen initiate an investigation (a Formal Complaint). A Formal Complaint must be either submitted by the Complainant or signed by the Title IX Coordinator on behalf of the Complainant. Formal Complaints submitted to the Title IX Coordinator may be resolved through either informal or formal resolution processes. Evergreen will not proceed with either resolution process without a Formal Complaint.

For purposes of this Title IX Policy and Procedure, the Complainant must be participating in or attempting to participate in an Evergreen education program or activity at the time the Formal Complaint is filed.

1. Informal Resolution:

Under appropriate circumstances and if the Complainant(s) and Responding Party(ies) agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a

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mandatory reporting situation, an immediate threat to the health, safety or welfare of a member of the Evergreen community or the larger Evergreen community, or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the Complainant(s) and the Responding Party(ies) may explore remedies or resolution through:

- Guided conversations or communications conducted by the Title IX Coordinator / HRO representative or a mutually agreed upon third party;
- Structured resolution process conducted by a trained mediator; or
- Voluntarily agreed on alterations to either or both of the parties' work or class schedules, on-campus activities, or student housing arrangements.

If the parties agree to an informal resolution process, Evergreen will commence the process within 14 business days after the parties agree to this option and conclude within 30 business days of beginning that process, subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the Complainant or the Responding Party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the Complainant and the Responding Party voluntarily resolve a report, Evergreen's Title IX Coordinator will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

2. Formal Resolution

Formal resolution means that the Complainant's allegations of Sexual Harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

K. Emergency Removal

If a student Respondent poses an immediate threat to the health and safety of Evergreen Community or an immediate threat of significant disruption to Evergreen's operations, Evergreen's Senior Student Conduct Official or their designee may summarily suspend a Respondent pursuant to the Interim Suspension process described in WAC 174-123-200(2), pending final resolution of the allegations. Nothing in this Procedure prohibits Evergreen from placing non-student employees on administrative leave pending final resolution of the allegations.

L. Investigation Notices

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Upon receiving a Formal Complaint and determining that allegations comport with Title IX claims, Evergreen will provide the parties with the following notices containing the following information:

1. Notice of formal and informal resolution processes. A description of Evergreen's grievance resolution procedures, including the informal resolution procedure.
2. The Title IX Coordinator will serve the Respondent and the Complainant with a Notice of Investigation in advance of the initial interview with the Respondent to allow the Respondent sufficient time to prepare a response to the allegations and to inform the Complainant that Evergreen has commenced an investigation. The investigation notice will:
 - a. Include the identities of the parties (if known), a description of the conduct alleged constituting Title IX Sexual Harassment, and the time and location of the incident (if known).
 - b. Confirm that the Respondent is presumed not responsible for the alleged conduct and that Evergreen will not make a final determination of responsibility until after the grievance and disciplinary procedures have been completed.
 - c. Inform the Complainant(s) and the Respondent(s) that they are entitled to have an advisor of their own choosing, who may be an attorney.
 - d. Inform parties they have a right to review and inspect evidence.
 - e. Inform parties about code of student rights and responsibilities provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.
3. Amended investigation notice. If during the course of the investigation, Evergreen decides to investigate Title IX Sexual Harassment allegations about the Complainant or Respondent that are not included in the Notice of Investigation, Evergreen will issue an amended Notice of Investigation to both parties that includes this additional information.
4. Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the investigator shall provide the party with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time for the party to prepare for the interview or meeting. Sufficient time, as defined for this purpose, will be 5 business days, unless the investigator determines that good cause exists for a reasonable delay.

M. Investigation Process - Dismissal

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1. Mandatory dismissal. The Title IX Coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX Grievance Procedure, the investigator determines that the alleged misconduct in the Formal Complaint:
 - a. Does not meet the definition of Sexual Harassment under Title IX, even if proved; or
 - b. Did not occur in the context of an Evergreen Education Program or Activity; or
 - c. Occurred outside the United States.
2. Discretionary dismissal. The Title IX Coordinator may dismiss a Title IX claim in whole or in part, if:
 - a. The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint in whole or in part;
 - b. The Respondent is no longer enrolled with or employed by Evergreen; or
 - c. Specific circumstances prevent Evergreen from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.
3. The Title IX Coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.
4. Mandatory or discretionary dismissal of a Title IX claim does not preclude Evergreen from investigating and pursuing discipline based on allegations that a Respondent violated other federal or state laws and regulations, the Evergreen Student Code of Student Rights and Responsibilities, The Evergreen Non-Discrimination Policy and Procedure, and/or other codes and contractual provisions governing student and employee behavior.

N. Investigation Process – Consolidation of Formal Complaints

When multiple Sexual Harassment allegations by or against different parties arise out of the same facts or circumstances, Evergreen may consolidate the investigation of Formal Complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Records and Privacy Act (FERPA). This includes instances in which a Complainant and/or a Respondent have lodged Formal Complaints against one another or when allegations of Sexual Harassment are lodged by a single Complainant against multiple Respondents, or when multiple Complainants lodge Sexual Harassment complaints against single or multiple Respondents.

O. Investigation Process – Required Procedures

During the investigation, the Investigator:

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1. Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.
2. Interviews that are conducted by the investigator will be audio recorded, if the party consents, for the purposes of the investigator's accuracy in the written investigative report.
3. Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a No Contact Order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witnesses or when contact with a party and/or witness is prohibited by court order. An Evergreen-imposed No Contact Order shall be no broader than is necessary to protect the threatened party or witness and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness and/or party.
4. Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX Coordinator and the Investigator at least five (5) days before the initial interview or meeting they plan to attend, so that Evergreen can secure its own legal representation, if necessary.
 - a. Evergreen will provide an opt-out Advisor for each Complainant and Respondent to assist with the grievance and disciplinary process at Evergreen. Parties may continue to use the assigned Advisor, or the Party may select their own Advisor. Advisors will cross-examine witnesses on the Party's behalf in a live hearing, if applicable. Any party that selects an attorney as an Advisor will have the attorney serve as their Advisor.
 - b. Student Complainants and Respondents may elect to have a person for emotional support with them during investigation and disciplinary procedures. Anyone selected for emotional support is at the choice of the student, and parties are not required to have this. Evergreen will not provide anyone for this role. If a student chooses to have someone for emotional support with them during these procedures, the role will be to provide emotional support and care during the process, while still adhering to the guidelines mentioned for Advisor.
5. The investigator will provide all parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations

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raised in the Formal Complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence upon which the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten (10) days in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten (10) days, the party will be deemed to have waived their right to submit comments and the investigator will finalize the report without this information.

6. The investigator will forward the final report to the Title IX Coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

P. Retaliation

Retaliation is strictly prohibited towards any individual who reports, files a complaint, or attempts to stop or interrupt sexual harassment, cooperates in the Title IX process, or is a Title IX Administrator in the grievance procedure. Retaliation should be reported promptly to the Title IX Coordinator. For reports of retaliation from the Title IX Coordinator, a party should report to the President of Evergreen. Any student or employee of Evergreen found to have engaged in retaliation shall be subject to disciplinary action. Intimidation, threats, coercion, or discrimination against any parties during a Title IX proceeding is prohibited and may constitute retaliation in violation of this policy.

Q. False Claims

A person who knowingly makes false allegations of sexual harassment under this Title IX policy and procedure, or who knowingly provides false information in a Title IX procedure shall be subject to disciplinary action.

R. Disciplinary Process

For Title IX Disciplinary Processes with a student Respondent, Appendix A of this Policy and Procedure outlines the Disciplinary procedures. For Title IX Disciplinary Procedures with an employee Respondent, Appendix B of this Policy outlines the Disciplinary procedures.

In cases where a Dismissal from Title IX is warranted but other disciplinary actions will be pursued, cases in which the Respondent is a student will be processed through the Student Code of Rights and Responsibilities. In cases in which the Respondent is an employee, the case will be processed through the Non-Discrimination Policy and Procedure.

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APPENDIX A

TITLE IX STUDENT CONDUCT PROCEDURES

WAC 174-123-360 Order of Precedence

This supplemental procedure applies to allegations of Sexual Harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. *See* 34 C.F.R. Sec 106. To the extent these supplemental hearing procedures conflict

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with Evergreen's standard disciplinary procedures, WAC 174-123-110 through -350, these supplemental procedures shall take precedence.

WAC 174-123-370 Title IX definitions

For purposes of the Supplemental Title IX Student Conduct Procedure, the following terms used have the definitions contained in the Title IX Policy and Procedure and the terms below have are defined as follows:

(1) Consent means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

Consent cannot be obtained by force or coercion. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats or intimidation (words or actions that cause an individual to submit to or comply with sexual contact or intercourse due to fear for their safety and/or implied threats) that overcomes free will or resistance. Coercion is unreasonable pressure for sexual contact or sexual intercourse. When someone makes clear to another person by word or action that they do not want to engage in sexual contact or intercourse, that they want to stop, or that they do not want to go past a certain point of sexual contact or intercourse, continued pressure beyond that point is coercive.

(2) Complainant means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

(3) Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

(4) Formal Complaint means a writing submitted by the Complainant or signed by the Title IX coordinator alleging Sexual Harassment against a Respondent and requesting that Evergreen conduct an investigation.

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(5) Education Program or Activity includes locations, events, or circumstances over which Evergreen exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by Evergreen.

(6) Determination of Responsibility means a decision of the Hearing Panel regarding whether the Respondent is responsible for the alleged violation(s) of this Title IX policy. If the Respondent is found responsible for the alleged violations, the Determination of Responsibility will include discipline and sanctions, as appropriate.

(7) Interim Suspension means a temporary exclusion from enrollment, including exclusion from college premises or denial of access to all activities or privileges for which a Respondent might otherwise be eligible, pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 174-123-200(2).

WAC 174-123-380 Prohibited Conduct Under Title IX

Pursuant to RCW 28B.50.140(13) and Title IX of the Education Act Amendments of 1972, 20 U.S.C. Sec. 1681, Evergreen may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of “sexual harassment.”

For purposes of this supplemental procedure, “sexual harassment¹” encompasses the following conduct:

- (1) Quid Pro Quo Harassment. An Evergreen employee conditioning the provision of an aid, benefit, or service of Evergreen on an individual’s participation in unwelcome sexual conduct.
- (2) Hostile Environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Evergreen’s educational programs or activities, or employment.
- (3) Sexual Assault. Sexual assault includes the following conduct:
 - (a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes

¹ Washington’s Law Against Discrimination (WLAD), RCW 49.60, and Gender Equality in Higher Education Act, RCW 28B.110, provide broader protection from sexual misconduct than the narrow definitions of “sexual harassment” prohibited under Title IX. Accordingly, institutions will want to retain broader definitions of sexual misconduct that are in their regular student conduct code, as this conduct is still subject to regulation under state law and institutional policies prohibiting gender discrimination.

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anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

- (b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.
 - (c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen (18).
 - (d) Statutory Rape. Consensual sexual intercourse between someone who is eighteen (18) years of age or older and someone who is under the age of sixteen (16).
- (4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of State of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Washington, RCW 26.50.010.
- (5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:
- (a) The length of the relationship;
 - (b) The type of relationship; and
 - (c) The frequency of interaction between the persons involved in the relationship.
- (6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

WAC 174-123-390 Title IX Jurisdiction

- (1) This supplemental procedure applies only if the alleged misconduct:
 - (a) Occurred in the United States;

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- (b) Occurred during an Evergreen education program or activity; and
 - (c) Meets the definition of Sexual Harassment as that term is defined in this supplemental procedure.
- (2) For purposes of this procedure, an “education program or activity” is defined as locations, events, or circumstances over which Evergreen exercised substantial control over both the Respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Evergreen.
- (3) Proceedings under this procedure must be dismissed if the Title IX Coordinator determines that one or all of the requirements of Section 1(a)-(c) have not been met. Dismissal under this procedure does not prohibit Evergreen from pursuing other disciplinary action based on allegations that the Respondent violated other provisions of Evergreen’s Code of Student Rights and Responsibilities, WAC 174-123-170.
- (4) If the Title IX Coordinator and/or the Student Conduct Official determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Student Conduct Official will issue a notice of dismissal in whole or part to the parties explaining why some or all of the Title IX claims have been dismissed.

WAC 174-123-400 Initiation of Discipline

- (1) Upon receiving the Title IX investigation report from the Title IX Coordinator, the Student Conduct Official will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the Respondent for engaging in prohibited conduct under Title IX.
- (2) If the Student Conduct Official determines that there are sufficient grounds to proceed under these procedures, the Student Conduct Official will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the Chair of the Hearing Panel. The Hearing Panel Chair will serve the notice on the Respondent and the Complainant, and their respective advisors. The notice must:
- (a) Set forth the basis for Title IX jurisdiction;
 - (b) Identify the alleged Title IX violation(s);
 - (c) Set forth the facts underlying the allegation(s);
 - (d) Identify the range of possible sanctions that may be imposed if the Respondent is found responsible for the alleged violation(s);
 - (e) Explain that the parties are entitled to be accompanied by their chosen Advisors during the hearing and that:

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- (i) The Advisors will be responsible for questioning all witnesses and the other party(ies) on the party's behalf;
 - (ii) An Advisor may be an attorney; and
 - (iii) Evergreen will appoint the party an Advisor of Evergreen's choosing at no cost to the party, if the party fails to do so; and
 - (iv) A party may select to have an individual as emotional support with them during Title IX processes. This individual is separate from an Advisor, and will serve the purpose of providing care and emotional support for the party, but will not participate during the processes.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

WAC 174-123-410 Pre-Hearing Procedure

- (1) Upon receiving the disciplinary notice, the Hearing Panel Chair will send a hearing notice to all parties, in compliance with WAC 174-123-290(3). In no event will the hearing date be set less than ten (10) days after the Title IX Coordinator provided the Final Investigation Report to the parties.
- (2) A party may choose an Advisor to be at the Hearing with them. The Advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information for all advisors selected by the parties to appear at the Hearing must be submitted to the Hearing Panel Chair at least five (5) days before the Hearing.
- (3) A party may choose to have an attorney serve as their Advisor at the party's own expense. This right will be waived unless, at least five (5) days before the hearing, the attorney files a notice of appearance with the Hearing Panel Chair, with copies to all parties and the Student Conduct Official.
- (4) Parties may also select an individual to serve as emotional support during the hearing. This individual will not have a formal role in the hearing, and will serve the purpose of providing care and emotional support for the party.
- (5) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Evergreen intends to offer the evidence at the hearing.

WAC 174-123-420 Rights of Parties

- (1) The Evergreen State College's Code of Student Rights and Responsibilities, WAC 174-123, and this supplemental procedure shall apply equally to all parties.

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- (2) Evergreen has the burden of offering and presenting sufficient testimony and evidence to establish that the Respondent is responsible for a Title IX violation by a preponderance of the evidence.
- (3) The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
- (4) During the hearing, each party shall be represented by advisors. The parties are entitled to advisors of their own choosing and the Advisor may be an attorney. If a party does not choose a Process Advisor, then the Title IX Coordinator will appoint a Process Advisor of Evergreen's choosing on the party's behalf at no expense to the party.

WAC 174-123-430 Evidence

The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

- (1) Relevance: The Hearing Chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.
- (2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.
- (3) Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:
 - (a) Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
 - (b) Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- (4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the Hearing Panel must not rely on any statement by that party or witness in reaching a determination of responsibility.
- (5) No negative inference: The Hearing Panel may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.
- (6) Privileged evidence: The Hearing Panel shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
 - (a) Spousal/domestic partner privilege;
 - (b) Attorney-Client and attorney work product privileges;
 - (c) Privileges applicable to members of the clergy and priests;

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- (d) Privileges applicable to medical providers, mental health therapists, and counsellors;
- (e) Privileges applicable to sexual assault and domestic violence advocates; and
- (f) Other legal privileges identified in RCW 5.60.060.

(7) Recording of Live Hearing: In accordance with WAC 174-123-290(17), there will be a single verbatim sound recording of the hearing, and the record will be on file with the senior college official and is the property of the college in accordance with RCW 34.05.449.

WAC 174-123-440 Initial Order

In addition to complying with WAC 174-123-310, the Hearing Panel will be responsible for conferring and drafting an Initial Order that:

- (1) Identifies the allegations of Sexual Harassment;
- (2) Describes the grievance and disciplinary procedures, starting with filing of the Formal Complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
- (3) Makes findings of fact supporting the determination of responsibility for each charge;
- (4) Reaches conclusions as to whether the facts establish whether the Respondent is responsible for engaging in Sexual Harassment in violation of Title IX;
- (5) Contains a statement of, and rationale for, the Hearing Panel's determination of responsibility for each allegation;
- (6) Describes any disciplinary sanction or conditions imposed against the Respondent, if any;
- (7) Describes to what extent, if any, the Complainant is entitled to remedies designed to restore or preserve the Complainant's equal access to Evergreen's education programs or activities; and
- (8) Describes the process for appealing the Initial Order.
- (9) The Hearing Panel Chair will serve the Initial Order on the Parties simultaneously.

WAC 174-123-450 Appeals

- (1) The Parties shall have the right to appeal from the Initial Order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a Formal Complaint. The Parties may by filing a written notice of appeal with the Hearing Panel Chair within ten (10) calendar days of service of the Student Conduct Official's, or

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Hearing Panel's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the decision shall be deemed final.

- a. Either party may appeal based on the following criteria: procedural irregularity that affected the outcome of the determination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX Administrator; or severity of sanctioning is not consistent with the violation.
- (2) The President or their designee will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).
 - (3) The President's Office shall serve the Final Decision on the parties simultaneously.

APPENDIX B

TITLE IX EMPLOYEE DISCIPLINARY HEARING PROCEDURE

A. Order of Precedence

This employee discipline procedure applies to allegations of Sexual Harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. § 106. Disciplinary procedures against an employee Respondent alleged to have engaged in Sexual Harassment in violation of Title IX shall be governed by Evergreen's administrative hearing practices and procedures, Chapter WAC 174-108-910, and this hearing procedure. To the extent the hearing procedure conflicts with WAC 174-108-910, and/or provisions set forth in employment contracts, collective bargaining agreements, employee handbooks, and other Evergreen employment policies and procedures, this hearing procedure will take precedence.

B. Title IX Jurisdiction

This procedure applies only if the alleged misconduct:

1. Occurred in the United States;
 2. Occurred during an Evergreen education program or activity; and
 3. Meets the definition of Sexual Harassment as that term is defined in this Policy and Procedure.
- A. For purposes of this procedure, an "education program or activity" is defined as locations, events, or circumstances over which Evergreen exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Evergreen.
- B. Proceedings under this supplemental procedure must be dismissed if the Title IX Coordinator determines that one or all of the requirements of Section B(1)-(3) have not been met. Dismissal under this procedure does not prohibit Evergreen from pursuing disciplinary action against a Respondent based on allegations that the Respondent engaged in other misconduct prohibited by federal or state law, employment contracts or handbooks, the Evergreen Non-Discrimination Policy and Procedure, or other Evergreen policies.
- C. If the Decision Maker(s) for Grievance Procedures determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX Coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

C. Initiation of Discipline

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- A. Upon receiving the Title IX investigation report from the investigator, the Decision Maker will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the Respondent for engaging in prohibited conduct under Title IX.
- B. If the Decision Maker determine that there are sufficient grounds to proceed under these Disciplinary procedures, the Title IX Coordinator will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the assigned Decision Maker. The Decision Maker will serve the notice on the Respondent and the Complainant, and their respective advisors. The notice must:
 - 1. Set forth the basis for Title IX jurisdiction;
 - 2. Identify the alleged Title IX violation(s);
 - 3. Set forth the facts underlying the allegation(s);
 - 4. Identify the range of possible sanctions that may be imposed if the Respondent is found responsible for the alleged violation(s);
 - 5. Explain that the Parties are entitled to be accompanied by Advisors of their own choosing during the hearing and that:
 - a. Advisors will be responsible for questioning all witnesses and the other party on the Party's behalf;
 - b. An Advisor may be an attorney and/or, if the Party is a represented employee, a union representative;
 - c. A represented employee who chooses an Advisor who is not a union representative must submit a signed waiver of union representation that includes consent from the union; and
 - d. Evergreen will appoint the Party an Advisor of Evergreen's choosing at no cost to the Party, if the Party fails to choose an Advisor;
 - 6. Explain that if a Party fails to appear at the hearing, a decision of responsibility may be made in the Party's absence.
- C. Service of the disciplinary notice or any other document required to be served under this supplemental procedure may be done personally or by first class, registered, or certified mail, or by electronic mail to the Party's college email address.

D. Pre-Hearing Procedure

- A. Upon receiving the disciplinary notice, the Decision Maker will send a hearing notice to all parties in compliance with WAC 10-08-040. The hearing date may not be scheduled less

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than ten (10) days after the Title IX Coordinator provided the Final Investigation Report to the Parties.

- B. A Party is entitled to be accompanied by an Advisor of their choice during the disciplinary process at the party's own expense. The Advisor will be conducting the cross-examination of parties and witnesses. The full names and contact information of Advisors selected by the parties to appear at the Hearing must be submitted to the Decision Maker at least five (5) days before the Hearing. The Advisor may be an attorney and/or, if the Party is a represented employee, a union representative.
 - 1. If the Advisor is an attorney, the Advisor must file a notice of appearance with the Title IX Coordinator with copies to all parties and the Decision Maker at least five (5) days before the hearing. If a notice of appearance is not filed within this timeframe, the Party will be deemed to have waived their right to have an attorney as an Advisor.
 - 2. If a Party is a represented employee who chooses not to use a union-provided Advisor, the Party must provide the Title IX Coordinator and the Decision Maker with a signed waiver of union representation, including written consent from the union.
- C. In preparation for the hearing, the Parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Evergreen intends to offer the evidence at the hearing.

E. Rights of Parties

- A. The provisions of this procedure shall apply equally to both parties.
- B. The Evergreen State College bears the burden of offering and presenting sufficient testimony and evidence to establish that the Respondent is responsible for a Title IX violation by a preponderance of the evidence.
- C. The Respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.
- D. During the hearing, each Party shall be represented by an Advisor. The Parties are entitled to an Advisor of their own choosing and the Advisor may be an attorney or, if the Respondent holds a represented position, a union representative. If a party does not choose an Advisor, then the Title IX Coordinator will appoint an Advisor of Evergreen's choosing on the Party's behalf at no expense to the Party.

F. Evidence

The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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- A. Relevance: The Decision Maker shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.
- B. Relevance means that information elicited by the question makes a fact in dispute more or less likely to be true.
- C. Questions or evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:
 - 1. Is asked or offered to prove someone other than the Respondent committed the alleged misconduct; or
 - 2. Concerns specific incidents of prior sexual behavior between the Complainant and the Respondent, which are asked or offered on the issue of consent.
- D. Cross-examination required: If a Party or witness does not submit to cross-examination during the live hearing, the Decision Maker must not rely on any statement by that Party or witness in reaching a determination of responsibility.
- E. No negative inference: The Decision Maker may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.
- F. Privileged evidence: The Decision Maker shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:
 - 1. Spousal/domestic partner privilege;
 - 2. Attorney-Client and attorney work product privileges;
 - 3. Privileges applicable to members of the clergy and priests;
 - 4. Privileges applicable to medical providers, mental health therapists, and counselors;
 - 5. Privileges applicable to sexual assault and domestic violence advocates; and
 - 6. Other legal privileges identified in RCW 5.60.060.

G. Initial Order

- A. The Decision Maker will be responsible for drafting an Initial Order that:
 - 1. Identifies the allegations of Sexual Harassment;
 - 2. Describes the grievance and disciplinary procedures, starting with filing of the Formal Complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

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3. Makes findings of fact supporting the determination of responsibility;
4. Reaches conclusions as to whether the facts establish whether the Respondent is responsible for engaging in Sexual Harassment in violation of Title IX;
5. Contains a statement of, and rationale for, the Decision Maker's determination of responsibility for each allegation;
6. Describes any disciplinary sanction or conditions imposed against the Respondent, if any;
7. Describes to what extent, if any, the Complainant is entitled to remedies designed to restore or preserve the Complainant's equal access to Evergreen's education programs or activities and/or work environment; and
8. Describes the process for appealing the Initial Order to the Evergreen President or their designee.

B. The Decision Maker will serve the Initial Order on the Parties simultaneously.

H. Appeals

A. The Parties have the right to appeal from the determination of responsibility and/or from a Title IX dismissal, in whole or part, of a Formal Complaint, as set forth in the Initial Order.

- a. Either party may appeal based on the following criteria: procedural irregularity that affected the outcome of the determination; new evidence discovered that was not reasonably available at the time of the determination; a conflict of interest from a Title IX Administrator; or severity of sanctioning is not consistent with the violation.

B. The President or the President's delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanctions and conditions imposed in the Initial Order are affirmed, vacated, or amended, and, if amended, set forth the new disciplinary sanctions and conditions.

C. The President's Office shall serve the Final Decision on the parties simultaneously.

D. All decisions reached through this process are final. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any Collective Bargaining Agreement.

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