



## East-West Center

Title IX Policy as of January 1, 2021

### I. PURPOSE

The Center for Cultural and Technical Interchange Between East and West, Inc., a Hawaii nonprofit corporation, dba the East-West Center (the “EWC” or “Center”) is committed to fostering an environment that is free from unlawful discrimination on the basis of sex, including sexual harassment and sexual assault.

Under Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) and its implementing regulations (34 C.F.R. § 106) sexual harassment is a form of prohibited sex discrimination (“Title IX”). Title IX provides:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.*

This Title IX policy (“Policy”) is intended to ensure a safe and non-discriminatory educational and work environment and describes the process by which EWC satisfies requirements under Title IX and its implementing regulations. Undefined terms herein shall have the same meaning as prescribed under Title IX or the relevant regulatory authority, as applicable.

This Policy supersedes any previous policy addressing sexual harassment, misconduct, or discrimination. EWC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

### II. APPLICABILITY

All students, participants, faculty, staff, postgraduate scholars, affiliates and others participating in EWC programs and activities in the United States are subject to this Title IX Policy. This Policy applies to conduct occurring on or after August 14, 2020.

Given the federal mandates of Title IX and its implementing regulations, the rights and obligations provided in this Title IX Policy necessarily supersede any conflicting rights or obligations provided in other EWC policies. Conduct that falls outside the jurisdictional or definitional scope of this Title IX Policy, however, may still violate other EWC policies and codes of conduct, and may be addressed through other EWC processes, as applicable.

### III. DEFINITIONS

**A. “Actual Knowledge”** means notice of sexual harassment or allegations of sexual harassment to EWC’s Title IX Coordinator or any Official with Authority to institute corrective measures on behalf of the EWC. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when

the only official of the EWC with actual knowledge is the Respondent. The mere ability or obligation to report sexual harassment or to inform a participant about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in this Policy.

**B. “Complainant”** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment as defined under Title IX.

**C. “Confidential Resource(s)”** means an individual(s) appointed by the EWC and who is not a Responsible Employee. Confidential Resources can provide assistance related to issues of sexual harassment in a confidential manner.

**D. “Formal Complaint”** means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a respondent and requesting that the EWC investigate the allegation(s). At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the Program or Activity of the EWC. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the EWC) that contains the complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**E. “Grievance Process”** means a method of formal resolution outlined herein to address conduct that falls within the policies included below, and which complies with the requirements of Title IX.

**F. “Mandatory Reporter”** means an employee of the EWC who is obligated by state law or EWC policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.

**G. “Notice”** means that an employee, participant, or third-party informs the Title IX Coordinator or other Official with Authority to institute corrective measures, of the alleged occurrence of prohibited conduct under this policy.

**H. “Official with Authority”** means an employee of the EWC explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the EWC.

**I. “Participation”** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Program or Activity- operated by the EWC.

**J. “Parties”** mean the Complainant(s) and Respondent(s), collectively.

**K. “Program or Activity”** means locations, events, or circumstances where the EWC exercises substantial control over both the Respondent and the context in which the alleged

sexual harassment occurs, and also includes any building owned or controlled by a participant organization that is officially recognized by the EWC.

**L. “Respondent”** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as defined under Title IX.

**M. “Participant”** means a person who has gained admission and Participates in an Program or Activity operated by the EWC, including students, interns, and short-term program participants or attendees.

**N. “Supportive Measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the EWC’s programs and/or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the EWC’s educational environment, or deter sexual harassment.

**O. “Title IX Coordinator”** is at least one official designated by the EWC to ensure compliance with Title IX and the EWC’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

#### **IV. REPORTING TITLE IX PROHIBITED CONDUCT**

##### **A. What to Report**

The types of sexual harassment covered by this Title IX Policy includes conduct on the basis of sex that satisfies one or more of the definitions below. Note that attempts to commit any of the Title IX Prohibited Conduct, and sexual misconduct or other discrimination on the basis of sex that does not fall within the specific definitions below may still violate EWC policy and should be reported to the Title IX Coordinator.

##### **1. Title IX Sexual Harassment**

The Title IX regulations define “sexual harassment” to include types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. EWC prohibits the following conduct (together, the “**Title IX Prohibited Conduct**”), on the basis of sex, that satisfies one or more of the following:

**a.** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to EWC programs or activities.

**b.** An employee of the EWC conditioning the provision of an aid, benefit, or service of the EWC on an individual’s participation in unwelcome sexual conduct.

**c. Sexual Assault:** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

**d. Dating Violence:** means violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**e. Domestic Violence:** means violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Hawaii, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Hawaii.

**f. Stalking:** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

(1) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(2) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

(3) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**g. Retaliation.** The EWC prohibits and will not tolerate retaliation. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by law or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and its accompanying procedure. A retaliation complaint, allegation, or report will be reviewed as a separate offense; that is, a person can be found responsible for retaliation even if not found to be responsible for the underlying reported sexual harassment. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator for appropriate action. Charging an individual with a conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and its accompanying procedure does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **B. Where and How to Report**

### **1. Title IX Coordinator**

The Title IX Coordinator is the individual designated by EWC to coordinate its efforts to comply with Title IX requirements. All reports of Title IX Prohibited Conduct or other violations should be reported to the **EWC Title IX Coordinator**, at the contact information below.

Any person may report Title IX Prohibited Conduct (whether or not the individual reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or the U.S. Department of Education's Assistant Secretary of the Office of Civil Rights, or both.

#### **Title IX Coordinator (Interim)**

Ann Hartman  
1601 East-West Road  
Honolulu, HI 96848  
Phone: (808) 944-7619  
Email: [titleix@EastWestCenter.org](mailto:titleix@EastWestCenter.org)

#### **The OCR office for Hawaii is located at:**

Seattle Office  
Office for Civil Rights  
U.S. Department of Education  
915 Second Avenue Room 3310  
Seattle, WA 98174-1099  
(206) 607-1600  
TDD: 800-877-8339  
Email: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

### **2. Deputy Title IX Coordinators**

The Title IX Coordinator may delegate responsibility for handling a report to a Deputy Title IX Coordinator, as appropriate, or to another office or individual in the event the matter reported falls outside of the scope of this Title IX Procedure.

### **3. Other EWC Officials**

Notice of allegations of Title IX Prohibited Conduct to the Title IX Coordinator, a Deputy Title IX Coordinator, or an official with authority to institute corrective measures on the EWC's behalf (an "**Official with Authority**"), triggers the EWC's response obligations under Title IX. At EWC, such officials include the President and Vice President.

#### **4. Reports to Law Enforcement**

If the individual is in immediate danger, or believes there could be an ongoing threat to the individual or the community, please call 911 or the local police agency.

For conduct that could also constitute a crime under Hawaii law, a Complainant is encouraged—but not required—to contact the police by dialing 911 or the local police agency in the jurisdiction in which the alleged incident occurred. Contacting law enforcement to make a report allows for forensic evidence to be collected.

The EWC reporting process is separate and distinct from the criminal reporting process. Reports made to the EWC regarding prohibited behavior will not necessarily trigger a report to law enforcement. Should an individual wish to report allegations to law enforcement or initiate civil proceedings, they may do so.

#### **C. When to Report**

There is no specific time frame for individuals who have experienced conduct that may constitute Title IX Prohibited Conduct to make an Initial Report pursuant to this Title IX Policy. Individuals are, however, encouraged to make a report soon after the incident in question in order to maximize the EWC's ability to investigate and reach a finding.

### **V. PROCEDURE**

#### **A. Initial Response**

##### **1. Receipt of an Initial Report of Title IX Prohibited Conduct**

Upon receipt of notice of an Initial Report of Title IX Prohibited Conduct (which may come from any individual), the Title IX Coordinator or Deputy Title IX Coordinator (or their designee) will promptly contact the Complainant:

- a.** to discuss the availability of Supportive Measures,
- b.** inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and
- c.** explain to the complainant the process for filing a Formal Complaint.

##### **2. Supportive Measures**

If on the face of the Initial Report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the Complainant that the matter may be referred to another EWC process. Even if the matter is referred, the Complainant will still receive an offer of Supportive Measures.

Supportive Measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the

Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

Supportive Measures will be different for every matter and will be based on individualized review. Such measures are designed to restore or preserve equal access to EWC's Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or EWC's educational environment, or deter sexual harassment. Supportive Measures<sup>1</sup> may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The EWC will maintain as Private any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the EWC to provide the Supportive Measures.

The Title IX Coordinator or Deputy Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator or Deputy Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures.

### **3. Privacy and Confidentiality**

Notice to the Title IX Coordinator, Deputy Title IX Coordinator, or other Official with Authority, as described above, of conduct that could constitute Title IX Prohibited Conduct triggers the EWC's response obligations under this Title IX Policy. If the Title IX Coordinator, Deputy Title IX Coordinator, or other Official with Authority becomes aware that Title IX Prohibited Conduct is alleged to have occurred, the EWC has an obligation to review the available information and determine whether to proceed to an Investigation.

In this context, Confidentiality and Privacy have distinct meanings. References made to Confidentiality refer to the ability of Confidential Resources to not report crimes and violations to law enforcement or EWC officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to Privacy mean EWC's officers and employees who cannot guarantee Confidentiality but will maintain Privacy to the greatest extent possible, and information disclosed will be relayed only as reasonably necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. EWC will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for Confidentiality cannot be honored.

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<sup>1</sup> EWC retains the authority to remove a Respondent from any Program or Activity on an emergency basis, where EWC undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any participant or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. EWC further retains the authority from placing a non-participant employee Respondent on administrative leave during the pendency of a Grievance Process. As provided by 34 C.F.R. § 106.44, this provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

The Title IX Coordinator, Deputy Title IX Coordinator, or other Official with Authority, will provide Privacy, but not Confidentiality, upon receiving a report of Title IX Prohibited Conduct.

## **B. Filing a Formal Complaint**

After the Initial Report, the Title IX Procedure will not move forward until a Formal Complaint is filed. In this context, a Formal Complaint means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. A Formal Complaint can be filed in one of two ways:

**1. Complainant submits Formal Complaint.** A Complainant may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Respondent and requesting that the EWC investigate the allegation of Title IX Prohibited Conduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the EWC's programs or activities. Attempting to participate includes circumstances where the Complainant has taken a leave of absence or has otherwise discontinued participation in EWC programs or activities, but intends to return to their EWC affiliation.

**2. Title IX Coordinator submits Formal Complaint.** If a Complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary and may complete and sign a Formal Complaint.

## **C. Receipt of a Formal Complaint**

The receipt of a Formal Complaint will initiate a Grievance Process that affords due process to all parties, treats parties fairly and impartially and reaches reliable responsibility determinations.

### **1. Determining Jurisdiction**

To fall within the jurisdiction of Title IX and to initiate the Grievance Process under this Title IX Policy, the alleged Title IX Prohibited Conduct must have taken place in an EWC Program or Activity, and against a person in the United States at the time the conduct occurred. An EWC Program or Activity includes locations, events, or circumstances over which the EWC exercises substantial control over both the Respondent and the context in which the Title IX Prohibited Conduct occurs, and includes any building (including off-campus buildings) owned or controlled by a participant organization that is officially recognized by the EWC. An off-campus event (in the United States) such as an academic or professional conference or study tours may constitute a EWC Program or Activity if, for example, it is a EWC-sponsored event or the EWC otherwise maintains substantial control over the event and Title IX Prohibited Conduct occurs within the context of such an event. Programs and activities conducted outside of the United States are not covered by the Title IX regulations.

#### **a. Dismissal**

The Formal Complaint shall be dismissed if it is determined by the Title IX Coordinator that the conduct alleged in the Formal Complaint would not constitute "sexual harassment" as defined

under Title IX even if proved, did not occur in an EWC Program or Activity, or did not occur against a person in the United States. Any conduct dismissed under this Title IX Policy that could constitute a violation of other EWC policy may be referred to another applicable EWC process.

EWC may elect to dismiss the Formal Complaint if: (i) the Respondent is no longer enrolled or employed by EWC; (ii) specific circumstances prevent EWC from gathering sufficient evidence to reach a determination; or (iii) the Complainant informs the Title IX Coordinator in writing that the Complainant desires to withdraw the Formal Complaint or allegations.

Upon dismissal, EWC shall promptly send a Notice of Dismissal and reason(s) for the dismissal simultaneously to the parties. The parties may appeal a Notice of Dismissal as described below.

## **2. Grievance Process**

If all of the elements are met, EWC will investigate the allegations according to the following Grievance Process:

**a. Written Notification.** Both parties will receive written notification of the allegations, which will contain, among other things, sufficient detail known at the time and with sufficient time to prepare a response before any initial interview; that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Hearing; and that both parties will have an opportunity to select an advisor of choice, who may be, but is not required to be, an attorney. Additional notifications will be sent to both parties if more allegations arise during the investigation.

**b. Informal Resolution Process.** Parties may choose an informal resolution process, such as mediation or restorative justice, except when the Respondent is an employee of EWC and the Complainant is a participant. Both parties must give voluntary, written consent and may withdraw consent any time before the final outcome of the informal resolution process. The Title IX Coordinator or Deputy Title IX Coordinator will designate an individual to conduct the informal resolution process. Any person who facilitates an Informal Resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

### **c. Formal Resolution Process**

#### **(1) Investigator**

The Title IX Coordinator or Deputy Title IX Coordinator will designate an individual to conduct the Investigation of a Formal Complaint. Any individual designated as an investigator or decision-maker (collectively the “**Title IX Personnel**”), will not have a conflict of interest or bias against either party. Title IX Personnel will have received appropriate training to ensure that the investigation, hearing, cross-examination and decision-making are conducted pursuant to necessary procedures as required.

**(2) Information Gathering and Medical Records**

Both parties will have equal and unrestricted opportunity to submit and review evidence throughout the investigation. EWC will send written notice of any investigative interviews, meetings, or hearings, which will be conducted on a reasonably prompt time frame.

EWC will protect parties' privacy by requiring a party's written consent before using the party's medical, psychological or similar treatment records during a Grievance Process.

**(3) Disclosure of Information**

After the Investigator has concluded the collection of evidence, both parties, and their advisors, will receive all relevant evidence, in electronic format or hard copy, with at least ten (10) business days for the Parties to respond with new evidence or rebuttal evidence.

**(4) Investigative Report**

After the Investigator has received and considered the parties' responses to the evidence, the Investigator will complete an Investigative Report that fairly summarizes the relevant evidence. The Title IX Coordinator will make the Investigative Report available to the parties and their Advisors in electronic format or hard copy, with at least ten (10) calendar days for the parties to respond in writing to the Investigative Report.

**(5) Live Hearing**

Both parties will have the right to have the matter heard at a live hearing by a neutral decision-maker designated by EWC, who will determine the matter using a Preponderance of the Evidence standard and who will not prejudge the outcome of a case. Each party's Advisor will have the opportunity to ask relevant questions and relevant follow-up questions of the other party and the witnesses. The decision-maker shall issue a written determination to both parties, with the reason for the outcome, and any sanctions and/or remedies.

**3. Appeals Process**

Both parties may appeal a determination regarding responsibility, and from a dismissal of a Formal Complaint or any allegations therein, on the following bases: (i) procedural irregularity that affected the outcome of the matter; (ii) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and (iii) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Each Party may submit a written appeal, which will be shared with the other Party with the opportunity to respond. The parties must submit the appeal by the date determined by the Title IX Coordinator, generally ten (10) calendar days from the receipt of the Notice of Dismissal. The appeal will be submitted to a neutral Appeals decision-maker, designated by EWC, who was not

involved in the investigation or hearing. Upon review, the Appeals decision-maker shall issue a written decision on the appeal to both parties.

## **VI. Recordkeeping**

EWC shall maintain for a period of seven years records of the following:

**A.** Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under paragraph (b)(6)(i) of this section, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to EWC's Program or Activity;

**B.** Any appeal and the result therefrom;

**C.** Any informal resolution and the result therefrom; and

**D.** All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will be available on the EWC website or upon request.