



San Francisco Bay University Policy on Prohibited Discrimination, Harassment, and Retaliation

Category: Legal/Compliance

Responsible Office: Title IX and Equity Office

Responsible Administrator: General Counsel

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**San Francisco Bay University
Policy on Prohibited Discrimination, Harassment, and Retaliation**

This Policy on Prohibited Discrimination, Harassment, and Retaliation (“Nondiscrimination Policy”) was approved by the Board of Directors on [date].

This policy encompasses the following:

- *Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Policy*
- ***Reporting Procedures for the Minors on Campus Policy***
- *Mandatory Reporting of Child Abuse Policy*

Furthermore, this policy supersedes all other previously published versions of the following policies:

- *Policy on Prohibited Discrimination, Harassment, and Retaliation* approved by the Board of Directors and made effective on September 19, 2024
- *Workplace and Academic Setting Relationship Policy* (effective date unknown).

I. Statement of University Values

San Francisco Bay University (University) believes that all members of the University community, including students, faculty, staff, and visitors, should pursue their work, education, and engagement in University programs and activities in a safe environment, free from discrimination and harassment based on protected characteristics, and retaliation. The University’s primary concern is the safety and security of students, staff, faculty, and the University community. The purpose of this Policy is to prevent and respond to discrimination and harassment for all protected characteristics for all students, faculty, staff, patients, and visitors. The University is an equal-opportunity educator and employer, proudly pluralistic, and firmly committed to providing equal opportunity for persons of all backgrounds and a diverse, inclusive, equitable environment. The University is committed to providing a safe and transparent University community where discrimination, harassment, and retaliation are universally recognized as intolerable, where those who are harmed are provided support and resolution options, and where a fair and impartial resolution process is provided to all parties. It is the responsibility of every member of the University community to foster an environment free from discrimination, harassment, and retaliation. All members of the community are strongly encouraged to take reasonable and prudent actions to prevent or stop acts of discrimination, harassment, or retaliation. This may include directly intervening when safe to do so, enlisting the assistance of others, contacting law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive responsibility will be supported by the University and protected from retaliation.

This Policy applies to all students, staff, faculty, and other individuals participating in or seeking to participate in the University's program or activities, including education and employment. Any individual found responsible for engaging in Prohibited Conduct in violation of this Policy will face disciplinary sanctions up to and including expulsion (for students) or termination from employment (for employees). The University will take steps to prevent recurrence of any Prohibited Conduct and to remedy any effects on the impacted individuals.

II. Statement of Non-Discrimination

The University prohibits discrimination on the basis of actual or perceived race, color, ethnicity, religion (including religious dress and grooming practices), creed, sex (including sexual orientation, gender, gender identity, and gender expression), age (40 years and over in the employment context), marital status, national origin, citizenship status, employment status, income status, shared ancestry and ethnic characteristics, partnership status, medical condition (including cancer and genetic characteristics), pregnancy (including childbirth, breastfeeding, or related medical conditions), disability, political belief or affiliation, domestic violence victim status, military or veteran status, and any other class of individuals protected from discrimination under federal, state, or local law, regulation, or ordinance (Protected Characteristics), and their implementing regulations, in any of its education programs and activities, in employment and application for employment, in admission and application of admission, and in all other University programs and activities, in compliance with Title IX of the Education Amendments of 1972 and its implementing regulations, 20 U.S.C. 1681 et seq.; Title III of the Americans with Disabilities Act of 1990, as amended in 2008; Section 504 of the Rehabilitation Act of 1973; Title VI and VII of the Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967; Executive Order 11246 of 1965, as amended by Executive Order 11357 of 1967; the California Fair Employment and Housing Act; and other federal, state, and local laws, regulations, or ordinances that prohibit discrimination. The University seeks to comply with all statutes prohibiting discrimination in education, even when such laws and regulations may conflict with each other. Further, in compliance with Section 504 of the Rehabilitation Act of 1973, the University provides reasonable accommodations for students, employees, and applicants for admission or employment who have disabilities. The University provides reasonable accommodations for religious beliefs to students, faculty, and staff. For questions about the application of these federal laws, please contact the University's Title IX Coordinator or the ADA/504 Coordinator.

III. Scope

This Policy applies to all students, employees, and other individuals who are participating in or attempting to participate in the University's education programs or activities.

This Policy applies to discrimination, harassment, and retaliation that occurs both in the

United States and in an education program or activity of the University. The University's education programs and activities include all University operations, including academic, extracurricular, housing, research, and occupational training. This Policy applies to all conduct that is subject to the University's disciplinary authority and conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the University. This Policy also applies to a hostile environment that exists within the University's education programs or activities, even when the conduct alleged to be contributing to the hostile environment occurred outside of the University's education programs or activities or outside of the United States, when that conduct has continuing effects within the University's education programs and activities. This Policy does not draw a line between on-campus, off-campus, or online conduct, provided the conduct occurred in an education program or activity in the United States. Examples include University-sponsored, University-funded, or University-supported study off-campus, research, internships, mentorships, summer sessions, conferences, meetings, social events, or other affiliated programs or premises.

Any person, regardless of their affiliation to the University, may make a report of Prohibited Conduct to the University. The formal and informal resolution processes described in this Policy may only be initiated, however, if the Complainant is participating in or attempting to participate in the University's education program or activity at the time the formal complaint is filed.¹ Where a Complainant is not participating in or attempting to participate in the University's education program or activity, the University still will offer reasonably available Supportive Measures and assist in offering additional reporting options.

The University's ability to respond to a report of Prohibited Conduct under this Policy is based on its disciplinary authority over the Respondent. If the Respondent is not an employee or student, the University's ability to take disciplinary action will be limited and is determined by the context of the reported conduct and the nature of the relationship of the third-party Respondent to the University. The University will determine the appropriate manner of resolution, which may include referral to local law enforcement or to the home school or employer of the third-party Respondent, and/or restriction from access to campus or University programs or activities.

Inquiries about this Policy may be referred to the University's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both.

The University's Title IX Coordinator *is the Associate Director of Title IX and Equity*.²

¹ In this policy, the individual reported to have experienced Prohibited Conduct is referred to as the Complainant. The individual who is reported to have engaged in the Prohibited Conduct is referred to as the Respondent. When the Complainant and the Respondent are discussed collectively, they will be referred to as the parties and may be referred to individually as a party. An individual who reports an allegation of Prohibited Conduct but who did not personally experience the reported conduct is referred to as the Reporter.

² Any reference to the University's Title IX Coordinator should be construed to mean the Associate Director of Title IX and Equity.

Andrew Nguyen
Associate Director of Title IX and Equity

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IV. Resolution of Reports of Discrimination, Harassment, and Retaliation

The University is committed to maintaining an environment free from Prohibited Conduct and has established procedures for the prompt and equitable resolution of such complaints. Because the regulatory requirements for resolution processes are more prescriptive for Sexual Harassment than other forms of discrimination, harassment, or retaliation, the University is implementing two different resolution processes (1) resolution for complaints involving Sexual Harassment,; and resolution for complaints involving all other types of discrimination and harassment not on the basis of sex, and retaliation.

V. Intersection and Coordination with Other University Policy

Reports of Prohibited Conduct may sometimes implicate conduct prohibited by another University Policy.

Where conduct involves the potential violation of both this Policy and another University policy arising from the same or similar set of facts and circumstances, the University has the discretion to investigate and resolve the conduct under the resolution processes set forth in this Policy, provided that doing so does not unduly delay a prompt and equitable resolution of the report and that the parties are provided timely notice of this decision and an opportunity to respond. Where the definitions conflict, the definitions in this Policy will control.

VI. Definitions of Prohibited Conduct:

This Policy prohibits the following forms of Prohibited Conduct:

A. Discrimination

Discrimination can take two forms:

1. **Disparate Treatment Discrimination:** Disparate Treatment Discrimination is any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual's Protected Characteristic(s) and that:

- a. excludes an individual from participation in;
- b. denies the individual benefits of;
- c. treats the individual differently; or
- d. otherwise adversely affects a term, condition, or benefit of an individual's employment, education, living environment, or participation in a University program or activity.

2. Disparate Impact Discrimination:

i. Employment: In the employment context, Disparate Impact Discrimination occurs when there is sufficient evidence that policies, tests, or practices that are neutral on their face disproportionately exclude or adversely impact a group of individuals within the class of individuals with Protected Characteristics, where the policies, tests, or practices are not job-related and consistent with business necessity. In determining whether a facially-neutral policy has a disparate impact on the basis of Protected Characteristics, the University considers the following issues:

- a. Does the policy, test, or practice have a disparate impact on the basis of a particular Protected Characteristic? This typically requires a statistical analysis.
- b. Is the policy, test, or practice job-related and consistent with business necessity?
- c. If job-related and consistent with business necessity, is there a less discriminatory alternative available?

ii. Student/Educational Program or Activity: In the student or educational context, Disparate Impact Discrimination occurs when there is sufficient evidence that facially-neutral policies, tests, or practices, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of disproportionately excluding or adversely impacting students or third parties on the basis of Protected Characteristics. In determining whether a facially-neutral policy has a disparate impact on the basis of Protected Characteristics, the University engages in the following three-part inquiry:

- a. Has the policy, test, or practice resulted in an adverse impact on students or third parties of a particular Protected Characteristic?
- b. Is the policy, test, or practice necessary to meet an important educational goal?
- c. If necessary to meet an important educational goal, are there comparably effective alternative policies, tests, or practices available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected Protected Characteristic, or is the proffered justification a pretext for discrimination?

In addition to the above, discrimination includes failing to provide reasonable accommodations, consistent with state and federal law, to a qualified individual with a disability or to accommodate the religious beliefs of students, staff, and faculty.

Examples of potential Discrimination under this Policy include but are not limited to those that result in the interference with, limitation of, or denial of access to:

- An employee's, or applicant for employment's, access to employment or terms, conditions, and/or benefits of employment (e.g., hiring, advancement, assignment).
- A student's, or admission applicant's, ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignment, campus housing; athletics).
- An authorized volunteer's ability to participate in a volunteer activity. A guest's or visitor's ability to participate in, access, or benefit from the University's programs or activities.

B. Harassment

1. Quid Pro Quo Harassment

Quid pro quo harassment occurs when submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a University program or activity (e.g., campus housing).

Examples of behavior that might be considered quid pro quo harassment include, but are not limited to:

- Physical coercion or pressure of an individual to engage in unwelcome conduct or punishment for a refusal to respond or comply with unwelcome conduct.
- Use of a position of power or authority to: (a) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to unwelcome conduct, or for reporting harassment; or (b) promise rewards in return for sexual favors.

2. Hostile Environment Harassment

Hostile environment harassment is unwelcome conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's education program or activity. The University considers a variety of factors related to the offensiveness, pervasiveness, and severity of the unwelcome conduct, including: (1) the degree to which the conduct affected the Complainant's ability to access the University's

education program or activity; (2) the type, frequency, and duration of the conduct (e.g., one stray remark will not be considered pervasive, whereas conduct that is widespread, openly practiced, or well-known to students and staff will likely be considered pervasive); (3) the parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; and (4) the location of the conduct and the context in which it occurred.

Examples of conduct that may constitute Hostile Environment Harassment based on a Protected Characteristic include but are not limited to:

- Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature
- Ridicule, abuse, insults, or derogatory comments that are directly or indirectly based on a Protected Characteristic.
- Offensive remarks about an individual's looks, clothing, hair, or body parts, that relate to a Protected Characteristic.
- Offensive comments about an individual's racial, ethnic, religious, or other Protected Characteristics.
- Disparaging or offensive remarks about an individual's gender, gender identity, gender expression, or sexual orientation, whether or not sexual in nature.
- Disparaging or offensive comments about an individual's religious beliefs or affiliations, or lack of religious beliefs or affiliations.
- Expressing negative stereotypes about an individual based on Protected Characteristics (e.g., gender, country of birth, ancestry, citizenship, race), including acts of cultural appropriation.
- Disparaging, intimidating, or offensive references to an individual's disability, record of disability, or perceived disability.
- Disparaging or offensive racial or ethnic remarks, including racial or ethnic slurs, jokes, or epithets.
- A course of conduct of pursuing, following, waiting, or showing up uninvited at or near places frequented by the Complainant.
- Unwelcome touching and physical conduct.
- Inappropriate displays of sexually explicit objects, pictures, cartoons, posters, computer screen savers, websites, movies, drawings, or sexual gestures.

C. Sexual Harassment

Sexual Harassment is an umbrella term that includes the following conduct: Title IX Quid Pro Quo Harassment on the basis of sex, Title IX Hostile Environment Harassment on the basis of sex, Quid Pro Quo Harassment on the basis of sex, Hostile Environment Harassment on the basis of sex, Sexual Assault, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking, and Sexual Exploitation.

1. Title IX Quid Pro Quo Harassment on the basis of sex

Title IX Quid Pro Quo Harassment on the basis of sex occurs when a University employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

2. Title IX Hostile Environment Harassment on the basis of sex

Title IX Hostile Environment Harassment on the basis of sex is unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

3. Quid Pro Quo Harassment on the basis of sex, as defined in Section VI.B.1 above

4. Hostile Environment Harassment on the basis of sex, as defined in Section VI.B.2 above

5. Sexual Assault

Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity. Sexual contact includes:

- sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or
- sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.

6. Sexual Misconduct

Sexual misconduct is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation). Sexual contact includes:

- Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object or requiring another to penetrate themselves with a body part or an object, however slight;
- The intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another, or using a person's own intimate part to intentionally touch another person's body; or

- Attempts to commit sexual assault.

7. Dating Violence

Dating violence includes any act of violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

8. Domestic Violence

Domestic violence includes any act of violence committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the Complainant under California state law; or by any other person against an adult or minor Complainant who is protected from that person's acts under California state law.

9. Stalking

Stalking involves a course of conduct directed at a specific person that would cause a reasonable person to suffer substantial emotional distress or to fear for that person's own safety or that of another. This includes cyberstalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, texts, or other similar forms of contact are used to pursue, harass, or make unwelcome contact with another person. Stalking and cyberstalking may involve individuals who are known to one another or who have an intimate or sexual relationship or may involve individuals not known to one another. For the purposes of this definition:

- "Course of conduct" means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property.
- "Reasonable person" means a prudent person who normally exercises due care under similar circumstances.
- "Substantial emotional distress" means significant mental suffering or anguish.

10. Sexual Exploitation

Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

1. The prostituting of another person.
2. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.
3. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
4. The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
5. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

D. Prohibited Relationships

Consensual sexual or romantic relationships between faculty and students as well as employees and students are prohibited.

Faculty are prohibited from exercising academic responsibility over a student with whom he or she has previously had a consensual sexual or romantic relationship. "Academic responsibility" includes (but is not limited to) teaching, grading, mentoring, advising on or evaluating research or other academic activity, participating in decisions regarding funding or other resources, and recommending for admissions, employment, or awards.

Preexisting sexual or romantic relationships between a faculty or staff member and a student are permitted provided the faculty or staff member recuses himself or herself from any supervisory or academic responsibility over the student and notifies the Office of Human Resources of the relationship so that adequate alternative supervisory or evaluative arrangements can be put in place. Preexisting relationships occur when the sexual or romantic relationship began before the faculty-student or employee-student relationship began (e.g., a student's spouse is hired by the university).

Consensual sexual or romantic relationships between a Student Teacher (including students who are serving in a teaching role as laboratory instructor, Teaching Assistant, or grader) and a student are permitted, provided the Student Teacher: (1) does not exercise any evaluative or teaching function for that student or recuses himself or herself from the role of Student Teacher, and (2) notifies his or her supervisor and the Office of Human Resources so that alternative evaluative, oversight or teaching arrangements can

be put in place.

Consensual sexual or romantic relationships between employees, including faculty, are permitted, generally. Relationships between employees in which one has direct or indirect supervisor or evaluative authority over the other requires recusal and disclosure to the reporting party's supervisor and the Office of Human Resources. The university may take any action necessary to minimize the disruption of the work group, including transferring either or both employees.

Failure to timely disclose the relationship, as required above, is a violation of this policy.

E. Retaliation

Retaliation means any adverse action, intimidation, threat, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or its regulations or because the individual has made a report or Formal Complaint of Prohibited Conduct testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, or meeting under this Policy, including informal resolution.

Retaliation can be committed by any individual or group of individuals, not just a Complainant or Respondent. Retaliation may constitute a violation of this Policy even when the underlying complaint is dismissed or did not result in a finding of responsibility.

VII. Related Definitions

A. Consent

Consent must be affirmative. "Affirmative Consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is positive cooperation in act and attitude made with knowledge and agreement to the nature of the act.

Consent cannot be obtained through physical force, threats, or coercion, or by taking advantage of another person's incapacitation. Coercion is conduct, including intimidation or express/implied threats of immediate or future physical, emotional, financial, or reputational harm to the Complainant or another, which would place a reasonable person in fear they will be injured or harmed if they do not submit.

It is the responsibility of each individual involved to ensure they have the Affirmative Consent of the other(s) to engage in each act of sexual activity. Belief in Affirmative Consent is not reasonable if it arose from a Respondent's voluntary intoxication or recklessness, and such intoxication is not an excuse for engaging in Prohibited Conduct. Further, such belief is not reasonable if reasonable steps are not taken to determine Affirmative Consent.

Additional guidance on Affirmative Consent:

- Consent can be given by clear words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
- Affirmative consent must be ongoing throughout the sexual activity and can be revoked at any time. Sexual contact must cease immediately once consent is withdrawn and clearly communicated.
- Consent cannot be inferred from silence, passivity, or lack of verbal or physical resistance. Relying on nonverbal communication alone may result in a violation of this Policy.
- Consent cannot be inferred from an existing or previous dating relationship. The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be real-time and mutual consent to sexual activity.
- There must be mutual consent to engage in the sexual activity each time it occurs.
- Consent to one form of sexual activity does not imply or constitute consent to another form of sexual activity.
- Consent to engage in sexual activity at one time is not consent to engage in the same or different sexual activity at a different time.
- Consent to engage in sexual activity with one individual is not consent to engage in sexual activity with another.

B. Incapacitation

Affirmative Consent cannot be obtained by taking advantage of another individual's incapacitation. Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual who is incapacitated is not capable of giving valid, affirmative consent.

Incapacitation means an individual cannot understand the fact, nature, or extent of the sexual activity. An incapacitated individual lacks the physical and mental capacity to make informed, reasonable judgments about whether or not to engage in sexual activity.

An individual who is incapacitated may not be able to understand where they are, whom they are with, how they got there, or what is happening. Further, an individual may be incapacitated as a result of consumption of alcohol, medication, or drugs. When alcohol, medication, or other drugs are involved, incapacitation is a state of intoxication or impairment that is so severe that it interferes with an individual's capacity to make informed and knowing decisions. Impairment must be significant enough to render an individual unable to understand the fact, nature, or extent of the sexual activity.

Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination. The University does

not expect students, faculty, or staff to be medical experts in assessing incapacitation. Individuals should look for common and obvious warning signs that show that an individual may be incapacitated or approaching incapacitation. An individual's level of intoxication is not always demonstrated by objective signs; however, some signs that an individual may be incapacitated include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

Another effect of excessive alcohol consumption can be memory impairment or an inability to recall entire or partial events (sometimes referred to as "blackout" or "brown-out"). An individual may experience this symptom while appearing to be functioning "normally," including communicating through actions or words that can reasonably and objectively be interpreted as communicating consent to engage in sexual activity. Total or partial loss of memory, alone, may not be sufficient, without additional evidence, to prove that an individual was incapacitated under this Policy. Whether sexual activity under these circumstances constitutes Prohibited Conduct depends on the presence or absence of the outwardly observable factors indicating that an individual is incapacitated, as described above.

An individual's level of intoxication may change over a period of time based on a variety of individual factors, including the amount of substance intake, speed of intake, body mass, height, weight, tolerance, quantity and pattern of food and sleep, drinking pattern, and metabolism. It is critical, therefore, that any individual engaging in sexual activity is aware of both their own and the other individual's level of intoxication and capacity to give consent.

In evaluating Affirmative Consent in cases involving incapacitation, the University considers the totality of available information in determining two issues:

- i. Did the Respondent know the Complainant was incapacitated?; or, if not,
- ii. Would a sober, reasonable individual in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated? If either question is answered positively, Affirmative Consent was absent, and the conduct is likely a violation of this Policy.

VIII. Privacy and Confidentiality

The University is committed to protecting the privacy of all individuals involved in the reporting, investigation, and resolution of a report of Prohibited Conduct under this Policy. All employees who are involved in the University's response to reports of Prohibited Conduct receive specific training and guidance about safeguarding private information in accordance with state and federal law. It is important to understand that privacy and confidentiality have distinct meanings under this Policy.

A. Privacy

Privacy refers to the discretion that will be exercised by the University, including the Title

IX Office, in the course of any formal or informal resolution process under this Policy. Information related to a report of Prohibited Conduct will be handled discreetly and shared with a limited circle of University employees or designees who need to know to assist in the assessment, investigation, and resolution of the report and related issues. Individuals in the Title IX Office, along with Investigator, Adjudicator, those tasked with facilitating Informal Resolutions, and appellate officials will receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this Policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will maintain the privacy of the parties to the extent reasonably possible. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA).

B. Confidentiality

Confidentiality refers to statutory protections provided to individuals who disclose information in legally protected or privileged relationships, including professional mental health counselors, medical professionals, attorneys, and ordained clergy. When an individual shares information with a Confidential Resource as a confidential communication in the course of a protected relationship, the Confidential Resource cannot disclose the information without the individual's written permission or unless required by ethical or legal obligations that compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent threat of physical harm to self or others, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18. Similarly, medical and counseling records cannot be released without the individual's written permission or unless permitted or required consistent with ethical or legal obligations.

Confidential Resources may share non-personally identifying information about Clery-reportable crimes with the designated Clery Coordinator for purposes of the anonymous and aggregate statistical reporting under the Clery Act.

C. Release of Information by the University

The University will not disclose personally identifiable information obtained pursuant to this Policy, except when the University has obtained prior written consent from a person with the legal right to consent to the disclosure, or otherwise required by federal law, federal regulations, or to the extent such disclosures are not otherwise in conflict or are permitted under federal or state law.

Pursuant to the Clery Act, the University must disclose statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the U.S. Department of Education. If a report of sexual assault, dating violence, domestic violence, stalking, or another Clery Act crime poses a serious or continuing threat to the campus community, the University will issue a timely notification to the campus community to

protect the health and safety of the campus community as required by the Clery Act. In all of these instances, the information is reported in a manner that does not include personally identifying information about individuals involved in an incident. The University will not release to the general public the name of the Complainant, the Respondent, or witnesses except as otherwise permitted or required by law. The University also will not disclose information about any Supportive Measures to individuals other than the individual to whom they apply, including informing one party of Supportive Measures provided to another party, unless necessary to provide the Supportive Measures or restore or preserve a party's access to the education program or activity.³

The University may share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. All University proceedings are conducted in compliance with the requirements of FERPA, the Clery Act (as amended by VAWA), Title IX, state and local law, and University policy.

IX. Reporting Responsibilities of University Employees

This section describes the various reporting and disclosure options available and the associated confidentiality implications. Because of their role at the University, some employees are designated as Confidential Resources, meaning they are able to maintain a higher degree of confidentiality, as described above. All other employees are required to promptly share all relevant details of an alleged incident of Prohibited Conduct with the Title IX Coordinator. The distinctions between these groups are explained below so that individuals can make informed choices about how and where they seek help and guidance.

A. Confidential Resources

Confidential Resources include any University employee whose communications are privileged or confidential under federal or state law and anyone specifically designated by the University to serve as a Confidential Resource.⁴ Confidential Resources include medical, clinical, and mental health professionals and clergy, as well as any employees providing administrative, operational, and/or related support for such providers in their performance of such services. Information about Confidential Resources is contained on the SFBU website at <https://www.sfbu.edu/student-life-support/health-and-wellness>.

Information shared with a Confidential Resource when that Confidential Resource is operating within the scope of their role will be maintained as confidential and not shared with the Title IX Coordinator. The Confidential Resource should share with the reporting individual that: (1) they are a Confidential Resource and are not required to share the

³ If a party is a student with a disability, the Title IX Coordinator may consult with the Coordinator for Disability and Accessibility Services in order to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of Supportive Measures.

⁴ A University employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination is also a Confidential Resource when acting in that capacity.

reported information with the Title IX Coordinator, (2) provide the reporting individual with information on how to contact Title IX Coordinator and how to make a report, and (3) that the Title IX Coordinator may be able to offer and coordinate Supportive Measures, as well as initiate an informal or formal resolution process.

When individuals who otherwise are Confidential Resources receive information outside of the provision of services, the Confidential Resource is required to share that information with the Title IX Coordinator. For example, a licensed counselor who receives a disclosure in the context of speaking at a prevention program would be required to share the information with the Title IX Coordinator.

A Complainant may seek assistance, support, and advice from a Confidential Resource without initiating an investigation that could reveal the identity of the Complainant or the fact that the Complainant has disclosed the incident. An individual who speaks to any of the employees described above must understand that if a Complainant wants to maintain confidentiality, the University may be unable to conduct an investigation of the particular incident or pursue disciplinary action against a Respondent. A Complainant who at first requests confidentiality may later decide to initiate a complaint with the Title IX Coordinator or to make a report to law enforcement and may be assisted by Confidential Resources in doing so.

B. All Other Employees

All University employees, other than those designated as Confidential Resources, are Responsible Employees and must report conduct that reasonably may constitute Prohibited Conduct to the Title IX Coordinator. These employees include all faculty and staff, resident advisors, and all other students employed by the University. Student employees must report conduct that reasonably may constitute Prohibited Conduct if they witness or become aware of such conduct while functioning within the scope of their employment with the University. The only exception to the reporting requirement is the circumstance where a Responsible Employee is personally subject to conduct that reasonably may constitute Prohibited Conduct. In such a case, the Responsible Employee is not required to report their own experience of Prohibited Conduct to the Title IX Coordinator.

Responsible Employees are required to report to the Title IX Coordinator all known information about alleged Prohibited Conduct, such as the identities of the parties, any witnesses, and the date, time, and specific location of the alleged incident.

1. Exception for Disclosures During Certain Public Awareness Events

Responsible Employees are *not* required to report information disclosed at public awareness events (e.g., “Take Back the Night,” vigils, protests, survivor speak-outs, or other public forums in which students may disclose Prohibited Conduct). The University may provide information about Title IX and available University and community resources

and support at public awareness events.

C. *Mandatory Reporting of Child Abuse and Neglect*

The University complies with California state law requirements under the Child Abuse and Neglect Reporting Act (CANRA) and the Welfare and Institutions Code. Designated University employees are required to report known or suspected abuse, molestation or neglect relating to children, elders or dependent adults to the Department of Children and Family Services Child Protection Hotline at (800) 540-4000 or local law enforcement.

X. Reporting Options

Anyone can make a report as follows:

- Contacting the Title IX Coordinator in Person, by Email, or by Telephone
General Inbox and Making a Report: t9-equity@sfbu.edu
Email: andrew.nguyen@sfbu.edu
Phone: (510) 803-7328 x227
Office: Student Success Hub Building, Room: #8
- Online reporting portal
- Local law enforcement
 - Fremont Police Department
510-790-6800

The University encourages anyone who has experienced Prohibited Conduct to reach out to available resources. The University recognizes that a Complainant may have different needs at different times. A Complainant does not need to know whether they wish to request any particular course of action or how to label what happened in order to make a report. Individuals who are uncertain about what they wish to do in response to an incident of Prohibited Conduct, including how or whether to report the conduct, may contact and consult a Confidential Resource to address questions and concerns in a confidential setting. Individuals with questions or concerns about the University's processes may also contact the Title IX Coordinator directly to learn more about available resources and options.

A. Time Frame for Reporting

Complainants and witnesses are encouraged to report Prohibited Conduct as soon as possible to maximize the University's ability to respond promptly and effectively. The University does not, however, limit the time frame for reporting. Depending on the relationship of the Respondent to the University, the University may not have the authority to impose disciplinary action. Where the University does not have disciplinary authority—i.e., a report is made after a student has left or graduated or an employee no longer works for the University—the University still will seek to meet its Title IX obligations by evaluating

the reported conduct, providing reasonably available Supportive Measures to the Complainant, and assisting the Complainant in identifying external reporting options and may take other appropriate action to address the reported conduct.

B. *Amnesty*

The University encourages good faith reports of Prohibited Conduct under this Policy. To that end, the University will not pursue disciplinary action for illegal consumption of alcohol or drugs in violation of the Student Handbook against a student enrolled in the University who makes a good faith report to the University as a Complainant, or who is a witness to an incident of Prohibited Conduct, unless the University determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty. This amnesty applies only to conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the investigation.

C. *Coordination with Law Enforcement*

A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the University will assist a Complainant in contacting law enforcement at any time. Under limited circumstances where there is a threat to the health or safety of any University community member, the University may independently notify law enforcement. An individual may make a report to the University, to law enforcement, to neither, or to both. The University's resolution process and law enforcement investigations may be pursued simultaneously, but will operate independently of one another. The University will, when appropriate, coordinate information with law enforcement if law enforcement is notified. The University, upon request, may also temporarily pause its investigation to allow preliminary fact gathering by law enforcement.

D. *Obligation to Provide Truthful Information*

All University community members are expected to provide truthful information throughout the resolution process. Intentionally false accusations will not be tolerated. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions, in accordance with the *Student Handbook* and *Employee Handbook*, as applicable. A claim will not be deemed intentionally false merely because there is insufficient evidence to prove a violation of this Policy or because it is deemed to be without merit. An intentionally false claim is one made with knowledge beforehand that it is false and with malicious intent toward another person.

XI. *Response to A Report or Complaint of Prohibited Conduct*

Any person may report Prohibited Conduct to the Title IX Coordinator verbally or in writing. Upon receipt of a report, the Title IX Coordinator will take steps to promptly and effectively respond to the report. More specifically, the Title IX Coordinator will contact the

Complainant to discuss the availability of Supportive Measures with or without filing a formal complaint, will explain to the Complainant the process of filing a formal complaint, and will consider the Complainant's wishes with respect to a resolution process.

A. Supportive Measures

A Supportive Measure is a non-disciplinary, non-punitive individualized service offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent at any time before or after filing a formal complaint or where no formal complaint has been filed. Supportive Measures are designed to preserve access to the University's education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of the Complainant, the Respondent, or broader University community; maintain the integrity of the investigative and/or resolution process; and deter retaliation. The University will maintain the confidentiality of any Supportive Measures provided to a Complainant and a Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures.

The University will provide reasonable Supportive Measures to Complainants, Respondents, and other individuals who are participating or attempting to participate in its education program or activity, as appropriate and available, taking into account the role of the other individual and the nature of any contractual relationship with the University.

Available Supportive Measures may include, but are not limited to, the following:

- No-contact orders issued by the University, which are measures that restrict encounters and communications between the parties.
- Academic accommodations, which are measures that include deadline extensions, incompletes, course changes, late drops, or other arrangements as appropriate.
- Residential accommodations, which are measures that include arranging for new housing or providing temporary housing options, as appropriate.
- Transportation or working arrangement changes or other employment accommodations, as appropriate.
- Access to support services, provided with assistance from the University, including campus escort services, increased security and monitoring of certain areas on campus, advocacy, academic support, counseling, disability, health or mental health services, visa and immigration assistance, student financial aid services, and legal assistance, both on and off campus, as applicable.
- Training and education programs on preventing and addressing Prohibited Conduct.

- Assistance with reporting a crime to local law enforcement, which may be requested at any time by an individual involved in an alleged incident of sexual discrimination. Such individuals may request orders of protection, restraining orders, or relief from abuse orders from courts of appropriate jurisdiction. The University will provide reasonable assistance upon request. The University also will work to respect and implement the requirements of such orders on premises that it owns or controls, as necessary and appropriate.

The availability of Supportive Measures will be determined by the specific circumstances of each report. The University will consider a number of factors in determining which Supportive Measures to take, including the needs of the student or employee seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the parties; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether court proceedings have been used to protect any parties (e.g., protective orders). The University will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

The Title IX Coordinator is responsible for ensuring the implementation of Supportive Measures and coordinating the University's response with the appropriate offices on campus. The Title IX Coordinator has the discretion to continue, modify, or terminate any Supportive Measure

As noted above, the University will not disclose information about any Supportive Measures to individuals other than the individual to whom they apply, including informing one party of Supportive Measures provided to another party, unless necessary to provide the Supportive Measures or restore or preserve a party's access to the education program or activity.⁵

B. Initial Assessment

Upon receipt of a report or formal complaint of Prohibited Conduct, the Title IX Coordinator will conduct an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator or their designee will also promptly contact the Complainant to share the following information:

- that the University has received a report that the Complainant may have experienced Prohibited Conduct;
- a statement that retaliation for making a report, initiating a complaint or participating in a resolution process, is prohibited;
- available counseling resources within the University or in the community;
- where a potential crime may have occurred, notice that the Complainant has the

⁵ If a party is a student with a disability, the Title IX Coordinator may consult with the Coordinator for Disability and Accessibility Services in order to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of Supportive Measures.

- right, but not the obligation, to report the matter to law enforcement;
- the University's investigation procedures established under this Policy;
- reasonably available supportive measures;
- that the University will ascertain and consider the Complainant's wishes with respect to supportive measures;
- the availability of supportive measures with or without the filing of a formal complaint;
- the importance of preserving evidence;
- a request for the Complainant to meet with the Title IX Coordinator or other designated employee of the Title IX Office to discuss options for responding to the report;
- the process for filing a formal complaint; and
- the manner in which the University responds to reports of Prohibited Conduct and a description of potential disciplinary consequences.

A Complainant may: request supportive measures only; file a formal complaint; or request more time to consider their options. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a formal complaint on behalf of a Complainant. A Complainant is always entitled to reasonably available supportive measures, regardless of whether a formal complaint was filed.

As part of the Initial Assessment, the Title IX Coordinator will determine, in consultation with other need-to-know University officials, as appropriate, whether the Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy.

C. Overview of Initial Assessment

As part of the initial assessment, the Title IX Coordinator will:

- Promptly contact the Complainant to discuss the availability of Supportive Measures.
- Consider the Complainant's wishes with respect to Supportive Measures.
- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident.
- Address immediate physical safety and emotional well-being needs.
- Conduct an individualized analysis of safety and risk for the campus community to determine whether a student Respondent's presence in the University's education programs or activities poses an imminent and serious threat to the physical health or safety of a Complainant, any student, or other individual that

justifies removal.

- Notify the Complainant of the right to contact (or decline to contact) law enforcement or seek a civil protection order.
- Notify the Complainant of the right to seek medical treatment.
- Notify the Complainant of the importance of preservation of evidence.
- Refer the report to the designated Clery Coordinator to assess the reported conduct for any Clery Act obligations, including entry in the daily crime log or issuance of a timely warning.
- Provide the Complainant with written information about on- and off-campus resources.
- Provide the Complainant with a copy of this Policy and an explanation of the procedural options, including seeking Supportive Measures, the option of initiating a complaint, and the formal and informal resolution processes.
- Notify the Complainant of the right to be accompanied at any meeting or proceeding by an advisor of their choice, and that the University will provide an advisor, without fee or charge.
- Assess the available information for any pattern of conduct by Respondent.
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns).
- Explain the University's Policy prohibiting retaliation and how to report acts of retaliation.
- Determine the age of the Complainant, and if the Complainant is a minor, make the appropriate report of suspected abuse consistent with California state law.

The University will seek to complete the initial assessment within 10 business days but recognizes that there may be circumstances in which the initial assessment takes longer based on the availability of the Complainant or other necessary information, a Complainant's request to maintain privacy or not seek disciplinary action, or other factors outside of the University's control.

XII. Overview of the University's Resolution Processes

The University is committed to providing a prompt and equitable resolution of all reported violations of this Policy. To implement this Policy, the University has developed a formal and an informal resolution process to resolve formal complaints of Prohibited Conduct:

- **Informal Resolution:** a process that includes informal or restorative options for resolving reports pursuant to terms (including remedies and sanctions) that are voluntarily and mutually agreed upon by all parties and the University.
- **Formal Resolution:** formal procedures that involve an investigation, adjudication and, if appropriate, the imposition of sanctions.

In all formal and informal resolution processes, the University will treat Complainants and Respondents equitably. Upon receipt of a report, the University will conduct an initial assessment of the available information and consider the Complainant's stated interests, as well as the University's compliance obligations, in determining how to proceed. The Title IX Coordinator will offer and coordinate appropriate Supportive Measures for the Complainant regardless of whether a formal or informal resolution process is initiated. The Respondent is entitled to reasonably available Supportive Measures when the formal or informal resolution process is initiated.

A. Time Frame for Resolution

The University will seek to complete the appropriate resolution process as promptly as possible, consistent with the need to conduct sensitive and informed fact gathering to ensure an equitable resolution. The Policy designates reasonably prompt time frames for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any time frame in this Policy for good cause and/or due to extenuating circumstances. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, exam periods, the complexity of the investigation, the volume of information, number of witnesses, length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, the University will not unduly or unreasonably delay the prompt resolution of a report under this Policy. Reasonable requests for delays by the parties may serve to extend the time period for resolution of the report.

The Title IX Coordinator, in consultation with the Investigator, has the authority to determine whether an extension is required or warranted by the circumstances. The University will notify the parties in writing of any extension of the time frames for good cause, the reason for the extension, and the length of the extension. Time frames for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both the Complainant and the Respondent.

B. Advisor and Support Person

Throughout the informal or formal resolution process, each party has the right to be accompanied at any meeting by an advisor of their choice and an additional support

person. The advisor and support person may be any person, including an attorney. A party may decline to use an advisor or support person for any or all stages of the formal or informal resolution process with the exception of the hearing, where any questioning of the other party must be conducted by the party's advisor. If a party does not have an advisor for the hearing, the College will provide an advisor, free of charge, who may be, but is not required to be, an attorney, to attend the hearing and conduct questioning on behalf of that party.

The advisor and support person may observe, provide support, and provide guidance or advice to the party (in a nondisruptive manner). Neither the advisor nor the support person is permitted to speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings. The advisor and support person should plan to make themselves reasonably available; the University will not unduly delay the scheduling of meetings based on an advisor's or support person's unavailability. An advisor and support person may be asked to meet with a University administrator in advance of any proceedings to understand the expectations of the role, privacy considerations, and appropriate decorum. An advisor and support person may be removed for failure to follow these expectations. The advisor and support person are entitled to review all information made available to the party and are precluded from sharing the information from the University related to the resolution with any individual, other than the party. Failure to maintain the privacy of information provided by the University in the resolution process may result in removal of the advisor or support person.

C. Filing a Formal Complaint

The formal resolution process (investigation, determination, and appeal) and informal resolution process are initiated by the filing of a formal complaint. A formal complaint is a written document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The formal complaint may be submitted to the Title IX Coordinator in person, by mail, or by electronic mail. At the time of filing the formal complaint, the Complainant must be participating in or attempting to participate in the University's education program or activities. In addition, the Title IX Coordinator retains discretion, in consultation with relevant University stakeholders, to file a formal complaint on behalf of any individual.

1. Mandatory and Discretionary Dismissal of a Formal Complaint

The Title IX Coordinator will determine whether the conduct alleged in the formal complaint falls within the scope of the Policy and the definition of Sexual Harassment. Under the Title IX regulations, the University must dismiss some or all of the allegations in the formal complaint that relate to Sexual Harassment if it is determined at any stage during the process that:

1. the conduct alleged, even if substantiated, would not constitute Title IX Quid Pro Harassment on the basis of sex, Title IX Hostile Environment Harassment on the basis of sex, Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as

- defined in the Title IX regulations and the Policy; and/or
2. the conduct did not occur within the University's education program or activity (which requires substantial control over both the Respondent and the context in which the conduct occurred, or where the conduct occurred in a building controlled by recognized student organizations); and/or
3. the conduct did not occur against an individual in the United States.

It is important to note that, where the allegations in the formal complaint include other forms of Sexual Harassment prohibited by the University, the conduct occurred outside of the United States, or the conduct is not within the education program or activity (but still within the scope of conduct regulated by the University), the Formal Resolution process will apply and the remaining allegations will proceed to an investigation and hearing pursuant to that process.⁶

In addition, under the Title IX regulations, the Title IX Coordinator may dismiss a formal complaint, at any stage of the process, in any of the following three circumstances:

1. the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any of its allegations;
2. the Respondent is no longer enrolled or employed by the University; or
3. specific circumstances, including a Complainant's decision not to respond to outreach by the Title IX Coordinator, prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or its allegations.

2. Notice of Dismissal of a Formal Complaint and How to Appeal the Dismissal

The decision about whether to dismiss a formal complaint, in whole or in part, may be made at any time in the process. Upon reaching a decision that the formal complaint will be dismissed, the Title IX Coordinator will promptly notify the Complainant of the dismissal of the complaint or any specific allegation within the complaint and the reason for the dismissal in writing. If the dismissal occurs after the Respondent has been notified of the allegations, then the University must also notify the Respondent in writing that the dismissal may be appealed. If some or all of the allegations in the formal complaint have been dismissed, the parties may appeal this dismissal using the procedure outlined in the "Appeals" section below. Parties remain entitled to appropriate Supportive Measures when a formal complaint is dismissed.

⁶ This includes circumstances where the University otherwise regulates the conduct, the conduct has or could have a continuing impact within the University's education program or activity, or the conduct may have the effect of posing a serious threat to the University community. Although the Formal Resolution process for reports of Sexual Harassment is the same, the parties, pursuant to the Title IX regulations, have the opportunity to appeal the mandatory dismissal of the allegations related to Sexual Harassment that reportedly occurred outside of the education program or activity or outside of the United States.

D. Consolidation of Formal Complaints

The University may consolidate formal complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances. All parties will receive simultaneous, timely notification of any such consolidation. During the course of the investigation, the investigation may reveal the existence of additional or different potential Policy violations, which also may be consolidated following notification to the parties of the amended notice of allegations. In the event of a consolidation of a formal complaint of Sexual Harassment and all other forms of Prohibited Conduct that is not Sexual Harassment, the resolution procedures applicable to cases of Sexual Harassment will apply to the consolidated matter.

E. Balancing Complainant Autonomy with the University's Responsibility to Investigate

The University endeavors to respect the wishes of a Complainant to not pursue a Formal or Informal Resolution. When a Complainant decides to not pursue a Formal or Informal Resolution, the Title IX Coordinator may file a formal complaint, after considering the following factors:

- a. The Complainant's request not to proceed with a resolution process;
- b. The Complainant's reasonable safety concerns regarding filing a formal complaint;
- c. The risk that additional acts of Prohibited Conduct would occur if a formal complaint is not filed;
- d. The severity of the alleged Prohibited Conduct, including whether the conduct, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and/or harassment and prevent its recurrence;
- e. The age and relationship of the parties, including whether the Respondent is an employee of the University;
- f. The scope of the alleged Prohibited Conduct, including information suggesting a pattern, ongoing Prohibited Conduct, or Prohibited Conduct alleged to have impacted multiple individuals;
- g. The availability of evidence to assist a decision maker in determining whether Prohibited Conduct occurred; and
- h. Whether the University could end the alleged Prohibited Conduct and prevent its recurrence without initiating its resolution process.

If, after considering these factors and other relevant factors, the Title IX Coordinator determines that the reported conduct presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged

prevents the University from ensuring equal access on the basis of any Protected Characteristic to its education program or activity, the Title IX Coordinator may file the formal complaint.

When the Title IX Coordinator files a formal complaint, the Title IX Coordinator will notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures. The University will not compel a Complainant to participate in an investigation or disciplinary proceeding.

Because the University is under a continuing obligation to address Prohibited Conduct campuswide, reports of Prohibited Conduct (including anonymous and third-party reports in which names are not mentioned) also will prompt the University to consider broader remedial action such as increased monitoring, supervision, or security at locations where the reported Prohibited Conduct occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

F. Emergency Removal

Certain circumstances may warrant removing a student Respondent from a University education program or activity before resolution of the complaint. The University may remove a student Respondent on an emergency basis from University property or employment, education or research programs, or activities. The determination of whether to remove a student may be made by the Title IX Coordinator in consultation with other University employees, as necessary. This decision may be made at any point in the process.

Before imposing an emergency removal, the University will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct justifies a removal. If the University determines such removal is necessary, the Respondent will promptly be provided written notice and an opportunity to challenge the decision immediately following the removal. During any challenge, the Respondent will remain off-campus and must comply with the notice of removal. That notice shall include a statement that the use of any information the Respondent chooses to provide may be used subsequently in implementing any aspect of this Policy, including the investigation and adjudication. The Respondent will have 72 hours to submit a written challenge of the safety and risk analysis to the Title IX Coordinator. The Title IX Coordinator will assign the matter to be reviewed by a decision maker to evaluate the information in support of the individualized safety and risk analysis and any information provided by the Respondent and the Complainant, as applicable. The decision maker will submit a final decision in writing to the Respondent and the Complainant within three (3) business days, with a copy to Title IX Coordinator.

Any individual who hears the challenge to the removal determination will not be involved in any decision regarding responsibility or appeal of that decision regarding responsibility.

G. Administrative Leave

The University retains the authority to place an employee Respondent on administrative leave during the investigation and adjudication process, consistent with the procedures set forth in the *Employee Handbook* .

XIII. Informal Resolution Process

The University may resolve reports through informal resolution (which may include the possibility of mediation), as appropriate based on the circumstances. Informal resolution is not appropriate for all matters, and the University retains the discretion to determine which cases may be appropriate for informal resolution and the type of informal resolution process that may be appropriate in a specific case.. Informal resolution is not available in cases in which an employee is alleged to have sexually harassed a student.

Informal resolution is available only once a formal complaint has been filed, prior to a determination of responsibility, and where the Complainant, Respondent, and the University voluntarily consent to the process in writing.

Before initiating an informal process, the University will provide the parties with written notice of the process and obtain the parties' voluntary, written request for and consent to the informal resolution process. The written notice to the parties will disclose:

- The allegations and potential Policy violations at issue;
- The requirements of the informal resolution process (described below);
- The consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared in the event a formal resolution process is resumed;
- The circumstances under which the parties are precluded from resuming a formal complaint arising from the same allegations; and
- The parties' right to withdraw from the informal resolution process and resume the formal resolution process with respect to the complaint, at any time prior to agreeing to a resolution.

Upon initiation of the informal resolution process, the Title IX Coordinator will appoint an individual to facilitate an informal resolution. The appointed facilitator may be the Title IX

Coordinator or a trained third party, but it may not be the same person as the Investigator or the Adjudicator in the formal resolution process. The facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

The facilitator will meet with both parties to discuss the options for informal resolution. Although face-to-face mediation or a restorative justice process may be suggested, parties will never be required to meet directly with one another as part of the informal resolution process. Terms of an informal resolution can include restrictions on the Respondent imposed as remedies or disciplinary sanctions, had the matter proceeded to formal resolution.

When allegations of Prohibited Conduct have been resolved through informal resolution by mutual consent of the parties and on a basis that is acceptable to the appointed facilitator in consultation with the Title IX Coordinator, the resolution process shall be considered final and there will be no subsequent process or appeal.

Complaints that are resolved via informal resolution should be completed within 60 days of the University's receipt of the complaint.

XIV. Formal Resolution Process: Investigation

Upon the initiation of a complaint and election to proceed to a formal resolution, the University will conduct an adequate, reliable, and impartial investigation of the complaint. In doing so, the University will conduct an investigation that gathers sufficient information to determine whether discrimination, harassment, or retaliation occurred. The investigation will be impartial and will be conducted by a trained Investigator who has no actual bias or conflict of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

During the investigation both the Complainant and Respondent have equal opportunities to receive written notice of allegations; to participate in the investigation; to review and present inculpatory and exculpatory information and evidence that is not otherwise impermissible; to be accompanied by an advisor and support person of their choice to any meeting; to timely and equal access to information that will be used in disciplinary proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, sanction, and rationale; and to appeal the outcome.

The Investigator, not the parties, is responsible for gathering relevant evidence. The Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution and are encouraged to preserve relevant evidence. In the event that a party declines to voluntarily provide material information, the University's ability to conduct a prompt, thorough, and equitable investigation may be

adversely impacted.

A. *Initiating an Investigation*

Following the initiation of an investigation, the Title IX Coordinator will assign one or more Investigators to conduct a prompt, thorough, fair, and impartial investigation. The assigned Investigator may be an employee of the University or an external professional hired by the University. The selection of an internal or external Investigator will be informed by the complexity of the case, the availability of internal resources at the time of the investigation, and other reasonable considerations.

The Title IX Coordinator will ensure that the Investigator receives annual training on the University's obligation to address Sexual Harassment in its education program or activity; the scope of conduct that constitutes discrimination, harassment, and retaliation, including Sexual Harassment as defined in the Title IX regulations; the scope of the University's education program and activity; the resolution process outlined in this Policy; how to conduct an investigation that is fair and impartial, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and the meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance pursuant to this Policy.

The Investigator will be impartial and free from actual bias or conflict of interest for or against Complainants or Respondents generally, or the Complainant or Respondent in the matter being investigated. If either party believes an assigned Investigator has a conflict of interest or bias, they must notify the Title IX Coordinator as soon as possible, but no later than three (3) calendar days after receiving notice of the identity of the Investigator. The Title IX Coordinator will consider the nature of the conflict and determine if a different individual should be assigned as Investigator. The Title IX Coordinator's decision regarding any conflicts is final.

B. *Notice of Allegations*

The Title IX Coordinator will provide the Notice of Allegations to the Complainant and Respondent. Such notice will occur as soon as practicable after the University receives a formal complaint, if there are no extenuating circumstances.

The parties typically will be notified through their University email accounts if they are a student or employee and by other reasonable means if they are neither. The University will provide sufficient time for the parties to review the Notice of Allegations and to prepare a response before any initial interview.

The Notice of Allegations will include the following information:

- i. Notice of the University's investigation and adjudication process and a hyperlink to a copy of this Policy;
- ii. Notice of the allegations potentially constituting Prohibited Conduct with sufficient

details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting Prohibited Conduct; and the date and location of the alleged incident, if known;

- iii. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigation and adjudication process by a trained and neutral decision maker;
- iv. The name of the Investigator, including how to challenge participation by the Investigator on the basis of a conflict of interest or bias;
- v. Information about the parties' participation options in the process;
- vi. The prohibition against retaliation;
- vii. A list of available Supportive Measures;
- viii. A statement that the parties may have an advisor and support person of their choice, who may be, but is not required to be, an attorney, accompany them to all meetings;
- ix. The importance of preserving any potentially relevant evidence in any format; and
- x. A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

To the extent that the University has reasonable concerns for the safety of any person as a result of providing the Notice of Allegations, the University may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

If the investigation reveals the existence of additional or different potential violations of this Policy, the Title IX Coordinator will issue a supplemental written notice of allegations. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding the additional charges.

C. Acceptance of Responsibility

At any point during the investigation, the Respondent may elect to accept responsibility

for some or all of the Policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the charges, the investigation will continue to conclusion, and any acceptance of responsibility will be documented in the investigation report. Where there is an acceptance of responsibility as to all of the potential Policy violations, and both parties agree, the matter may be resolved via Informal Resolution process.

D. Investigative Steps

During an investigation, the Investigator will seek to meet separately with the Complainant, Respondent, and relevant witnesses. Although the parties to the investigation may provide information and evidence, it is the Investigator's responsibility to gather any evidence directly related to the allegations in the formal complaint to the extent reasonably available, including information in the possession, custody, or control of the University (e.g., University security access records, employee or student information, etc.). In advance of any interview or meeting, the Investigator will send written notice of the interview date, time, and location, name of participants and purpose of the interview to the parties and witnesses, in sufficient time for the party to prepare and participate. The parties may provide questions they would like the Investigator to ask of the other party or any witness. The Investigator will ask all relevant questions.

E. Witnesses

The parties may provide names of potential witnesses to the Investigator. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, the parties, or related matters.

In the event that witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be included in the written investigation report, which the parties will have the opportunity to review at the conclusion of the investigation. Witnesses may be asked to participate in a meeting with the Adjudicator in cases alleging sex discrimination.

Expert witnesses are not permitted to be offered by either party in the investigation or adjudication.

F. Gathering of Evidence

The parties are permitted to provide all information that is directly related to the allegations to the Investigator. Evidence includes any facts or information presented in support of an assertion and may include text messages, email exchanges, timelines, receipts, photographs, screen shots, or social media communications. All information collected by the Investigator(s) that is directly related to the investigation will be available for review and response by the parties.

The Investigator also may consider information publicly available from online sources that comes to the attention of the Investigator. The University does not actively monitor online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witness should bring online information to the attention of the Investigator if they believe it is relevant.

The Investigator may also consider additional documents, items, or other relevant information that the Investigator independently obtains through witnesses or otherwise during the course of the investigation. This information also will be shared with the parties. Any evidence available, but not disclosed by the parties during the investigation, may be precluded from consideration at a subsequent hearing.

The Investigator(s) may visit relevant sites or locations and record observations through written, photographic, or other means.

G. *Relevance*

The University will not restrict the ability of either party to gather and present relevant evidence. Evidence is relevant if it is related to the allegations of Prohibited Conduct under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged Prohibited Conduct occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged Prohibited Conduct occurred. The Investigator and Adjudicator have the discretion to determine the relevance and probative value of information proffered or received.

In addition, the Investigator and Adjudicator will be guided by the following evidentiary considerations:

- ***Prior or Subsequent Conduct of the Respondent:*** In gathering information, the Investigator and Adjudicator may consider other reports of, or findings of responsibility for, similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern, or another material fact. For example, where there is evidence of a pattern or conduct similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be relevant and probative to the determination of responsibility and/or assigning of a sanction. Similarly, prior or subsequent conduct of a Complainant, even when it involves conduct that may violate University Policy, may be considered when relevant. The Investigator and Adjudicator will determine the relevance of this information, and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
- ***Complainant's Prior Sexual History:*** Questions and evidence about the

Complainant's prior sexual history are not relevant unless such questions and evidence are:

- Offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or,
- The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous relationships or prior consent cannot imply consent to future sexual acts. The Investigator and Adjudicator will assess whether information related to Complainant's prior sexual history is relevant. Where a sufficient informational foundation exists for the inclusion of such evidence, the Investigator will provide notice to both parties of the scope of any inclusion of such information in the investigation report.

H. Medical and Counseling Records and Other Privileged Information

The investigator(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege. There is no requirement that a Complainant or Respondent share privileged or confidential medical and counseling records. If a person voluntarily chooses to share medical or counseling records with the investigator(s), they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond

I. Expectations of the Parties

The University expects all members of the University community to cooperate fully with the investigation and disciplinary procedures. It is understood that there may be circumstances in which a Complainant or Respondent wishes to limit their participation, and the University will respect the choice of the Complainant or Respondent as to how to engage in proceedings under this Policy. The University may, however, move forward with formal resolution without the participation of a party or parties.

The University, investigator and decision-maker will not draw any adverse inference solely from a party's decision not to participate in the investigation or any form of resolution under this Policy; however, the Complainant or Respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the case.

In the event that a Respondent who has been notified of an investigation or adjudication fails to participate, the investigation or adjudication may proceed, findings reached, and if appropriate, a sanction imposed even without the participation of the Respondent.

J. Effect of Withdrawal from the University

At any time, the University may place an administrative hold on the Respondent's University transcript or defer or withhold the award of the Respondent's degree. Even if a Respondent withdraws from the University, the Title IX Coordinator may proceed with further action as necessary to eliminate, prevent, or address any impacts of the reported conduct.

K. Safeguarding the Privacy of Complainants and Respondents

The University will take reasonable steps to maintain the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the resolution process. The parties cannot engage in retaliation, including against witnesses. Individuals involved in investigations or disciplinary proceedings under this Policy are encouraged to exercise discretion in sharing information to safeguard the integrity of the process and to avoid the appearance of retaliation.

While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing their experiences with others who may support or assist them during the process. Parties, advisors, and support persons, however, are precluded from disclosing information and evidence obtained solely through the investigation process.

L. Timing of Investigation

The Investigator will provide periodic updates to the parties about the status of the investigation, with a goal to complete the fact-gathering portion of the investigation within approximately fifty (50) business days.

At the conclusion of the fact-gathering process and prior to the completion of the investigation report, the Investigator will make information gathered in the investigation available for review by the parties, their advisors, and support persons. The parties will have an equal opportunity to inspect and review all gathered evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The Investigator will send to each party, the party's advisor, and the party's support person, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) business days to submit a written response, which the Investigator will consider prior to completion of the investigative report. In the written submission, the parties may offer additional comment or feedback on the facts as gathered, clarify information previously shared, submit questions to be asked of the other party, suggest additional witnesses, or identify any other relevant information or evidence to assure the thoroughness, sufficiency, and reliability of the investigation. To the extent the requests additional steps would seek relevant

information, the Investigator should take the requested investigative steps.

XV. Formal Resolution Process: Determination, Sanction, and Appeal

The University has two separate procedures for determining whether the reported conduct occurred. When the formal complaint alleges Sexual Harassment, the University assigns the matter to an external Adjudicator to decide the outcome. When the complaint alleges any other form of Prohibited Conduct that is not Sexual Harassment, the Investigator decides the outcome. Both resolution processes apply a preponderance of the evidence standard, are guided by the same sanctioning considerations, and provide the same appeal rights and grounds to the parties.

A. Formal Resolution Process for Allegations of Prohibited Conduct that is not Sexual Harassment

1. Investigator as Decision Maker

When the complaint alleges Prohibited Conduct that is not Sexual Harassment, the outcome will be decided by the Investigator. Following the evidence review and the exhaustion of all requested and relevant investigative steps, the Investigator will prepare a written investigation report that fairly summarizes the information gathered in the investigation and reaches a determination on whether the Prohibited Conduct occurred, using a preponderance of the evidence standard. The Investigator will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness. If the Investigator is not persuaded under the applicable standard by the evidence that Prohibited Conduct occurred, whatever the quantity of the evidence is, the Investigator will not determine that Prohibited Conduct occurred. The determination will include a rationale, if Respondent is found responsible for engaging in Prohibited Conduct, the determination will include a sanction, and the procedures and permissible bases for the Complainant and Respondent to appeal.

2. Submission of Impact and Mitigation Statements

To inform the decision on sanction, following the evidence review, both parties may submit Impact and Mitigation Statements to the Title IX Coordinator. These statements present the parties with the opportunity to share any information they would like the Investigator to consider when assigning a sanction. The Title IX Coordinator shall disclose Impact and Mitigation Statements to the Investigator only in cases in which the Investigator informs the Title IX Coordinator that they have reached a decision regarding the Respondent's responsibility, and that the Respondent will be found responsible.

3. Sanction, Remedies, and Appeal

See section XV.C and XV.E below for information on sanction, remedies, and appeals following a determination by the Investigator.

B. Formal Resolution Process for Allegations of Sexual Harassment

1. The Investigation Report

Based on the written responses to the evidence review, the Investigator, in coordination with the Title IX Coordinator, will determine whether further investigation is required. In either case, the Investigator will produce an investigation report. The investigation report will fairly summarize the relevant information gathered in the investigation, and will not include a determination on responsibility.

The investigation report will be sent to each party, their advisors, and support persons in an electronic format or a hard copy for their review and written response. Both parties may submit a written response to the investigation report to the Title IX Coordinator within ten (10) calendar days of receiving the investigation report.

2. Notice of Hearing

The Title IX Coordinator will simultaneously provide the Complainant and Respondent with a written Notice of Hearing. The Notice of Hearing will include: the specific Policy violations that will be the subject of the hearing; the date, time, and location of the hearing; the name of the Adjudicator; instructions on how to challenge participation of the Adjudicator on the basis of conflict of interest or bias; a statement that all evidence that is directly related to the allegations, as shared in evidence review, will be available to enable each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; a statement that the parties can challenge the Investigator's determination of relevance at the hearing; a statement that the parties have the right to have an advisor present at the hearing, who will conduct questioning on the party's behalf; a statement that the University will provide a Hearing Advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing, if the party does not already have an advisor present for the hearing; information regarding how to request that witnesses be present at the hearing; information about the hearing format; and information regarding the right to request reasonable accommodations for disability or language diversity at the hearing.

3. Role of the Adjudicator

The Adjudicator will be an external professional who is free from conflicts of interest and bias for or against either party in the matter and Complainant or Respondents generally and who has received annual training on the University's obligation to address Sexual Harassment in its education program or activity; the scope of conduct that constitutes

Sexual Harassment; the scope of the University's education program and activity; the resolution process outlined in this Policy; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; the meaning and application of the term "relevant" in relation to questions and evidence, the types of evidence that are impermissible regardless of relevance pursuant to this Policy; and on any technology to be used at a live hearing. The Adjudicator may reach credibility determinations, but may not base credibility determinations on a person's status as a Complainant, Respondent, or witness. If either party believes the Adjudicator has a conflict of interest or bias, they may notify the Title IX Coordinator, who will determine if a conflict or bias exists, and if so, replace the Adjudicator with another individual.

The Adjudicator will review the Investigation Report and any written statements provided by the parties in response to the Investigation Report, all exhibits, and any additional relevant evidence introduced at the hearing. The Adjudicator will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue.

4. Format of a Hearing

The hearing will be live and require the participants to simultaneously see and hear each other. A hearing may be conducted with all parties physically present in the same geographic location. Alternatively, at the discretion of the Title IX Coordinator, any or all parties, witnesses, or other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may request that the parties be located in separate rooms or locations for the hearing, with technology enabling the Adjudicator and parties to simultaneously see and hear the party or witness answering questions. Such a request should be submitted to the Title IX Coordinator at least two (2) calendar days prior to the hearing. Nothing in this section requires the parties to appear in-person before the Adjudicator and the hearing may proceed with all parties participating virtually as appropriate and necessary. The format of the hearing (e.g., in person or virtual) is at the discretion of the Adjudicator and/or Title IX Coordinator.

The hearing is an opportunity for the parties to address the Adjudicator. The parties may address any information in the Investigation Report and supplemental statements submitted in response to the Investigation Report. The University will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including, to the extent required by federal law, for purposes of cross-examination.

The Adjudicator has the discretion to determine the format of the hearing and its deliberations. Typically, the Complainant and Respondent will have an opportunity to provide an opening statement to the Adjudicator. Each party will then have an opportunity to address the Adjudicator and respond to questions by the Adjudicator, or, as described below, questions by the other party's advisor. The Adjudicator may also choose to directly

question relevant witnesses, including the Investigator.

To the extent required by federal law, each party will have the opportunity to conduct cross-examination of the other party, witnesses, and/or the Investigator through their Advisor of Choice — or Hearing Advisor provided by the University — directly verbally, and in real-time. As previously noted, if a party does not have an advisor for the live hearing, the University will provide a Hearing Advisor, at no cost, who may be, but is not required to be, an attorney. Only relevant questions may be asked of a party or witness. The parties may submit written questions to the Adjudicator in advance, but are not required to do so. Before a Complainant, Respondent, or witness responds to a question at the Hearing, the Adjudicator, to the extent permitted by federal law, will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant. To the extent permitted by federal law, the Adjudicator shall have the authority and obligation to discard or rephrase any question that the Adjudicator deems to be repetitive, irrelevant, or harassing. In making these determinations, the Adjudicator is not bound by, but may take guidance from, the formal rules of evidence.

Questions related to the following areas of inquiry are irrelevant: information protected by a legally-recognized privilege, or any party's medical, psychological, and similar records, unless the party has given voluntary, written consent; and information about the Complainant's prior sexual history, except as described above.

If a party or witness does not submit to questioning by the other party's advisors at the hearing, the Adjudicator may exercise their judgment in evaluating whether their statements have a sufficient indicia of reliability to be admissible, and if so, in evaluating what weight, if any, to give to the statements of a party or witness not subject to cross-examination. In determining the relevance, admissibility, and weight, the Adjudicator may consider longstanding principles of jurisprudence and evidence.

The Adjudicator may not draw any adverse inference from the decision of a party or witness to not participate at the hearing. The Adjudicator may directly ask questions and elicit information from parties, witnesses, and/or the Investigator to aid the Adjudicator's findings of fact, conclusions regarding the application of the Policy to the facts, and the determination of responsibility.

Generally, the 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 Adjudicator has discretion to accept or exclude, for good cause, new evidence offered at the hearing. After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement.

The advisor may not provide the opening or closing statement and may not provide answers or responses on behalf of a party. The advisor's role during the hearing is to conduct questioning of the other party and any witnesses, to the extent required by federal law. A party may never conduct questioning of the other party themselves.

At the conclusion of the hearing, the Adjudicator will deliberate in private to determine

whether there is sufficient evidence, by a preponderance of the evidence, that the Respondent engaged in conduct that violated the Policy. The Adjudicator will notify the Title IX Coordinator of its decision. After being informed of the decision of the Adjudicator, and only in cases in which the Respondent is found responsible, the Title IX Coordinator shall disclose the Impact and Mitigation Statements (see below), if any, to the Adjudicator.

5. Impact and Mitigation Statements

Upon receiving the Notice of Hearing, and until three (3) business days prior to the commencement of the party's individual meeting, both parties may submit Impact and Mitigation Statements to the Title IX Coordinator. These statements present the parties with the opportunity to share any information they would like the Adjudicator to consider when assigning a sanction. The Title IX Coordinator shall disclose Impact and Mitigation Statements to the Adjudicator only in cases in which, after the meeting, the Adjudicator informs the Title IX Coordinator that they have reached a decision regarding the Respondent's responsibility, and that the Respondent will be found responsible.

C. Sanction(s)

The University may only institute discipline on a Respondent for Prohibited Conduct following a determination at the conclusion of an investigation that the Respondent engaged in Prohibited Conduct.

Following receipt of the parties' impact statements, the Adjudicator will determine a sanction. In addition to the parties' impact statements, the Title IX Coordinator also will provide the Adjudicator with a summary of the judicial/disciplinary history (date, charge, and disciplinary action) of the Respondent, if applicable, along with any available sanctioning precedents in similar cases. The Adjudicator will consider all of the documents and information provided in determining an appropriate sanction.

The Policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Adjudicator has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community, and accountability for the Respondent. Sanctions should support the University's educational mission and federal obligations.

In determining the appropriate sanction(s) and/or remedies, the Adjudicator will consider a number of factors, including:

- The nature of the conduct at issue;

- The impact of the conduct on the Complainant;
- The impact or implications of the conduct on the University community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere, and any criminal convictions, if such information is available and known;
- Any expression of remorse or acceptance of responsibility by the Respondent;
- Maintenance of a safe and respectful environment conducive to learning;
- Protection of the University community;
- The necessity of any specific action to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant or other University community members; and,
- Any mitigating, aggravating, or compelling circumstances to reach a just and appropriate resolution in each case.

Sanctions may be issued individually, or a combination of sanctions may be imposed. Sanctions will be imposed following the expiration of the time to appeal, or determination of appeal.

1. Range of Sanctions

Disciplinary sanctions for students may include a warning, probation, fines or restitution, suspension, or expulsion from any or all University program(s) and activities in which the student is enrolled or participating. It also may include other action as deemed appropriate under the circumstances to preserve the rights of the Complainant to a safe environment. Although sanctions for violation(s) of this Policy can include any form of discipline as stated in this section, students found to have committed sexual assault most likely will receive a sanction of suspension or expulsion.

Disciplinary sanctions for employees may include a warning, probation, fines or restitution, suspension, termination of employment, or other action as deemed appropriate under the circumstances.

The Title IX Coordinator will, as appropriate, coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions and take other appropriate prompt and effective steps to ensure that the Prohibited Conduct does not continue or recur within the University's education program or activity.

2. Remedies

After a determination of Prohibited Conduct has been made, the Adjudicator, the Investigator, or Title IX Coordinator may issue remedies to the Complainant or any other impacted individual whose equal access to the University's education programs or activities were limited or denied by the Prohibited Conduct, in order to restore or preserve that person's access to the University's education program or activity.

D. The Written Outcome Letter

The Adjudicator will prepare a written outcome letter, including the finding of responsibility or non-responsibility, and, if applicable, the sanction and rationale. To the extent permitted by law, the Complainant and Respondent will be informed simultaneously, in writing, no later than ten (10) business days following the hearing.

The written outcome letter will include:

- A description of the alleged Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- A statement of, and rationale for, the outcome;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each alleged policy violation, including a determination regarding responsibility, any disciplinary sanctions, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
- The procedures and permissible bases for the Complainant and the Respondent to appeal.

E. Appeals

The Complainant and Respondent may appeal the outcome, subject to the limitations set forth below. The Title IX Coordinator will provide written notification to the Complainant and the Respondent of any applicable appeal procedures at the time the Complainant and Respondent receive the Investigator's investigation report for complaints alleging Prohibited Conduct that is not sex discrimination, or the Adjudicator's written outcome letter in matters involving sex discrimination. The purpose of an appeal is to allow the University to review and correct material errors in the adjudication process, if any.

1. Grounds for Appeal

A Complainant or Respondent may appeal the decision of the Adjudicator or Investigator

on one or more of the following grounds:

- Discovery of new evidence, which was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could materially affect the original outcome;
- Procedural irregularity that materially affected the outcome of the matter; or
- The Title IX Coordinator, Investigator, and/or the Adjudicator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The right of appeal is available only to a Respondent or Complainant.

2. Appeal Procedures

An appeal must be made in writing, signed by the party filing the appeal, and directed to the appropriate Appellate Official. An appeal in which the Respondent is a student must be directed to the Provost and an appeal in which the Respondent is an employee must be directed to the Chief Operating Officer. Any of these individuals may assign the appeal to a designee to serve as the Appellate Official, so long as that person is appropriately trained and does not have a conflict of interest or bias for or against Complainants or Respondents generally, or the Complainant or the Respondent in the appealed matter.

Appeals must be made within five (5) business days of receipt of the Investigator's investigation report for complaints alleging Prohibited Conduct that is not sex discrimination, or the Adjudicator's written outcome letter in matters involving sex discrimination. The appeal must include the grounds for appeal and an outline of any supporting evidence.

When a party appeals either the determination of the Adjudicator or Investigator, the dismissal of a complaint, or the provision of a Supportive Measures, the Title IX Coordinator will do the following:

- Notify the other party in writing when an appeal is filed;
- Ensure that the appellate official is not the Investigator(s) or a member of the Adjudicator and ensure that this individual is trained appropriately; and
- Allow both parties reasonable and equal opportunity to make a statement in support of, or challenging, the outcome.

The Appellate Official may: (1) affirm the findings or determination of responsibility, or (2) remand the matter for reevaluation or further investigation. The Appellate Official will issue a simultaneous written decision to the parties within ten (10) calendar days of receipt of the appeal. In reaching a decision, the Appellate Official has the discretion to consult with relevant stakeholders.

All decisions by the Appellate Official are final.

XVI. Prevention and Education

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. All incoming students and new employees (faculty and staff) receive primary prevention and awareness programming, and returning students and current employees receive ongoing training and related programming. For a description of the University's Prohibited Conduct prevention and awareness programs, including programs on minimizing the risk of incidents of Prohibited Conduct and bystander intervention, see the University's annual Clery reports.

XVII. Documentation and Record Retention Policies

The University will create and maintain the following records for a period of seven years: records of any actions, including any Supportive Measures, taken in response to a report or formal complaint of Prohibited Conduct; records of investigations, including any determination regarding responsibility and any audio recording(s) or transcript(s) created, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant; any appeal and the result of that appeal; any Informal Resolution and the result of such resolution processes; and all materials used to provide training. These records will be maintained in accordance with the privacy protections set forth in Title IX, Title VII, the Clery Act, FERPA, and applicable state law regarding the privacy of personnel records.