



American  
Jewish  
University

# Sexual Misconduct Policy & Procedures (Title IX)

Revised  
August 14, 2020

**AMERICAN JEWISH UNIVERSITY**  
**SEXUAL MISCONDUCT POLICY & PROCEDURES**

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## **1. Policy**

It is the policy of American Jewish University (“University”) to provide a learning and work environment in which sexual misconduct is not tolerated, and in which persons reporting such misconduct are provided support and avenues of redress.

This policy prohibits all forms of sexual misconduct, including sexual assault, (i.e., sexual harassment, non-consensual sexual contact and non-consensual sexual intercourse), relationship violence, sexual exploitation and stalking (collectively, “sexual misconduct”). The University also prohibits retaliation against an individual for making a report of conduct prohibited under this policy or for participating in a complaint resolution process of an alleged violation of this policy.

When sexual misconduct is brought to the attention of the University, the University will take prompt and appropriate action to stop, prevent, correct, and when necessary, discipline, behavior that violates this policy.

## **2. Title IX**

Title IX of the Education Amendments of 1972 (Title IX) is a federal law that prohibits discrimination on the basis of sex and gender in the University’s education programs and activities.

The University’s Title IX Coordinator is responsible for monitoring compliance with Title IX; providing education and training; tracking and reporting annually on all incidents in violation of this policy; and coordinating the University’s investigation, response, and resolution of all reports under this policy. The Title IX Coordinator is:

**Rich Potter**  
**Title IX Coordinator**  
**310-440-1269**  
**rpotter@aju.edu**

Inquiries or concerns about Title IX may be referred to the University’s Title IX Coordinator and/or the Office for Civil Rights, U.S. Department of Education, 50 United Nations Plaza, San Francisco, CA 94102; home: 415.486.5555; Email: OCR.SanFrancisco@ed.gov.

## **3. Scope of the Policy**

All University community members including students, faculty, staff, volunteers, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity with the University or on University property, are expected and required to comply with this policy.

Behavior explicitly prohibited by this policy is that which is alleged to have occurred within an education program or activity of the University. For purposes of this policy, “education program or activity” means locations (within the United States), events, or circumstances

over which the University exercised substantial control over both the person(s) alleged to have violated the policy and the context in which the alleged sexual misconduct occurred.

Sexual misconduct that does not occur within an education program or activity of the University, as defined by this policy, or outside the United States may, depending on the circumstances, still be addressed through other University policies and processes, such as those that govern student and employee conduct.

#### 4. **Definitions**

Definitions of terminology used in this policy follow:

**Sexual Misconduct** – is an umbrella term that the University uses to describe any unwelcome behavior of a sexual nature that is committed without consent. Sexual misconduct can occur between strangers or acquaintances, or people who know each other well, including between people involved in an intimate or sexual relationship, can be committed by anyone regardless of gender identity/expression, and can occur between people of the same or different gender. Examples of sexual misconduct include, sexual harassment, sexual assault (non-consensual sexual contact and non-consensual sexual intercourse), relationship violence, stalking, and sexual exploitation. Note, the definitions of sexual harassment, sexual assault, relationship violence, stalking and exploitation set forth below are general in nature. For purposes of Title IX, a determination that a person engaged in sexual misconduct will be strictly measured against definitions found at 34 C.F.R. 106.30(a).

**Sexual Harassment** – Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic status education or progress, (2) submission to or rejection of such conduct by an individual is used as the basis of employment or academic decisions affecting the individual, (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or of creating an intimidating, hostile, or offensive work or educational environment, or (4) Submission to, or rejection of the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the University.

- **Hostile Environment Caused By Sexual Harassment** – refers to a situation where students and/or employees are subject to a pattern of exposure to unwanted sexual behavior that is sufficiently severe/pervasive and objectively offensive that it alters the conditions of education, employment, or participation in a University program or activity, thereby creating an environment that a

reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not amount to a hostile environment caused by sexual harassment.

- **Quid Pro Quo Harassment** – refers to a situation where students and/or employees are subject to unwanted sexual behavior where submission or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education, employment, or participation in a University program or activity.

**Sexual Assault** – is having or attempting to have sexual contact with another individual without consent. (See below for definition of consent). Sexual contact includes:

- Non-consensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon a person, when such touching is without his or her consent or by force. Sexual contact includes intentional contact with the intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.
- Non-consensual sexual intercourse is any sexual intercourse, however slight, with any object (e.g. penis, object, finger, hand), by a person upon a person, that is without consent or by force. Sexual intercourse includes vaginal or anal penetration and oral copulation (mouth to genital contact or genital to mouth contact) no matter how slight the penetration or contact.

**Relationship Violence** – is an umbrella term that includes dating and domestic violence. Relationship violence means physical violence committed against a person who is a spouse or former spouse, a cohabitant or former cohabitant, a person with whom they have a child, or with whom they have a previous or current dating, romantic, intimate, or sexual relationship regardless of the length of the relationship or gender/gender identity of the individuals in the relationship.

Violence means causing physical harm to the person or to their possessions. Intimate partner violence may also include non-physical conduct that would cause a reasonable person to be fearful for their safety; examples include economic abuse and behavior that intimidates, frightens, or isolates. It may also include sexual assault, sexual misconduct, or stalking. Intimate partner violence can be a single act or a pattern of conduct.



**Sexual Exploitation** – sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for his or her own advantage or benefit or for the benefit or advantage of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, videotaping or photographing of any type (web-cam, camera, Internet exposure, etc.) without knowledge and consent of all persons; prostituting another person; knowingly transmitting HIV or a sexually transmitted disease to an unknowing person or to a person who has not consented to the risk; or inducing incapacitation with the intent to commit sexual assault, without regard to whether sexual activity actually takes place.

**Stalking** – A course of behavior or conduct directed at a specific person that would cause a reasonable person under similar circumstances to fear for their safety or for the safety of loved ones. A course of conduct consists of two or more acts wherein a person directly, indirectly, or through a third party follows, monitors, observes, surveils, threatens, or communicates to or about another person through behaviors. This may include but is not limited to unwanted telephone calls, letters or emails, unwanted or threatening gifts, threats, damage to property, physical assault, or appearing without invitation at a place of residence, school, or work. Cyber stalking includes use of electronic media, such as the internet, social networking sites, blogs, cell phones, apps, texts, or other electronic media to stalk an individual.

**Consent** – is defined as an affirmative, conscious, and voluntary agreement to engage in sexual activity. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact. Consent cannot be obtained through: (1) the use of coercion or force or (2) by taking advantage of the incapacitation of another individual.

Silence, passivity, or the absence of resistance does not imply consent. It is important not to make assumptions; if confusion or ambiguity arises during a sexual interaction, it is essential that each participant stops and clarifies the other's willingness to continue.

Consent can be withdrawn at any time. When consent is withdrawn, sexual activity must cease. Prior consent does not imply current or future consent; even in the context of an ongoing relationship, consent must be sought and freely given for each instance of sexual contact.

An essential element of consent is that it be freely given. Freely given consent might not be present, or may not even be possible, in relationships of a sexual or intimate nature between individuals where one individual has power, supervision or authority over another.

In evaluating whether consent was given, consideration will be given to the totality of the facts and circumstances, including but not limited to the extent to which a complainant affirmatively uses words or actions indicating a willingness to engage in sexual contact, free from intimidation, fear, or coercion; whether a reasonable person in the respondent's position would have understood such person's words and acts as an expression of consent; and whether there are any circumstances, known or reasonably apparent to the respondent, demonstrating incapacitation or fear.

**Coercion** - is verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual contact.

**Force** – is the use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual contact.

**Incapacitation** – an individual who is incapacitated is one who lacks the ability to make informed judgments and cannot consent to sexual contact. Incapacitation is the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. Mentally helpless means a person is rendered temporarily incapable of appraising or controlling one's own conduct. Physically helpless means a person is physically unable to verbally or otherwise communicate consent or unwillingness to an act.

Where alcohol or other drugs are involved, incapacitation is a state beyond impairment or intoxication. Where alcohol or other drugs are involved, evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects a person's: decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

It is not an excuse that the respondent was reckless or intoxicated and therefore, did not realize the incapacity of the other party.

Under California law a person under the age of 18 does not have the legal capacity to consent.

**Complainant** – is an individual or group of individuals who is alleged to have been subject to sexual misconduct or other conduct that violates this policy.

**Respondent** – is an individual or group of individuals against whom an allegation of sexual misconduct or other conduct that violates this policy is made.

**Report** – is an account of sexual misconduct that has allegedly occurred made to the University by the complainant, a third party, or an anonymous source.

**Formal Complaint** – is a document filed by a complainant or a document signed by the Title IX Coordinator, alleging sexual misconduct against a respondent and requesting an investigation into the allegation. If the formal complaint is signed by the Title IX Coordinator, the Title IX Coordinator is not treated as a complainant, nor is the Title IX Coordinator treated as a party to the complaint. At the time of filing the formal complaint, the complainant must be participating in, or attempting to participate in, an education program or activity of the University.

## **5. Options for Assistance Following an Incident of Sexual Misconduct**

The University will seek to support any person impacted by sexual misconduct, regardless whether the misconduct is alleged to have occurred in an education program or activity of the University. Both the University and the community provide a variety of resources to assist and support individuals who have experienced sexual misconduct or are affected by allegations of sexual misconduct. These resources, both immediate and ongoing, are available to all persons irrespective of their decision to make a complaint under this policy or to law enforcement.

### **a. Emergency Assistance**

The University strongly encourages any individual who experiences sexual misconduct to seek immediate assistance. Emergency assistance is available by calling 911 if the individual is feeling unsafe and wishes to reach local law enforcement or emergency medical care (including an ambulance) anywhere within the United States. Seeking prompt assistance may be important to ensure an individual's physical safety or to obtain medical care in the case of a sexual assault.

### **b. University and Community Assistance and Resources**

Though the University does not provide on campus health services and counselling services are limited, the University will assist members of the University community who experience or are affected by sexual misconduct, (whether as a complainant, a responding party, or a third party), with referrals to community based resources such as:

#### **Santa Monica –UCLA Medical Center Rape Treatment Center**

The Rape Treatment Center provides free, expert, comprehensive, and compassionate care for sexual assault victims – children and adults – 24 hours a day, including emergency medical treatment and forensic services; crisis counseling and longer-term psychotherapy; advocacy; accompaniment during police reporting, medical care, and court proceedings; information about rights and options to help individuals make informed

choices; and many other support services. The Center is located at 1250 16th St, Santa Monica, CA 90404. The phone number is: 424.259.7209. See also, <https://www.uclahealth.org/santa-monica/rape-treatment>.

Additional sexual misconduct crisis and counseling options are available locally and nationally through a number of agencies, including:

**The Gay Men’s Domestic Violence Project**

800.832.1901

<http://gmdvp.org/gmdvp/>

**The Rape Foundation**

1223 Wilshire Blvd., No. 410

Santa Monica, CA 90403

310.451.0042

[www.therapefoundation.org](http://www.therapefoundation.org)

**Jewish Family Services’ JFS { Hope**

(818) 505-0900 • 323.681.2626

*(Intimate Partner Violence Services)*

<https://www.ifsla.org/hope>

**Strength United**

818.933.9470

*(24 hours assistance for sexual assault and domestic violence)*

<https://www.csun.edu/eisner-education/strength-united>

**National Sexual Assault Hotline RAINN**

800.656.4673

<https://www.rainn.org/about-national-sexual-assault-telephone-hotline>

**National Domestic Violence Hotline**

800.799.SAFE

<https://www.thehotline.org/>

The University’s Title IX Coordinator will work with individuals affected by sexual misconduct to ensure their safety and support their well-being. This assistance may include supportive measures (See Section 8c below). Individuals who report an incident of sexual misconduct may also be able to obtain a formal protective order from a civil or criminal court. The University will work with the students and employees who elect to seek such protective orders.

**c. Evidence Preservation**

Individuals who experience an incident of sexual misconduct involving a sexual assault are urged to seek medical attention as soon as possible. Individuals who promptly seek medical attention benefit from being examined for physical injury, receiving preventative treatment for sexually transmitted diseases, a toxicology examination for date rape drugs, and emergency contraception.

In addition, prompt reporting allows for the preservation of evidence, which will only be used if the individual decides (then or later) to press criminal charges or file civil suit. To preserve evidence, an individual who is sexually assaulted should not bathe, douche, smoke, brush their teeth or change clothes (a change of clothes should be brought along). If clothes have been changed, the original clothes should be put in a paper bag (plastic bags damage evidence) and brought to the hospital. Do not disturb the scene of the assault. If it is not possible to leave the scene undisturbed, evidence (e.g. bedding, towels,

loose fabrics, prophylactics, and clothing) should be placed in separate paper bags to be preserved.

Time is a critical factor in collecting and preserving evidence. The physical evidence of an assault is most effectively collected within the first 48 to 96 hours of the assault. If, however, an individual who is sexually assaulted chooses to report the incident days, weeks, or even months after the assault, important support systems are still available and can be arranged, but the individual should understand that delay may make it more difficult to collect physical evidence of the sexual assault that could impact a criminal prosecution or civil lawsuit.

Hospitals and other healthcare practitioners that treat any physical injury sustained during a sexual assault are required to report it to law enforcement. The individual who is sexually assaulted may choose whether or not to speak to police and do not need to make an immediate decision to press criminal charges. That decision can be made at a later time.

Taking the steps to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution, and may be helpful in obtaining protective orders. In circumstances where the individual does not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address health concerns.

Individuals who experience any form of sexual misconduct are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful in connection with a University or police investigation.

## **6. Reporting Policies and Protocols**

The University encourages reporting of sexual misconduct. Members of the University community who believe they have experienced sexual misconduct have the right to choose whether or not to report the incident to the University and/or law enforcement, and have the right to choose whether to engage with the University once the University receives a report.

### **a. Reporting to the University**

An incident of sexual misconduct may be reported directly to the University's Title IX Coordinator [*or, in an emergency, to on-call staff by dialing the office of the Vice President of Finance and Administration at 213-321-2719*]. If the University's Title IX Coordinator is the alleged perpetrator of the sexual misconduct, the report should be submitted to Human Resources at HR@aju.edu, or in person at the University. Filing a report with a University official will not obligate the individual to pursue a formal complaint under this policy.

Sexual misconduct may be reported at any time, regardless of how much time has elapsed since the incident occurred. The University is committed to supporting the rights of a person reporting an incident of sexual misconduct to make an informed choice among options and services available.

The University will respond to all reports in a manner that treats each individual with dignity and respect and will take prompt responsive action to end any misconduct, prevent its recurrence, and address its effects.

**b. Reporting to Law Enforcement**

The University also strongly encourages persons who experience sexual misconduct which may constitute a violation of law (rape, sexual assault, relationship violence, etc.) to report the incident to local law enforcement (e.g., LAPD for the Familian Campus and Ventura County Sherriff's Office for the Brandies-Bardin Campus) at any time, 24 hours a day, 7 days a week, by calling 911. Filing a police report can result in the investigation of criminal behavior and the prosecution of the perpetrator. Timely reporting to the police is an important factor in successful investigation and prosecution of crimes, including sexual violence.

At an individual's request, the University will assist the individual in contacting law enforcement. If the individual decides to pursue a criminal complaint, the University will cooperate with law enforcement agencies to the extent permitted by law. An individual has the option to decide whether or not to participate in any investigation conducted by law enforcement.

Note, a criminal investigation into an allegation of sexual misconduct does not relieve or substitute for the University's duty and authority to conduct its own prompt review of a complaint. Accordingly, the University will not wait for the conclusion of a criminal investigation or proceeding to begin its own concurrent investigation and resolution of an alleged violation. The standards for criminal proceedings differ from those used in campus proceedings. As a result, conduct that may not be subject to criminal action may still be addressed through University processes and procedures. A finding of "not guilty" in a criminal matter does not necessarily preclude a finding of responsibility for violating this policy in a University proceeding.

**c. Reporting of Crimes & Annual Security Reports**

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, or Clery Act, requires institutions of higher education to record and report certain information about campus safety, including the number of incidents (with no detail or personally identifying information) of certain crimes on or near campus, some of which constitute sexual misconduct under this policy.

Note, in certain circumstances, California Education Code, Section 67383, requires the University to forward information concerning reports of violent crimes, including reports of sexual assaults, to a local law enforcement agency. The report is forwarded without

identification of the complainant and respondent, unless explicit consent is provided by the complainant allowing for the sharing of personally identifying information.

**d. Timely Warnings**

In the event that a situation arises, either on or off campus, that, in the judgment of the Vice President of Finance and Administration (or designee) constitutes an ongoing or continuing threat, a campus wide “timely warning” will be issued. The warning will be disseminated to staff and students through announcements by one or more of the following means, but are not limited to bulletins or flyers, mass e-mails and text messages. The timely warning will include information that promotes safety and tips to prevent similar crimes, allowing the campus community to take appropriate precautions. The timely warning will also include the time, location, and type of crime reported. Anyone with information warranting a timely warning should report the circumstances to the *Vice President of Finance and Administration* by phone at 310.440.1532, by email at [Adrian.breitfeld@aju.edu](mailto:Adrian.breitfeld@aju.edu), or in person at the University.

**e. Third-Party and Anonymous Reporting**

In cases where sexual misconduct is reported to the Title IX Coordinator by someone other than the individual who has been subjected to sexual misconduct (by an instructor, classmate or friend, for example), the Title IX Coordinator will promptly notify the individual that a report has been received. This policy will apply in the same manner as if the individual had made the initial report. The Title IX Coordinator will make every effort to meet with the individual to discuss available options and resources. Reports from an anonymous source will be treated in a similar fashion.

**f. Amnesty for Sexual Misconduct Complainants and Witnesses**

The University encourages reporting of sexual misconduct and seeks to remove any barriers to making a report. The University recognizes that an individual who has been consuming alcohol (including underage consumption) or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for that conduct. To encourage reporting, an individual who makes a good faith report of sexual misconduct that was directed at them or another person or participates in an investigation as a witness will not be subject to disciplinary action by the University for a conduct or policy violation that is related to and revealed in the sexual misconduct report or investigation, unless the University determines that the violation was serious and/or placed the health or safety of others at risk.

**g. No Retaliation**

The University prohibits retaliation against those who file a complaint or third-party report, or otherwise participate in the investigative and/or complaint resolution process (e.g., as a witness). The University will take strong responsive action if retaliation occurs. Any incident of retaliation should be promptly reported to the Title IX Coordinator or Senior Director of Human Resources.

## **7. University Policy on Confidentiality**

The University encourages individuals who experience sexual misconduct to talk to somebody about what happened – so individuals can get the support they need, and so the University can respond appropriately.

This policy is intended to make members of the community aware of the various reporting and confidential disclosure options available to them – so they can make informed choices about where to turn should they experience sexual misconduct. The University encourages individuals to talk to someone identified in one or more of these groups.

### **a. Privileged and Confidential Communications**

Individuals who wish to seek advice or assistance concerning, or to discuss options for dealing with, sexual misconduct on a strictly confidential basis may speak with licensed mental health provider, ordained clergy, medical providers in the context of seeking medical treatment, and rape crisis counselors, who, except in very narrow circumstances specified by law, will not disclose confidential communications to the University or anyone.

### **b. Reporting to “Responsible Employees”**

A “responsible employee” is a University employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct, or who a student could reasonably believe has this authority or duty.

When an individual tells a responsible employee about an incident of sexual misconduct, the individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the individual and that the University will need to determine what happened – including the names of the individual and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University’s response to the report. A responsible employee should not share information with law enforcement without the individual’s consent or unless the individual has also reported the incident to law enforcement.

All University employees, including faculty and staff, with responsibilities for student welfare are considered responsible employees. The only exceptions are licensed mental health counsellors or ordained clergy who provide pastoral counseling to members of the University community.



Before an individual reveals any information to a responsible employee, the employee should ensure that the individual understands the employee's reporting obligations – and, if the individual wants to maintain confidentiality, direct the individual to confidential resources.

If the individual wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the individual that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the individual's request for confidentiality.

Responsible employees will not pressure an individual to request confidentiality, but will honor and support the individual's wishes, including for the University to fully investigate an incident. By the same token, responsible employees will not pressure an individual to make a full report if the individual is not ready to.

**c. Reporting to Title IX Coordinator**

When an individual tells the Title IX Coordinator about an incident of sexual misconduct, the individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

To the extent possible, information reported to the Title IX Coordinator will be shared only with people responsible for handling the University's response to the report. The Title IX Coordinator should not share information with law enforcement without the individual's consent or unless the individual has also reported the incident to law enforcement or as may be required by Section 67383 of the California Education Code.

Before an individual reveals any information to the Title IX Coordinator, the Title IX Coordinator should ensure that the individual understands the Title IX Coordinator's reporting obligations – and, if the individual wants to maintain confidentiality, direct the individual to confidential resources. If the individual wants to tell the Title IX Coordinator what happened but also maintain confidentiality, the Title IX Coordinator should tell the individual that the University will consider the request, but cannot guarantee that the University will be able to honor it.

**d. Requesting Confidentiality: How the University Will Weigh the Request and Respond**

If an individual discloses an incident of sexual misconduct to the Title IX Coordinator but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students and/or other members of the University community, including the individual.

If the University honors the request for confidentiality, an individual must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

Although rare, there are times when the University may not be able to honor an individual's request in order to provide a safe, non-discriminatory environment for all students and/or other members of the University community.

The Title IX Coordinator will evaluate requests for confidentiality. When weighing an individual's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including its obligation to provide a safe and non-discriminatory environment for all University community members.

**If the University determines that it cannot maintain a complainant's confidentiality,** the University will inform the complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response. The University will remain ever mindful of the complainant's well-being, and will take ongoing steps to protect the complainant from retaliation or harm and work with the complainant to create a safety plan. Retaliation against the complainant, whether by students or University employees, will not be tolerated. The University will also employ supportive measures as may be appropriate.

## **8. Procedures for Responding to Reports of Sexual Misconduct**

The University's Title IX Coordinator oversees the University's investigation, response to, and resolution of all reports of sexual misconduct, and of related retaliation. Allegations that a student or employee has engaged in sexual misconduct will be investigated and resolved using the procedures outlined below. In the case of a report concerning or complaint against someone other than a student or employee, the Title IX Coordinator shall determine the manner in which such report/complaint will be handled.

### **a. Advisor and Emotional Support Person**

A complainant and respondent may have an advisor and/or emotional support person (collectively referred to as an advisor) of their choice with them at all meetings and any hearing that they attend in connection with the procedures outlined below.

The advisor may be a friend, mentor, family member, attorney, member of the University community, or any other person, as long as they are not also a witness or otherwise a participant in the complaint resolution proceedings.

An advisor may not make a presentation or represent the complainant or respondent during any meeting or proceeding, except as otherwise provided herein. During any meeting or proceeding, the adviser/support person is present to observe and provide counsel and/or emotional support to the party.

Although reasonable attempts will be made to schedule proceedings consistent with the advisor's availability, the process will not be unduly delayed in order to schedule the proceedings at the convenience of the advisor.

**b. Initial Assessment**

Upon receipt of a report of sexual misconduct the Title IX Coordinator will make an initial assessment of the report, which will include an immediate assessment of any risk of harm to individuals or to the campus community, and will take steps necessary to address any such risks.

The complainant will be provided with information on the complainant's rights and options under this policy and these procedures, written materials about the availability of, and contact information for, on and off-campus resources and services, and coordination with law enforcement.

As part of the initial assessment, the Title IX Coordinator may also meet with the respondent and other relevant parties. If the Title IX Coordinator meets with the respondent, the respondent will be provided with information on the respondent's rights and options under this policy and these procedures, and written materials about the availability of, and contact information for on and off-campus resources and services.

If after completing an initial assessment the Title IX Coordinator concludes that there is a potential policy violation, the Title IX Coordinator will determine how to proceed, depending on a variety of factors, such as the complainant's desire to use the University's informal or formal complaint resolution procedures, complainant's request that their name not be used, complainant's request that no investigation into a particular incident be conducted or that no disciplinary action be taken, the risk posed to any individual or the campus by not proceeding, the nature and seriousness of the allegations, whether there have been other reports/complaints of misconduct involving the respondent, and whether the allegations are contested. In implementing the approach, the Title IX Coordinator will inform and coordinate with the appropriate responsible administrator(s).

Note, a complainant's request for confidentiality will likely limit the University's ability to investigate a particular matter. The University may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. Examples include: providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; publicizing the University's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct.

If the Title IX Coordinator concludes that the University will employ complaint resolution procedures outlined in this policy, the respondent and complainant will be so informed in writing. The notice will include information sufficient to apprise the respondent of the nature of the allegations, including the complainant's name; the nature of the alleged policy violation(s) (e.g., sexual assault, harassment, exploitation, or retaliation); the date(s) of the alleged policy violation(s); the location(s) where the violation(s) allegedly occurred; and the sanctions that may be imposed if the respondent is found to have violated this policy. The notice will also include a statement that the respondent is presumed not responsible for the alleged conduct, and that a determination regarding

responsibility will be made at the conclusion of the process. The notice will further inform the parties that they each may have an advisor of their choice, including an attorney, will be afforded an opportunity to review and inspect evidence, and that University policy prohibits knowingly making false statements or knowingly submitting false information in connection with the complaint resolution process. Both the complainant and respondent will be given the opportunity to meet separately with the Title IX Coordinator to review this policy and these procedures.

The parties will also be informed in writing if, during the complaint resolution process, conduct is disclosed which may constitute a further violation of this policy, and the respondent will be afforded an opportunity to respond before the complaint resolution process is concluded.

**c. Supportive Measures**

Supportive measures are actions taken by the University in response to a report of sexual misconduct to meet the needs and protect the rights of the parties and/or other members of the University community, as appropriate.

Supportive measures are individualized services offered as appropriate to either or both the complainant and respondent involved in an incident of sexual misconduct, prior to an investigation or while an investigation is pending. As noted above, an individual may request to receive support – including the measures mentioned in this section – even if they do not choose to participate in the University’s complaint resolution process.

Supportive measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations. In the case of students, such measures shall not be punitive and shall be applied to the fullest extent possible to avoid depriving any student of their education.

The University may also suspend a student or employee pending the completion of an investigation and complaint resolution process, particularly when in the judgment of the Title IX Coordinator, the imminent physical health or safety of any member(s) of the University community may be jeopardized by the on-campus presence of the student.

A student who has been placed on interim suspension has the right, within three (3) business days of the notice of the suspension, to meet with the Rector (or designee), to request re-consideration of the interim suspension. The Rector (or designee) will review the appeal to determine whether the decision to place the student on interim suspension was arbitrary or capricious. A decision is arbitrary and capricious where there is no rational connection between the facts presented and the decision made.

The imposition of supportive measures is not indicative of a determination of responsibility or any other outcome. These measures may be modified at any time and may be kept in place after a final decision is reached as to whether a violation of this policy has occurred.

## **9. Complaint Resolution Process**

### **a. Informal Resolution**

Informal resolution is a voluntary process for timely and corrective action through the imposition of individual and/or community-focused remedies designed to maintain the complainant's access to the educational, extracurricular, and employment activities at the University and to eliminate a potential hostile environment. The option to pursue informal resolution will be presented to the parties only after the University has sufficient information about the nature and scope of the conduct at issue. In cases involving allegations of sexual assault or relationship violence, informal resolution is generally not appropriate.

If the complainant, the respondent, and the Title IX Coordinator (or designee) all agree to pursue an informal resolution, the Title IX Coordinator (or designee) will attempt to facilitate a resolution that is agreeable to all parties. The role of the Title IX Coordinator (or designee) is not to be an advocate for either party, but rather, to aid in the resolution of issues in a non-adversarial manner. Under the informal process, the University will only conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the University, and the University community.

The University will not compel a complainant or respondent to engage in mediation, to directly confront the other party, or to participate in any particular form of informal resolution. If at any point during the informal resolution process, the complainant, the respondent, or the University wishes to cease the informal resolution process and to proceed with formal complaint resolution, the informal resolution process will stop and the formal complaint resolution process described below will proceed.

Any informal resolution must adequately address the concerns of the complainant, the rights of the respondent, and the overall intent of the University to stop, remedy, and prevent policy violations. The University will take appropriate actions as necessary and use its best efforts to remedy any harm that occurred and to prevent any further incidents of sexual misconduct. Examples of potential remedies are provided in the "Supportive Measures" section of this policy. The recommended resolution may also include other institutional responses or requirements imposed on the respondent.

The time frame for completion of informal resolution may vary, but the University will seek to complete the process within twenty (20) days of receipt of an initial report of sexual misconduct.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution and the outcome of the informal resolution process.

### **b. Formal Resolution**

A formal resolution process will be initiated when a formal complaint is made by (i) a complainant alleging a violation of this policy by a respondent; or (ii) by the Title IX Coordinator based upon a determination that a formal resolution process is necessary

after considering the safety of the broader campus community. The formal resolution process involves an investigation, hearing and appeal.

Note, a respondent may accept responsibility for the conduct alleged at any time during the investigation or hearing process, and acknowledge the identified policy violation(s). If a respondent accepts responsibility for the violation(s), the respondent may proceed to sanctioning rather than completing an investigation or hearing. In doing so, the respondent waives any right to appeal the policy determination of responsibility.

#### **(1) Investigation**

The Title IX Coordinator will designate a trained internal or external investigator (or team of investigators) to investigate a report of sexual misconduct. The complainant and respondent will have three (3) business days after being notified of an investigator's identity to object to the investigator's selection on the basis of actual or perceived conflict of interest, bias, or prejudice. If either the complainant or respondent object, the Title IX Coordinator will evaluate whether the objection is substantiated, and, if so, the Title IX Coordinator will remove and replace the investigator.

Prior to any meeting, including an investigative interview meeting, with a party, the investigator shall provide the party with written notice of the date, time, location, participants, and purpose of the meeting. The investigator shall provide the written notice with sufficient time for the party to prepare for the meeting.

In the course of the investigation, the investigator will interview the complainant, respondent, witnesses, and gather any other information or documentation the investigator determines is necessary to conduct an adequate, reliable, and impartial investigation. The complainant and respondent will both have an equal opportunity to share information with and have their information considered by the investigator, including providing the names of witnesses and questions to ask the other party or any witnesses. The investigator will consider all such information when determining the persons to interview and the questions to ask, but these decisions remain in the investigator's discretion. The investigator may also choose to interview other witnesses not identified by the parties.

The investigator will take reasonable steps to gather relevant available evidence. The investigator will not consider evidence which requires seeking information protected by a legally recognized privilege, unless the person holding the privilege has waived the privilege.

The investigator may consider prior or subsequent conduct of the respondent in determining pattern, knowledge, intent, motive, or absence of mistake.

The investigator will generally not gather information related to the sexual history of either the complainant or respondent. The investigator will not consider sexual history as it pertains to a party's reputation or character. However, the investigator may consider sexual history when:

1. The sexual history pertains to prior sexual conduct between the parties, and is therefore relevant to an analysis of whether the respondent reasonably believed complainant consented to the alleged conduct.
2. The sexual history is relevant to explain an injury.
3. The sexual history is relevant to show another person is, or may be, responsible for the alleged conduct.
4. The sexual history is relevant to show a pattern of behavior by respondent.

Prior to the conclusion of the investigation, both the complainant and respondent shall have been provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the investigator does not intend to rely and inculpatory or exculpatory evidence whether obtained from a party or other source.

After each party has had the opportunity to meet with investigator, identify witnesses, and suggest questions, inspect and review evidence, and the investigator has completed witness interviews and the gathering of evidence, the investigator will prepare a preliminary report. The preliminary report shall include description of the investigative process, the investigator's summary of the allegations at issue, disputed and undisputed facts, and all evidence including witness statements, and a description and explanation for why any evidence submitted, and/or witnesses, and questions proposed by the parties were not considered. The investigator will not state an ultimate finding of whether the respondent has or has not violated this policy.

The parties will be provided with an opportunity to review the preliminary report and respond. The report will be made available to the parties in a secure manner (e.g., by providing digital copies of the materials through a protected "read-only" web portal). Neither party (nor the advisor of either) may copy, remove, photograph, print, image, videotape, record, or in any other manner duplicate or remove the information provided.

The parties may each submit comments, feedback, additional documentary evidence, requests for additional steps in the investigation, names of additional witnesses, questions to be asked the other party or witnesses, or any other information they deem relevant to the investigator, within ten (10) calendar days after the preliminary report is made available for review.

The Investigator has discretion to determine if the comments, feedback and any other information submitted by the parties warrant further action on the part of the investigator. If the Investigator determines no further action is required, the investigator will explain the reason(s) for this decision in the final Investigation report.

In the event new relevant information is provided by one of the parties or developed through further investigation, the information will be incorporated into the preliminary report and the parties will be provided a second and final opportunity to review and

provide comment and feedback regarding the new information before the investigator finalizes the report.

After addressing any comment and feedback, the investigator will deliver the final report to the Title IX Coordinator (or designee, if the Title IX Coordinator is the investigator), and a copy shall be provided simultaneously to the parties.

Upon receipt of the final report, the Title IX Coordinator (or designee), will make a determination as to whether there is sufficient evidence to proceed to a hearing. If not, the Title IX Coordinator will close the case and notify the parties. If there is sufficient evidence to proceed to a hearing, the hearing will be scheduled.

## **(2) Hearing**

The hearing is an opportunity for the parties to address a hearing panel/officer in person and to question the other party and/or witnesses, and for the hearing panel/officer to obtain information following the investigation which is necessary for a determination of whether a violation of this policy occurred. The hearing is not intended to be a repeat of the investigation. The hearing panel/officer will be well-versed in the facts of the case based upon the final investigation report.

The Title IX Coordinator, in consultation with appropriate administrators, shall appoint a three-person hearing panel (which may include administrators, faculty and/or staff) and shall appoint one of the hearing panel's members to serve as the panel chair. The Title IX Coordinator, in consultation with appropriate administrators, may also elect to engage a qualified external hearing officer either to assist the hearing panel in the conduct of the hearing or to serve as the hearing officer in lieu of a panel. In determining whether to select a hearing officer, the University, will consider the nature of the allegations, the complexity of the case, whether there is any issue of conflict of interest, the availability of trained panel members, whether the University is in session or on break, and any other relevant factors.

The Title IX Coordinator will schedule a hearing date, time, and location and provide the parties with at least ten (10) calendar days prior written notice of the hearing. The parties will also be provided with the names of the panel members and/or of any hearing officer. The parties will have three (3) business days after being notified of the identity of the panel and/or hearing officer to object to such person(s) on the basis of actual or perceived conflict of interest, bias, or prejudice. The Title IX Coordinator will evaluate whether the objection is substantiated, and if so, the Title IX Coordinator, will remove and replace the panel member(s) and/or hearing officer.

At least five (5) calendar days prior to the hearing, the parties shall provide, for consideration by the hearing panel/officer, the names of any witnesses the parties suggest be called. The hearing panel/officer shall decide the appropriateness of the potential identified witnesses and shall notify the parties prior to the hearing of the reasoning why any proffered witness would not be appropriate to call as a witness.



The hearing panel/officer shall likewise submit to the parties the names of additional witnesses who the hearing panel/officer would like to appear at the hearing. Although good-faith attempts shall be made by the University to secure the attendance of all requested and approved witnesses, the parties must recognize that the University does not have the power to subpoena witnesses to appear, and that accordingly, the University, through the Title IX Coordinator, will only be able to use good-faith efforts and the University's own policies regarding cooperation to obtain the attendance of witnesses.

The hearing panel/officer has broad discretion to determine the hearing format. However, in all instances the hearing panel/officer shall permit cross-examination of the parties and witnesses. Neither party shall be allowed to directly question or cross-examine the other or witnesses during the hearing. Instead, questions may only be posed by the party's advisor. If a party does not have an advisor the University will, upon request, appoint an advisor for the limited purpose of posing questions to the other party and witnesses at the hearing. Any such request should be submitted to the Title IX Coordinator as soon as possible, and preferably no later than five (5) days prior to the scheduled hearing. Other than posing questions to the other party and witnesses, advisors may not participate directly in, or interfere with, the proceedings.

Only relevant questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question, the hearing panel/officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant on the record.

If a party or witness does not appear at the hearing, or appears and does not submit to cross-examination at the hearing, the hearing panel/officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing panel/officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

A typical hearing may include brief opening remarks by the hearing panel chair or hearing officer; questions posed by the hearing panel/officer to the investigator and one or both of the parties; follow-up questions by one party to the other (typically with the respondent questioning the complainant first); questions by the hearing panel/officer to any witness including the investigator; and follow-up questions by either party (typically with the respondent questioning the witness first). The hearing panel/officer also will afford either party an opportunity to offer closing remarks at the end of the hearing. Offering closing remarks is completely voluntary.

The hearing is closed to all persons except the parties, the parties' respective advisors, appropriate witnesses while they are testifying, the Title IX Coordinator, and/or any person designated by the University to serve as a hearing coordinator. Note, If a party does not participate in, or attend, the hearing, their advisor may still appear at the hearing and ask questions of the other party and witnesses.

The hearing shall be conducted with all persons physically present in the same geographic location or, at the discretion of the Title IX Coordinator, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. Note, at the request of either party, the Title IX Coordinator shall provide for the hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

A record of the hearing, ordinarily in the form of a digital or stenographic recording, will be made. Any such recording is University property, but shall upon reasonable request, be made available to the parties for inspection and review. No other recording of the hearing is permitted.

All participants at the hearing will behave in a respectful manner. The hearing panel/officer has discretion to remove any participant or observer who is not conducting themselves in a manner conducive to a fair, safe, and orderly hearing.

Following the close of the hearing, the hearing panel/officer will meet in executive session to consider all of the evidence and make a determination, by a preponderance of the evidence (and in the case of a hearing panel, by a majority vote), whether the respondent has violated this policy. This means that the hearing panel/officer will decide whether it is “more likely than not,” based upon all of the evidence, that the respondent is responsible for the alleged policy violation.

If the hearing panel/officer finds a violation of policy, the hearing panel/officer shall follow the procedures set forth in Section 9.b.3, below.

The hearing panel/officer will prepare a written determination which, shall include (i) a summary of the allegations which are the basis for the formal complaint; (ii) a description of the procedural steps taken in response to the complaint from the date of the receipt of the formal complaint through the determination; (iii) the findings of fact; (iv) conclusions as to whether the findings of fact evidence a violation of the policy; and (v) a statement of, and rationale for, a determination regarding responsibility and any disciplinary sanctions imposed.

The hearing panel/officer shall deliver the written determination to the Title IX Coordinator within ten (10) business days of the hearing, or as soon thereafter as possible, but in a case involving a finding of responsibility and imposition of sanctions against a student, not before the parties have had an opportunity to submit, and the hearing panel/officer has considered, impact and mitigation statements and the respondent’s disciplinary record as described in Section 9.b.3, below.

The parties shall be provided simultaneous written notice of the hearing panel/officer’s determination and information concerning the appeal process.

### **(3) Sanctions and Other Remedies**

This section applies only to proceedings involving student respondents. In the case of employee respondents found responsible for a policy violation, the Title IX Coordinator will refer the matter to University's designated officer responsible for administering employee discipline.

Within five (5) calendar days of the last day of the hearing, the parties may submit an impact or mitigation statement, which will be considered by the hearing panel/officer-only upon a finding of responsibility for the alleged policy violation. An impact statement is a written statement from the complainant in which the complainant describes the impact of the alleged policy violation on the complainant, expresses the complainant's preferences regarding appropriate sanctions, and identifies any aggravating circumstances that the complainant wishes the hearing panel/officer to consider. A mitigation statement is a written statement from the respondent in which the respondent explains any factors that the respondent believes should mitigate, or otherwise be considered in determining, the sanctions imposed. Impact and mitigation statements should be sent to the Title IX Coordinator.

If the hearing panel/officer determines there was a policy violation, the hearing panel/officer shall notify the Title IX Coordinator who will provide the hearing panel/officer with (i) any impact and mitigation statements, and (ii) any information concerning the respondent's prior disciplinary record which the University believes should be considered by the hearing panel/officer in connection with the imposition of sanctions.

Each of the parties shall be provided any statement submitted by the other party, but information concerning the prior disciplinary record of the respondent will not be shared with the complainant.

In connection with the imposition of sanctions, the hearing panel/officer should be guided by the following considerations: the severity of the violation on the complainant, documented disciplinary history of the respondent, any mitigating or aggravating circumstances, and the interests of the community.

One or more of the following sanctions may be imposed by the University on a respondent determined to have violated the policy:

- Reprimand/warning
- Disciplinary probation
- Restricting access to University facilities or activities
- Community service
- Issuing a "no contact" order to the respondent or requiring that such an order remain in place
- Suspension (limited time or indefinite)

- Expulsion
- Withholding of Degree

In addition to any other sanction (except where the sanction is expulsion), the hearing panel/officer may require any respondent determined to be responsible for a violation of this policy to receive appropriate education and/or training related to the sexual misconduct violation at issue.

## **10. Appeals**

Either party may appeal a decision to dismiss a complaint prior to a determination of responsibility, the determination of responsibility, and the sanctions on the grounds set forth below. However, if, the respondent accepted responsibility for the policy violation, either party may appeal only the sanction determination.

Appeals are decided by the University's President (or designee). The grounds for appeal are:

1. A procedural error affecting the dismissal or determination;
2. New evidence that was not reasonably available at the time the determination regarding dismissal, responsibility or sanction was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator, or a hearing panel member/officer 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; and
4. Excessiveness or insufficiency of a sanction.

Disagreement with a decision to dismiss, a determination of responsibility or sanctions is not, by itself, grounds for appeals.

The appealing party must submit the appeal in writing to the Title IX Coordinator within seven (7) calendar days after receiving notice that (i) a decision has been made to dismiss a complaint prior to a determination of responsibility, (ii) the hearing has not resulted in a finding that the respondent has violated the policy, or (iii) sanctions have been imposed based on a finding that the respondent has violated the policy. If either the complainant or respondent submits an appeal, the Title IX Coordinator will notify the other that an appeal has been filed and the grounds of the appeal. The non-appealing party may submit a written response within five (5) calendar days after notice of an appeal.

Note, in the event of an appeal, sanctions will normally be held in abeyance pending the outcome of the appeal. If, however, the University determines that there may exist a threat to the safety or welfare of the University community, sanctions will take effect immediately.

If both the complainant and respondent appeal, the appeals will be considered concurrently.

The President (or designee) will notify the complainant and respondent of the final decision in writing and the rationale for the decision. Appeals decisions will be rendered as soon as practical. All appeal decisions are final.

## **11. Miscellaneous Provisions**

### **a. Time Frame for Resolution**

The University will attempt to resolve all reports of sexual misconduct within 60-120 days of the initiation of the formal complaint resolution process. The Title IX Coordinator may set reasonable time frames for required actions under this policy. Those time frames may be extended for good cause as necessary to ensure the integrity and completeness of the investigation, comply with a request by external law enforcement, accommodate the availability of party, advisor and witnesses, the need to accommodate disabilities account for University breaks or vacations, or address other legitimate reasons, including the complexity of the investigation (including the number of witnesses and volume of information provided by the parties) and the severity and extent of the alleged conduct. Any extension of the timeframes, and the reason for the extension, will be shared with the parties in writing.

### **b. Bystander Intervention**

The University strongly encourages all community members to take reasonable and prudent actions to prevent or stop sexual misconduct, including sexual assault, relationship violence, and stalking. Taking action may include directly or indirectly confronting the situation (if it is safe to do so), taking steps to interrupt the situation, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the University and protected from retaliation.

### **c. Consolidation of Complaints**

Depending on the circumstances and in its discretion, the University may consolidate for investigation and/or adjudication formal complaints as to allegations of sexual misconduct 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 sexual misconduct arise out of the same facts or circumstances.

### **d. Dismissal of Complaint**

As required by federal regulation (34 C.F.R. §106.45(b)(3)(i)), any formal complaint alleging a violation of Title IX must be dismissed when information gathered demonstrates that:

- Even if true, the alleged conduct would not meet the definition of sexual misconduct under Title IX;
- The alleged conduct was found to not have occurred within the University's education program or activity; or
- The alleged conduct did not occur against a person in the United States.

Additionally, the University may decline to act upon a Title IX complaint under the following circumstances:

- There is not enough information to carry out a resolution process;
- The University can honor a complainant's request that no resolution process occur;
- The respondent is no longer enrolled or employed by the University;
- Specific circumstances exist that prevent the University from gathering information and evidence sufficient to reach a determination; or,
- There is insufficient nexus between the conduct and the University to carry out the resolution process.

A decision to dismiss a complaint for purposes of Title IX on the basis of any of the above-listed factors is made at the discretion of the Title IX Coordinator. The Title IX Coordinator will provide written notice to the parties describing the reason for the dismissal.

The University, however, may continue to pursue the complaint as a potential violation of another University policy dealing with student or employee conduct. If the University elects to continue to pursue the matter outside of the Title IX policy, the Title IX Coordinator shall provide written notice to the parties.

**e. False Reports**

The University will not tolerate intentional false reporting of incidents. A good faith report that results in a finding of "no violation" is not considered a false report. However, when a complainant or third party is found to have fabricated allegations or to have given false information with malicious intent or in bad faith, they may be subject to disciplinary action according to University policy.

**f. Academic Freedom**

The University adheres to principles of academic and expressive freedom. Nothing in this policy shall be construed to limit the legitimate exercise of academic and expressive freedom, including but not limited to written, graphic, or verbal expression that can reasonably be demonstrated to serve a legitimate educational purpose. Nor shall this

Policy be interpreted or applied in a manner that is inconsistent with California Education Code §94367.

**g. Training**

Title IX Coordinators, investigators, hearing panel members/officers, and any person who facilitates an informal resolution process, shall receive training on the definition of sexual misconduct, when and under what circumstances this policy may be invoked, how to conduct an investigation and the formal complaint process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. Such persons shall also receive such other training as is required by Title IX and the California Education Code §67386.

**h. Records**

The University will retain documents related to processes under this policy for a period of seven (7) years. Documents related to this process include: formal complaints, remedies provided to a complainant, the investigation report and attachments, the hearing determination, any sanctioning determination, and all appeal-related documents, as well as any audio recording or transcript of the hearing.

The University will also retain, for a period of seven (7) years, all materials used to train the Title IX Coordinator and assistant coordinators, Investigators, hearing panel members/officers, and any person facilitating the informal resolution or appeal process. The University shall make this training material publicly available on its website. I

**i. Education and Prevention Programs**

As part of its commitment to the prevention of sexual misconduct, the University offers education and awareness programs. Incoming students and new faculty and staff receive prevention and awareness programming as part of their orientation, and all students and faculty and staff receive ongoing training and related programs on an annual basis.

**j. Publication and Dissemination of Policy**

This policy shall be posted on the University's website, distributed and/or otherwise made accessible to all members of the University community. Every handbook and/or catalog made available to members of the University's community shall contain a link to this policy and the Title IX Coordinator's contact information.

**k. Amendments**

The University may amend this policy or the procedures from time to time. Nothing in this policy or procedures shall affect the inherent authority of the University to take such actions as it deems appropriate to further the educational mission or to protect the safety and security of the University community.

## **I. Legal Sources**

This policy is intended to comply with applicable law including the California Education Code (Cal. Ed. Code §§ 200, et seq.; 66250, et seq.; 94385); California Fair Employment and Housing Act (Cal. Gov't Code §§ 12900, et seq.); Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e, et seq.); Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681, et seq.) and (34 C.F.R. §§ 106.30, et. seq.); Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. §§ 1092(f), et seq.); Violence Against Women Reauthorization Act of 2013 (34 U.S.C. 12291 et. seq.).

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