



UNIVERSITY OF  
SAN FRANCISCO

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INTERIM POLICY AND PROCEDURES

**NONDISCRIMINATION BASED ON SEX AND GENDER,  
SEXUAL HARASSMENT,  
AND SEXUAL MISCONDUCT  
FOR ALL STUDENTS, EMPLOYEES, AND THIRD-PARTIES**

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## Introduction

Members of the University of San Francisco (hereinafter University) community, guests, and visitors have the right to be free from sex and gender-based harassment, and violence. The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from such discrimination.

To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of our educational programs and activities, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex or gender, and for allegations of retaliation as it relates to this policy. Any person who believes they have been subjected to sex or gender-based discrimination, including sexual harassment (inclusive of sexual assault, dating and domestic violence, and stalking) is encouraged to report these incidents.

All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University's mission is to create a culture that promotes learning in an environment in which students, faculty, staff, and visitors are expected to engage with one another with dignity, mindfulness, and mutual respect. This policy upholds the equal dignity of all members of our community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for those involved.

## **POLICY: Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual Misconduct**

### 1. Glossary

- *Advisor* – a person chosen by a party, or appointed by the institution, to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Appeal Decision-maker* – the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- *Complainant* – an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on sex or gender; or retaliation for engaging in a protected activity.
- *Complaint (formal)* – a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on sex or gender or retaliation for engaging in a protected activity against a Respondent and requesting the University investigate the allegation.
- *Confidential Resource* – an employee who is not a Mandatory Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* – means a business day when the University is in normal operation.

- *Decision-maker* – the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assign sanctions.
- *Directly Related Evidence* – evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- *Education program or activity* – locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the alleged sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- *Final Determination* – a conclusion arrived at using the applicable standard of proof, [preponderance of the evidence], that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding* – a conclusion arrived at using the applicable standard of proof, [preponderance of the evidence], that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* – a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of Title IX regulations (34 CFR §106.45) and the Violence Against Women Act § 304.
- *Grievance Process Pool* – includes any investigators, hearing officers, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Panel* – includes those who have decision-making and sanctioning authority within the University’s Formal Grievance Process.
- *Informal Resolution* – a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator, or designee, that occurs prior to a formal Final Determination being reached.
- *Investigator* – the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandatory Reporter* – an employee of the University of San Francisco who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.<sup>1</sup>

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Notice* – an employee, student, or third party informs the Title IX Coordinator, or other Official with Authority, of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct outlined in this Policy.
- *Official with Authority (OWA)* – an employee of the University who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf the University.
- *Parties* – includes the Complainant(s) and Respondent(s), collectively.
- *Postsecondary Institution* – a campus of the University of California, the California State University, or the California Community Colleges, a private postsecondary educational institution (which USF is), or an independent institution of higher education that receives state financial assistance.
- *Recipient* – a postsecondary education program that is a recipient of federal funding. USF is a recipient.
- *Relevant Evidence* – evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- *Remedies* – post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.
- *Respondent* – an individual who has been reported to be the perpetrator of conduct that could constitute discrimination based on sex or gender, sexual harassment, other sexual misconduct defined by this policy; or retaliation for engaging in a protected activity related to this Policy.
- *Responsible Employee<sup>4</sup>* – an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.
- *Sanction* – a consequence imposed by the University on a Respondent who is found to have violated this Policy.
- *Sexual Harassment* – the umbrella category including offenses of sexual harassment, sexual assault, stalking, and dating and domestic violence.
- *Student* – any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the Recipient.

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<sup>4</sup> Responsible employee is defined in CA Educ. Code § 66281.8

- *Title IX Coordinator* – at least one official designated by the University of San Francisco to ensure compliance with Title IX and the Recipient’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* – refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

## **2. Applicable Scope**

The University of San Francisco’s primary concern in student and employee safety, and the core purpose of this policy is the prohibition of all forms of discrimination based on sex or gender. Sometimes, discrimination involves exclusion from, or different treatment in, activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment, or in the case of sex or gender-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual orientation, dating violence, or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using University of San Francisco’s grievance processes as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the USF community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

The University recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the University community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

## **3. Title IX Coordinator**

The Title IX Coordinator oversees implementation of the recipient’s Policy on Nondiscrimination Based on Sex or Gender, Sexual Harassment, and Sexual Misconduct for all students, employees, and third-parties. The Title IX Coordinator has the primary responsibility for coordinating the University’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.



#### 4. **Independence and Conflict-of-Interest**

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the University President [Lone Mountain Campus, Rossi Wing, 4th Floor, 2130 Fulton St. San Francisco, CA 94117; (415) 422-6762]. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the University President [Lone Mountain Campus, Rossi Wing, 4th Floor, 2130 Fulton St. San Francisco, CA 94117; (415) 422-6762]. Concerns of misconduct or discrimination committed by any other Title IX Team member should be raised with the Title IX Coordinator.

#### 5. **Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

***Emily Gove***

Title IX Coordinator  
Division of Student Life  
2820 Turk Blvd., Lone Mountain 145  
(415) 422-4563  
Email: [egove@usfca.edu](mailto:egove@usfca.edu)

***Katrina Garry***

Deputy Title IX Coordinator  
2130 Fulton St., Lone Mountain 305  
(415) 422-4525  
Email: [kgarry@usfca.edu](mailto:kgarry@usfca.edu)

The University has also classified all employees (with few exceptions) as Mandatory Reporters of any knowledge they have that a member of community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

San Francisco Office  
Office for Civil Rights  
U.S. Department of Education  
50 United Nations Plaza  
Mail Box 1200, Room 1545  
San Francisco, CA 94102  
Telephone: 415-486-5555  
FAX: 415-486-5570; TDD: 800-877-8339  
Email: [ocr.sanfrancisco@ed.gov](mailto:ocr.sanfrancisco@ed.gov)

US Equal Employment Opportunity Commission  
San Francisco Office  
450 Golden Gate Ave.  
San Francisco, CA 94102  
Telephone: 800-669-4000

California Department of Fair Employment & Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
(800) 884-1684  
(800) 700-2320 (TDD Only)  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

## **6. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice of complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a complaint with, or give verbal notice, the Title IX Coordinator, Deputy Title IX Coordinator(s), or an Official With Authority (OWA). 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 any other official listed.
- 2) Report online, using the reporting form posted at <https://myusf.usfca.edu/title-ix>. Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further action is taken, though measures intended to protect the community may be enacted. The University tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and because the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

- 3) Contact the Department of Public Safety for emergency response: 415-422-2911, available 24 hours a day/7 days a week.
- 4) Report using the Whistleblower Hotline by calling 800-316-4315, or find further information at <https://myusf.usfca.edu/internal-audit/whistleblower-policy>. Reports will be vetted by General Counsel and appropriately forwarded to the Title IX Coordinator for review and response.

As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by the University for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests the University investigate the allegations. If notice is submitted on a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **7. Obtaining Help and Support**

When feasible, the University of San Francisco will enter into memoranda of understanding, agreements, or collaborative partnerships with institutional and community-based organizations to assist and/or provide services to Complainants and Respondents. This includes referrals and services related to counseling, health, mental health, advocacy, and legal resources.

## **8. Prevention and Outreach Programs**

The University has implemented comprehensive prevention and outreach programs to address issues of sexual harassment, sexual violence, domestic violence, dating violence, and stalking. These programs include, but are not limited to, information about the University’s policies and procedures, rights and responsibilities, the practical implications of an affirmative consent standard, empowerment programming, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction programs. Prevention and outreach programs are included as part of incoming student and new employee orientation. In addition, all employees must complete ongoing prevention and intervention training and education.<sup>2</sup>

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<sup>2</sup> California harassment law AB 1825 requires employers to provide supervisory employees (including faculty) with at least two hours of sexual harassment prevention training every two years, and non-supervisory employees at least one hour of training every other year in compliance with SB 1343.

## 9. Supportive Measures<sup>34</sup>

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties and/or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impact the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic/occupational impact on the parties is possible. The University will implement measures in a way that does not unreasonably burden the other party.

These measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program (for employees)
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid assistance
- Education to the institutional community or community subgroup(s) What does this mean?
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties, such as No Contact Orders (NCO)
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) letters/orders

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<sup>3</sup> CA Educ. Code Sect. 66281.8 (SB 493) requires institutions to consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

<sup>4</sup> CA Educ. Code, Sect. 66281.8 requires institutions to outline the possible interim measures that may be in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility.

- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Upon the issuance of a mutual no-contact directive, the institution will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Violations of no-contact directives will be referred to the appropriate student or employee conduct processes for enforcement (for students this is the Office for Student Conduct, Rights and Responsibilities; for employees this is Human Resources), or added as collateral misconduct allegations to an ongoing complaint under this Policy.

## **10. Emergency Removal**

The University can act to remove a student Respondent from its education program or activities – partially or entirely - on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Director of Public Safety, Dean of Students, or Human Resources, using its standard objective violence risk assessment procedures.

When an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an

administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible to the parties.

Where the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action, as provided in University employment policies, may also be applicable.

## **11. Promptness**

Once it has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the University procedures will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **12. Confidentiality/Privacy**

Every effort is made by the University to preserve the privacy of reports.<sup>5</sup> The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulation, 34 CFR §99; or as required by law; or to carry out the purposes of 34 CFR §106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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<sup>5</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means information related to a complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the recipient's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouse. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see section 17.a. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including by not limited to: Office of the Dean of Students, Office for Student Conduct, Rights and Responsibilities, Human Resources (if an employee is a party or witness), Public Safety, General Counsel. Information will be shared as necessary with investigators, decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below in this policy.

### **13. Jurisdiction<sup>6</sup>**

This policy applies to the education programs and activities<sup>7</sup> of the University of San Francisco, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the University's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to the University's educational program or activities. The University will extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;

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<sup>6</sup> CA Educ. Code, § 66281.1 requires institutions take reasonable steps to respond to each incident of sexual harassment. The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

<sup>7</sup> Which includes the University's employees' work environment.

- c. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder; and/or
- d. Any situation that substantially interferes with the educational interests or mission of the University.

If the Respondent is unknown, or is not a member of the University of San Francisco community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, the University can assist in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers, and to USF policies and procedures to which their employer has agreed to be bound.

When the Respondent is enrolled in, or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution as it may be possible to action through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

#### **14. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint.



## **15. Online Harassment and Misconduct**

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

Although the University may not control websites, social media, and other venues in which harassing communication are made, when such communications are reported to the university, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Any online posing or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside the University's control (e.g. not on University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

As it relates to this Policy, off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

## **16. Policy on Nondiscrimination Based on Sex and Gender**

The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education. This policy's scope is specific to discrimination as it relates to the following:<sup>8</sup>

- Sex;
- Gender;
- Gender expression;
- Gender identity;
- Pregnant or parenting status; and/or

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<sup>8</sup> For policies on non-discrimination for other civil rights and protected classes, please see the HR Policies and Fogcutter Student Handbook.

- Anyone participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of sex, gender, gender identity, gender expression, pregnant or parenting status, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commissions, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, or limit the educational, employment, residential, and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the categories listed above is in violation of this University policy on nondiscrimination.

When brought to the attention of the University, any such discrimination will be promptly and fairly addressed and remedied by the University according to the appropriate grievance process described within this policy.

## **17. Discriminatory Harassment Policy**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under university policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of the university policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offense.

### **a. Discriminatory Harassment**

Discriminatory harassment – defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristics protected by policy or law – is a form of prohibited discrimination under university policy.

The University of San Francisco does not tolerate discriminatory harassment of any employee, student, visitor, or third party. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>9</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the University may also impose sanctions on the Respondent through application of the grievance processes below.

The University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under this policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

These actions may include collaboration with Human Resources when it involves an employee, or the Office for Student Conduct, Rights and Responsibilities for students.

## **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The University has adopted the following definition of sexual harassment in order to address the unique environment of an academic community. One definition is required by federal law, and the other by state law. Both apply, and while they overlap, they are not identical.

### **California Sexual Harassment Definitions:<sup>10</sup>**

- a. unwelcome sexual advances, or
- b. requests for sexual favors, or
- c. other verbal, visual, or physical conduct of a sexual nature,
- d. made by someone from in the work or educational setting,<sup>11</sup>
- e. under any of the following conditions:
  - i. submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or

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<sup>9</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance](#).

<sup>10</sup> This definition of sexual harassment will be used in addition to and when formal complaints of Title IX Sexual Harassment are mandatorily dismissed. See section on Dismissal outlined below.

<sup>11</sup> The Department of Housing and Urban Development (HUD) Fair Housing Act requires – when an institution provides student and/or faculty/staff housing and sexual harassment occurs in an institution-owned residence – that the FHA/Title VII definition of sexual harassment will also apply in addition to the Title IX definition (USF will use the definition of discriminatory harassment above, the CA definition, to comply).

- ii. submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
- iii. the conduct has the purport or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
- iv. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Violence**, defined as:

- a. physical sexual acts,<sup>12</sup>
- b. perpetrated against a person without the person’s affirmative consent.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

**Title IX Sexual Harassment**, as an umbrella category, includes these specific definitions of sexual harassment, sexual assault, domestic violence, dating violence, and stalking and is defined as:

Conduct on the basis of sex/gender, or that is sexual in nature, that satisfies one or more of the following:

- 1) **Quid Pro Quo:**
  - a. an employee of the recipient,
  - b. conditions<sup>13</sup> the provision of an aid, benefit, or service of the recipient,
  - c. on an individual’s participation in unwelcome sexual conduct;
- 2) **Sexual Harassment:**
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and

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<sup>12</sup> A “physical act” includes both of the following:

- a. **Rape:**
  - penetration,
  - no matter how slight,
  - of the vagina or anus,
  - with any part or object,
  - or oral copulation of a sex organ
  - by another person
  - without the consent of the victim.
- b. **Sexual Battery:**
  - the intentional touching of another person’s intimate part without consent, or
  - intentionally causing a person to touch the intimate parts of another without consent, or
  - using a person’s own intimate part to intentionally touch another person’s body part without consent.

<sup>13</sup> Implicitly or explicitly

- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to the university's education program or activity.<sup>14</sup>

3) **Sexual assault**, defined as:

- a. Any sexual act<sup>15</sup> directed against a Complainant,<sup>16</sup>
  - without their consent, or
  - instances in which the Complainant is incapable of giving consent.
- b. **Incest:**
  - Non-forcible sexual intercourse,
  - between persons who are related to each other,
  - within the degrees wherein marriage is prohibited by California law.

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<sup>14</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>15</sup> A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

Rape:

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- Without their consent,
- Including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sodomy:

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>16</sup> This would include having another person touch you sexually, forcibly, or without their consent.

- c. **Statutory Rape:**
    - Non-forcible sexual intercourse,
    - with a person who is under the statutory age of consent of 18 years old.
- 4) **Dating Violence**, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition –
      - 1. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
      - 2. Dating violence does not include acts covered under the definition of domestic violence.
- 5) **Domestic Violence**,<sup>1718</sup> defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic of family violence laws of California, or
  - g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence in California.
- 6) **Stalking**, defined as:
- a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. directed at the Complainant, that
    - i. would cause a reasonable person to fear for the person’s safety, or
    - ii. the safety of others; or
    - iii. suffer substantial emotional distress.
- For purposes of this definitions
- (i) 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

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<sup>17</sup> California defines ‘domestic violence’ as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. In CA, dating violence is included within the definition of domestic violence.

<sup>18</sup> To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Any student Respondent found responsible for violating this policy will be subject to sanction(s) ranging from a warning to expulsion, depending on the severity of the incident, and taking into account any previous Student Conduct Code violations. Psychological and/or behavioral counseling may be required for students found responsible for a violation of this policy.

Any employee found responsible for violating this policy will be subject to sanction(s) ranging from warning to loss of employment, depending on the severity of the incident and taking into account any previous applicable action taken by Human Resources.

In considering an appropriate sanction(s), decision-makers shall consider all of the evidence presented during the investigation and hearing, and may also consider the following:

- Impact statements provided by the Complainant and Respondent - which will not be a part of the determination of whether this policy was violated.
- What is reasonable, appropriate, and fair given the facts of the case and the determination of responsibility, including, but not limited to:
  - What factors contributed to the absence of consent (e.g., coercion, force, incapacitation)?
  - What motivated the Respondent's behavior (e.g., negligence, intentional, reckless, biased)?
  - What is the impact on the Complainant?
  - What is the impact on others and the USF community?
  - What is the Respondent's disciplinary history?
  - Are the sanctions consistent with those imposed for similar offenses at the University?
  - Are there any aggravating or mitigating circumstances?

### **c. Force, Coercion, Consent, and Incapacitation<sup>19</sup>**

As used in the offenses above, the following definitions and understanding apply:

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<sup>19</sup> The California definition of consent is "Affirmative consent." Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that [they] ha[ve] the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or product consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Affirmative Consent is:**

- Knowing (conscious), and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

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

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.



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

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>20</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be a part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reasons, including by alcohol or other drugs.

In the evaluation of complaints, it shall not be a valid defense that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- 1) The Complainant was asleep or unconscious.
- 2) The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- 3) The Complainant was unable to communicate due to a mental or physical condition.

Thus, it is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. In the evaluation of complaints, it shall not be a valid defense to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- 1) The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- 2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

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

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<sup>20</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

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

**d. Other Civil Rights Offenses<sup>21</sup>**

In addition to the forms of sexual harassment described above, which are covered by Title IX, the University additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived protected characteristic (within the scope of this Policy).

**1) Sexual Exploitation**, defined as:

- a. a person taking sexual advantage of another person,
- b. for the benefit of anyone other than that person,
- c. without that person's consent,
- d. including, but not limited to, any of the acts outlined in the examples below.

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

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person observed).
- Invasion of sexual privacy (e.g. doxing).
- Taking pictures, video, or audio recording of another in a sexual act, or in any other activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closer and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STF) or infection (STI), without informing the other person of the infection.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of making that person vulnerable to non-consensual sexual activity.
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing).
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Knowingly soliciting a minor for sexual activity.
- Engaging in sex trafficking.
- Creating, possession, or dissemination of child pornography.

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<sup>21</sup> The definitions in this section may apply when formal complaints of Title IX Sexual Harassment are mandatorily dismissed but may also apply in addition to the Title IX offenses listed above. See section on Dismissal outlined below.

- 2) **Harm/Endangerment**, defined as:
  - a. threatening or causing physical harm;
  - b. extreme verbal, emotion, or psychological abuse; or
  - c. other conduct which theatres or endangers the health or safety of any person or damages their property.
  
- 3) **Discrimination**, defined as:
  - a. actions that deprive, limit, or deny
  - b. other members of the community
  - c. of educational or employment access, benefits, or opportunities,
  - d. including disparate treatment.
  
- 4) **Intimidation**, defined as:
  - a. implied threats or
  - b. acts that cause the Complainant reasonable fear of harm.

Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities. The University has policies for these other civil rights offenses (those not based on sex or gender) and can be found in the Fogcutter Student Handbook or Human Resources policies.

Sanctions for the above-listed Civil Rights Offenses range from warning through expulsion or termination.

## **18. Retaliation**

Protected activity under this policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate and available steps to protect individuals who fear they may be subjected to retaliation.

It is prohibited for the University or any member of the University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Allegations against an individual for code of conduct, or employment policy, violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **19. Mandated Reporting<sup>22</sup>**

All University of San Francisco employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, though there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institutional official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandatory Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the University for a Complainant or third-party (including parents/guardians when appropriate):

### **A. Confidential Resources**

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

- On-campus licensed professional counselors at Counseling and Psychological Services (CAPS), for students
- Licensed professional counselors through the Employee Assistance Program, for employees
- Clergy members acting within the scope of their ordination, may be found through University Ministry
- Off-campus:
  - Licensed professional counselors and other medical providers
  - Local rape and sexual assault crisis counselors

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<sup>22</sup> This Policy does not affect other mandated reporting obligations under policies or laws that require reporting to campus or local law enforcement, Child Protective Services, or Adult Protective Services.

- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

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

University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

**a. Mandated Reporters and Formal Notice/Complaints**

All employees of the University of San Francisco (including student employees such as Resident Advisors), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details, including names, of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or to seek a specific response from the University.

Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment, discrimination, or retaliation of which they become aware is a violation of University Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though it may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the University is technically not on notice simply because the harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **20. Notice to Law Enforcement**

There may be circumstances where the University is obliged to report an incident of violent crime, hate crime, or sexual assault immediately, or as soon as practicably possible, to local law enforcement. The University has a Memorandum of Understanding with the San Francisco Police Department to enhance communication, coordination, and collaboration.

### **Requests for Confidentiality with Respect to Reporting to Law Enforcement**

Complainants have the right to decide if they want to make a report to the police and/or speak with the police. The University will honor requests for confidentiality. Institutional and local law enforcement agencies are prohibited from disclosing information about most sexual assaults if the Complainant requests anonymity. When information is shared with law enforcement, such reports will include (when the Complainant has consented to being identified):

- The name and characteristics of the alleged victim
- The name and characteristics of the alleged perpetrator, if known
- Description of the incident, including location and date and time
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency

### **Mandatory Reporting Requirements for Health Practitioners in California**

Any licensed health care provider in the State of California providing services in a health facility, clinic, or physician's office is required to make a report if they provide *medical treatment for a physical condition* to a patient whom they know or reasonably suspect is the victim of assaultive or abusive conduct or a firearm injury. The health practitioner is required to make a report by telephone as soon as practically possible and send a written report to a local law enforcement agency within two working days. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained.

## **21. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state and federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so and may require a violence risk assessment to help determine whether or proceed. The Title IX Coordinator may sign a Formal Complaint to initiate a grievance process after reviewing any violence risk assessment results and weighing the following factors:

- a. Multiple or prior reports of sexual misconduct against the Respondent
- b. The Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- c. The Respondent is a faculty or staff member with oversight of students.
- d. There is a power imbalance between the Complainant and Respondent.
- e. The Complainant believes that they will be less safe if the Complainant's name is disclosed, or an investigation conducted.
- f. The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

In instances where the Complainant's request for confidentiality or no investigation is granted, the University will provide supportive measures to the Complainant and take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged Respondent or revealing the identity of the Complainant. These steps may include but are not limited to:

- Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred.
- Providing additional training and education materials for students and employees.
- Conducting climate surveys regarding sexual violence.

The University will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential, as appropriate. These steps may include changing living arrangements or course schedules, assignments, or other academic adjustments. The Complainant will be notified that the steps the University will take to respond to the complaint will be limited by the request for confidentiality.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When the University proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. The University will inform the Complainant prior to initiating the Formal Resolution Process and take immediate steps to provide for the safety of the Complainant, where appropriate. In the event the Complainant requests that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline, the University will honor this request.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University may offer Informal Resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to allegations taken seriously by the University and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **22. Federal Timely Warning Obligations**

The University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

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

## **23. False Allegations and Evidence**

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

Additionally, witnesses and parties knowingly providing false evidence; tampering with, or destroying, evidence; or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate University policies.

## **24. Amnesty for Complainants and Witnesses**

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

It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty for minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.



Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

## **25. Federal Statistical Reporting Obligations**

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

- a) All “primary crimes,” which include homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA<sup>23</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the Department of Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: Public Safety staff, student conduct staff, local police, coaches, Athletic Director, Student Housing and Residential Education staff, Human Resources staff, Title IX Coordinator and Deputy Coordinator(s), and any other official with significant responsibility for student and campus activities.

## **26. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time-sensitive. The University will inform the Complainant of the importance of preserving evidence by taking the following actions:

### **Sexual Assault**

- Seek forensic medical assistance at the Zuckerberg San Francisco General Hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).

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<sup>23</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

- Seeking medical treatment can be essential if it is not for the purposes of collecting forensic evidence.

### **Stalking**

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

During the initial meeting between the Complainant and the Title IX Coordinator (or person conducting intake), the importance of taking these actions will be discussed, if timely.

## **INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATION OF THE POLICY ON NONDISCRIMINATION BASED ON SEX AND GENDER, SEXUAL HARASSMENT, AND SEXUAL MISCONDUCT**

### **1. Overview**

The University will act on any formal notice/complaint of violation of the Policy on Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual Misconduct (“the Policy”) that is received by the Title IX Coordinator<sup>24</sup> or any other Official with Authority by applying these procedures, known as the Formal Grievance Process.

The procedures below apply to all allegations of harassment and discrimination on the basis of sex and gender involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all Policy offenses.

The procedures below may be used to address collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the Fogcutter Student Handbook, and faculty and staff handbooks.

### **2. Notice/Complaint**

Upon receipt of a complaint or notice of an alleged policy violation to the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint. This contact with Complainant will include the following information:

- That the University has received a report that the Complainant may have been subjected to sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complain process, or both, is prohibited.
- Counseling resources within the institution and/or the community.
- Notice that the Complainant has the right, but not the obligation, to report the matter to law enforcement.
- The University’s investigation procedures.
- A list of potential supportive measures, such as no-contact directives, housing changes, and academic schedule adjustments.
- The importance of preserving evidence.
- A request for Complainant to meet with the Title IX Coordinator to discuss options for responding to the report.

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<sup>24</sup> Anywhere this procedure indicates “Title IX Coordinator,” the University may substitute a trained designee.

- Information on how the University responds to reports of sexual harassment and a description of potential disciplinary consequences.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

The University uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

If the Title IX Coordinator received notice from a third party who is not the actual Complainant, the Coordinator will take appropriate steps to address and remedy any potential hostile environment, to the extent possible based on the information received.

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>25</sup> engages in an initial assessment, which is typically one to five (1-5) business days. The steps in an initial assessment may include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, determine appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

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<sup>25</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator, or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution<sup>2627</sup>, which informal mechanism may serve the situation the best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of 2020 Title IX regulations:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue, based on the nature of the complaint.
  - If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

#### **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the University’s CARE team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complaint;
- Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try and resolve a complaint through Informal Resolution, and if so, what approach may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass Order/Persona-non-grata is needed.

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<sup>26</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

<sup>27</sup> Per CA Educ. Code, Section 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, and student conduct officers. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionably violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the University's process for VRA can be found in Appendix B

#### **B. Dismissal (Mandatory and Discretionary)<sup>28</sup>**

The University must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a Formal Complaint, a Complainant is not participating or attempting to participate in the education program or activity of the recipient<sup>29</sup>.

The University may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein (which may be reinstated at a later time by the Complainant); or
- 2) The Respondent is no longer enrolled in or employed by the University; or

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<sup>28</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45

<sup>29</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

The dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

#### **4. Counterclaims**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as an underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>30</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing decision-makers(s).

##### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the University community.

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<sup>30</sup> "Available" means the party cannot insist on an Advisor who simply does not have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with the University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

**b. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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

**c. Advisors in Hearings/University-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-makers during the hearing.

**d. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

**e. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials or Investigators in a meeting or interview unless invited to do so



(e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>31</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

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

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with the University's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented, including the University requiring the party to use a different Advisor or providing a different University-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**f. Sharing Information with the Advisor**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. The University provides a consent form that authorizes the University to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentations demonstrating consent to release information to the Advisor before the University is able to share records with an Advisor.

The University will **always** communicate directly with the parties. The University will make every effort to include an Advisor in communication when specifically requested by a party, however, no guarantee can be made to do so and the party bears the ultimate responsibility to share all communication and information directly with their Advisor. Failure of the University to carbon copy an Advisor on any communication, even when requested to do so, is not sufficient to meet a ground for appeal in and of itself. It will be at the discretion of the Title IX Coordinator whether a request for all communication to be made through an attorney Advisor be granted.

Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers.

**g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may restrict the role of any Advisor who does not

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<sup>31</sup> Subject to state law provisions or University policy above.

respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

#### **h. Expectations of an Advisor**

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

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **j. Assistance in Securing an Advisor<sup>32</sup>**

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>]

Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with University policy.

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<sup>32</sup> This is being provided for informational purposes and does not constitute the University's endorsement of any of the external individuals/organizations listed.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the University's primary resolution approach unless Informal Resolution is elected by all parties and the University.

#### **A. Informal Resolution**

Three options for Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternate resolution mechanism as described below, (including mediation, restorative practices, facilitated dialogue, etc.), often before a formal investigation takes place.
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the Resolution Process (similar to above, but usually occurs post-investigation..

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may not enter into an agreement that requires the University to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institutions is "Accepted Responsibility." The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **B. Alternate Resolution Approaches**

Alternate Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, etc., by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternate Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The nature and severity of the alleged misconduct;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history of the Respondent;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary action (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternate Resolution are not appealable.

## **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the University policy and implements agreed-upon restrictions and/or remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

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

## **7. Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators<sup>33</sup> (“the Pool”) to carry out the process.

### **a. Pool Member Roles**

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

- To provide intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution – if appropriately trained in resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Hearing Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **b. Pool Member Appointment**

The Title IX Coordinator, in consultation with Human Resources and supervisors, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. The process of role assignment may be the result of particular skills, aptitudes, or talents identified in the members of the Pool that make them best suited to particular roles.

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<sup>33</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles

### c. Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University's discrimination and harassment based on sex and gender policy and procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and racial inequities, both broadly and in school disciplinary processes
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the university with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, University-provided Advisors), and Hearing Chairs. All Pool members are required to attend these training sessions annually. The materials used to train all members of the Pool are publicly posted on the USF Title IX website: [www.usfaca.edu/title-ix](http://www.usfaca.edu/title-ix)

#### **d. Pool Membership**

The Pool includes University employees from different areas of campus. There are specific members of the Pool who have further training and designation to serve as the Chair of live hearings.

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is informed the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that the investigation and hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses, but rather a process the University uses to comply with its obligations under existing law,
- A statement that the Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation(s) of misconduct),
- A statement that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing if intentionally withheld,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process,
- Detail on how the party may request disability accommodations during the Resolution Process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

The University will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

## **10. Appointment of Investigator(s)**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two investigators), usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

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

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Vice President for Student Life for students and Human Resources for employees.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.



## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disability or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

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

## **14. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties

- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without reasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic copy or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person who received it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- Elect to respond in writing to the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator(s) should document all rationales for any changes made after the review and comment period
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- Incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that is not included in the report

## **15. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and Resolution Process. Student witnesses and witnesses from outside the University community are encouraged to cooperate with University investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all parties must be made aware of and consent to<sup>34</sup> audio and/or video recording.

## **17. Evidentiary Considerations**<sup>3536</sup>

Neither the investigation nor the hearing will consider: 1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or 2) questions and evidence

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<sup>34</sup> Consent of the interviewer and interviewee is required in "all-party" (otherwise known as "dual-party") recording states, such as California.

<sup>35</sup> CA Educ. Code, Section 66281.8 provides that parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

<sup>36</sup> In the event of a dismissal under Title IX, but where the process still proceeds, the following is applicable: CA Educ. Code, Sec. 662821.8 provides that the investigator(s) or hearing officer(s) prohibit the following evidentiary considerations: (1) the past sexual history of a Complainant or Respondent except when the conditions in (3a and 3b) are present; (2) prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that the physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or (3a) the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and Respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations, (3b) when evidence in (3a) is permitted, investigators and hearing officers who allow consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent are required to consider that the fact the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient by itself to establish the conduct at issue was consensual. Prior to allowing the consideration of any evidence provided under this section, the investigator(s) or hearing officer(s) will provide a written explanation to the parties as to why the evidence is consistent with this clause.

about the Complainant's sexual predisposition; or 3) questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

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

#### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker(s) – unless all parties and Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select appropriate Decision-maker(s) from the Pool and provide a copy of the investigation report and the file of directly related evidence. Allegations involving student-employees in the context of their employment will be assessed for the appropriate make-up of the Pool to be the Decision-maker(s).

#### **19. Hearing Decision-maker Composition**

The University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter, but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

## **20. Additional Evidentiary Considerations in the Hearing**

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

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Hearing Notice**

No less than ten (10) business days prior to the hearing,<sup>37</sup> the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received-in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. If there is a request made and agreed to by both parties to be in the same room for the hearing, this request will be assessed by the Title IX Coordinator.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair, or Title IX Coordinator, may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not

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<sup>37</sup> Unless an expedited hearing is agreed to by all parties.

have an Advisor, and the University will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.

- A statement that questions that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>38</sup>
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>39</sup>
- An invitation to each party to submit to the Title IX Coordinator, or hearing facilitator, an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether the parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contacts.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal).

## **22. Alternate Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person would let the Title IX Coordinator know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

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<sup>38</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

<sup>39</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

### **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>40</sup>

The parties will be given a list of the names of the Decision-maker(s) at least five(5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than three (3) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or the hearing and will be exchanged between each party by the Chair.

### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their evidence ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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<sup>40</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of discrimination based on sex and gender, sexual harassment, sexual misconduct, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy on Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual Misconduct.

Participants at the hearing will include the Chair, any additional panelists including any alternates, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator (if not the hearing facilitator), and anyone providing authorized accommodations, interpretations, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused. The Investigator(s) may remain present for the duration of the hearing.

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainants who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.



However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair and/or hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator, or the Title IX Coordinator themselves. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Advisors and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that to be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present their report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question

(and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.<sup>41</sup>

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **30. Refusal to Submit to Cross-Examination and Inferences**

Any party or witness may choose to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily alleviated from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

### **31. Hearing Recordings**

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to review the recording or review a transcript of the recording upon request to the

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<sup>41</sup> If a dismissal occurs under Title IX, and the hearing process continues, CA law does not permit questioning by Advisors. All questions must be submitted by the parties/Advisors to the Decision-maker or Chair, who will pose them if the questions are relevant.

Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation in part or whole by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements and or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare the Notice of Outcome letter. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisor within five (5) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' University-issued email or otherwise approved account. Once emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notification to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state and federal law; any sanction(s) issued which the University is permitted to share according to state or federal law; and whether any remedies will be provided to the Complainant to ensure access to the University's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by the University, will note any changes to the outcome and/or sanction(s) that occur prior to the finalization, and the relevant procedures and bases for appeal.

### **34. Rights of the Parties (see Appendix A)**

### **35. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

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

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

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

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

#### **a. Student Sanctions**

The following are the usual sanctions<sup>42</sup> that may be imposed upon students or organizations singly or in combination:<sup>43</sup>

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<sup>42</sup> University policies on transcript notation will apply to these proceedings.

<sup>43</sup> Subject to University's Organizational Code of Conduct.

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Disciplinary Probation:* Imposed for a period of time to allow students to reflect upon their choices and behavior and to demonstrate the ability to abide by community standards and expectations. It also serves as formal notification that the activity in question is unacceptable and if continued or other inappropriate behavior follows, more severe action may be taken. Additional violations of the Student Conduct Code while on Disciplinary Probation will result in higher level sanctioning. Disciplinary Probation may impact a student's eligibility to participate in University-sponsored programs or services, or to serve in leadership positions.
- *Fines:* Monetary fines may be imposed on students or student organizations for violations of the Student Conduct Code.
- *Loss of Privileges:* Denial of participation in designated privileges and extracurricular activities for a specified period of time. Violation of any conditions in the loss of privileges and exclusion from activities sanction or violations of other policies or campus regulations during the sanction period may be cause for further conduct action, ordinarily in the form of suspension or expulsion.
- *Notifications:* Notification of violations will be made to appropriate officials if the respondent is involved in co-curricular activities (e.g., ROTC, student leadership) or intercollegiate athletics. A violation may result in the loss of the privilege of participating in co-curricular activities if the supervising official deems it appropriate. Parental notifications may also be made to encourage support to the student in successful completion of sanctions.
- *Restitution:* Compensation for damage to or misappropriation of University property may be imposed either exclusively or in combination with other conduct action. Reimbursement may also be imposed for damage to the property of or injury to another person as a result of a violation of the policy. Such reimbursement may take the form of monetary payment or appropriate service to repair or otherwise compensate for damages. Restitution may be imposed on any student acting alone, or through group or concerted activities, or on any campus organization that participates in causing the damages or expenses.
- *Exclusion:* Exclusion of a student from specified areas of the campus or campus activities. Violation of the conditions of exclusion or of University policies or campus regulations during the period of exclusion may be cause for further conduct action, which ordinarily is in the form of University suspension.
- *University Housing Relocation:* Relocation of a student in University-operated housing may occur when the student has demonstrated that they are unable to be successful in their current location by virtue of repeated violations of the Student Conduct Code and/or Residence Life policies.
- *University Housing Probation:* Imposed for a period of time to allow residential students to reflect upon their choices and behavior and to demonstrate the ability to abide by student housing community standards and expectations. It also serves as formal notification that the student is not in good standing with regard to their on-campus housing. Housing probation is typically assigned in situations where behavior has been detrimental to the on-campus residential community. Additional residentially-based violations of the Student Conduct

Code while on Housing Probation will result in an evaluation to determine if continued on-campus living is in the best interests of the student and the on-campus residential community. Housing Probation may impact a student's eligibility to participate in the housing lottery process, University-sponsored programs or services, or to serve in leadership positions.

- *University Housing Pre-Removal:* When a student has demonstrated a pattern of behavior that is contrary to the behavioral expectations of community living, they will be given formal notice that any further violation for which they are found responsible will result in immediate residence hall expulsion.
- *University Housing Suspension:* Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- *University Housing Expulsion:* The student is removed and permanently banned from the residence halls.
- *University Probation:* Imposed for a minimum of one (1) academic year in serious cases (including but not limited to illegal drug use or distribution; making threats of, or actually performing physical or sexual violence; acting in a manner that endangers others) for students who repeatedly violate the Student Conduct Code, and for students returning to the University after suspension. University Probation serves as formal notification that the student is not in good standing with the University and that similar or more severe violations of the Student Conduct Code while on this status will result in suspension or expulsion from the University. University Probation will impact a student's eligibility to participate in University-sponsored programs or services, or to serve in leadership positions.
- *University Suspension:* Separation of the student from the University for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- *University Expulsion:* Permanent separation of the student from the University.
- *Ineligibility for Graduation:* A graduating student involved with alleged policy violations prior to graduation may not graduate, participate in graduation ceremonies, or receive a diploma until the matter has been processed and sanctions completed.
- *Revocation of Admission and/or Degree:* Admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree, or for other serious violations committed by a student prior to matriculation or graduation.
- *Withholding Degree:* The University may withhold the diploma of students who have been alleged with a violation of University policy even though they have completed all academic requirements. In circumstances where expulsion is a possibility for conduct violations, the diploma may be withheld until the allegations have been resolved and/or sanctions completed.
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – verbal or written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions the University may assign any other responsive actions as deemed appropriate.

### **36. Withdrawal or Resignation While Allegations Pending**

#### **a. Students**

Should a student decide to not participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the Resolution Process typically ends with a dismissal, as the University has lost primary disciplinary jurisdiction over the withdrawn student. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses and additional locations of the University. Admissions will be notified that they cannot be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave of absence for a specified period of time (e.g., one semester), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

## **b. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the resigned employee. However, the University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

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

The employee who resigns with unresolved allegations pending is not eligible for academic admissions or rehire with the University, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **37. Appeals**

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator, but it must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator. No appeal decision-makers will have been previously involved in the Resolution Process for the complaint, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair, or designee, for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. 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



3. 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 specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

The other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be emailed, and/or provided a hard copy of the request with the approved grounds and will then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three (3) business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel. The Appeal Panel will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state and federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' University-issued email or otherwise approved account. Once emailed and/or received in person, notice will be presumptively delivered.

#### **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanction(s) include separation in any form, the University may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of the holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator, whose determination is final.

### **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is denied, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in a case of bias), the Appeal Chair may order a new investigation and/or hearing with new Investigator(s) and Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services

- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contract limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the University to the Respondent to ensure no effective denial of educational access.

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

### **39. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **40. Recordkeeping**

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

- a. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;
- c. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- d. Any appeal and the result therefrom;
- e. Any Informal Resolution and the result therefrom;

- f. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University of San Francisco website; and
- g. Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

#### **41. Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact Student Disability Services (for students) or Human Resources (for employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing sexual harassment, sexual misconduct, discrimination based on sex and gender, and/or retaliation for incidents on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator, or as necessitated by law. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

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

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

This Policy and procedures are effective January 1, 2022.

## **APPENDIX A: RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by University officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University public safety and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a University-implemented no-contact order (when applicable) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes

are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- Relocating an on-campus student's housing to a different on-campus location
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Visa/immigration resource referrals
  - Arranging to dissolve a housing contract and a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  - The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
  - The right not to have irrelevant prior sexual history or character admitted as evidence.
  - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  - The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
  - The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX B: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Case Management and Behavioral Intervention Team (CMBIT) members.

A VRA occurs in collaboration with CMBIT and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of **risk factors** that escalate the potential for violence;
2. a determination of **stabilizing influences** that reduce the risk of violence;
3. a contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of **intervention and management** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CMBIT. The CMBIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor will follow the process for conducting a violence risk assessment as outlined in the CMBIT manual and will rely on a consistent, research-based, reliable system that allows the for the operationalization of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>44</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>45</sup> The Extremist Risk Intervention Scale

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<sup>44</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>45</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)



(ERIS),<sup>46</sup> Looking Glass,<sup>47</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>48</sup> Historical Clinical Risk Management (HCR-20),<sup>49</sup> and MOSAIC.<sup>50</sup>

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CMBIT or threat team's member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or the community.

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<sup>46</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>47</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>48</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>49</sup> [hcr-20.com](http://hcr-20.com)

<sup>50</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)