

POLICIES & PROCEDURES

Sexual Misconduct (Title IX)

Human Resources Office

Purpose:

Institutional Values

Woodbury University is committed to providing a non-discriminatory and harassment-free educational, living and working environment for all members of our community including students, faculty, staff, and guests. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy prohibits all forms of sexual misconduct, including sexual harassment, sexual assault, stalking, intimate partner violence, and sexual exploitation. Misconduct of this nature is contrary to Woodbury's institutional values and prohibited by state and federal law.

Woodbury University encourages the prompt reporting of any incident of sexual misconduct to the University. Upon receipt of a report, the University will take prompt and effective action to end the misconduct, remedy the effects, and prevent its recurrence. This policy has been developed to reaffirm these principles, define community expectations, provide recourse for those individuals whose rights have been violated, and provide fair and equitable procedures for determining when this policy has been violated.

Scope

This policy applies to all Woodbury University community members including students, faculty, staff, volunteers, vendors, independent contractors, 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. This policy applies to conduct occurring on Woodbury University property or at University-sanctioned events or programs that take place off campus, including study away or internship/work experience programs, and may also apply to other off-campus locations when the University determines that the off-campus conduct has a direct impact on the educational mission and interest of the University.

This policy addresses all forms of sexual misconduct, including sexual harassment, sexual assault, staking, intimate partner violence, and sexual exploitation against Woodbury community members of any gender, gender identity, gender expression, or sexual orientation. Woodbury University does not discriminate on the basis of sex in its educational (including admission), co-curricular, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that states the following:

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

When used in this policy, Complainant means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

If You Have Been Assaulted

Individuals who have been a victim of sexual assault, attempted sexual assault, or other form of sexual violence are encouraged to visit <https://www.peaceoverviolence.org/iii-if-you-have-been-sexually-assaulted> for comprehensive information regarding what to do, where to get support, and legal options including filing a report with law enforcement. Members of the University's Title IX team, listed below, are also available for information and support.

Procedure:

Reporting, Confidentiality and Privacy

Woodbury University has designated a Title IX Coordinator to oversee the University's review, investigation, and resolution of reports of sexual misconduct. The Title IX Coordinator is:

- Responsible for the oversight of the investigation and resolution of all reports of sexual harassment, sexual assault, stalking, intimate partner violence, and sexual exploitation involving students, faculty, staff, vendors, and visitors;
- Assisted by designated Title IX Investigators, who are accessible to any member of the campus community for consultation and guidance;
- Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- Available to advise any individual about the courses of action available within the University, both informally and formally, as well as within the community;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention, and education efforts and periodic reviews of campus climate.

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Sexual Misconduct (Title IX)

Human Resources Office

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Department: Human Resources

Approved By: Vice President,

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Anyone wishing to report an incident of sexual misconduct is encouraged to speak with one of the above individuals. Additionally, the University considers any faculty or staff member (other than Counseling Services staff) who have a responsibility for student welfare to be “responsible employees.” This means that informing them of an incident of sexual misconduct requires them to provide notice to the institution; all such faculty and staff (including student staff such as Resident Advisors) are required to report such incidents to the Title IX Coordinator, who are officials with authority explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.

All members of the University community, even those who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual misconduct to the Title IX Coordinator. Reporting an incident of sexual misconduct does not mean that a disciplinary process will automatically be initiated. The Title IX team will conduct an initial assessment of the incident and will determine—keeping in mind the Complainant’s expressed preferences—the appropriate course of action to support and protect the safety of the Complainant and the community.

Woodbury University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. All University employees who are involved in the University’s Title IX response, including the Title IX Coordinator, and investigators, and hearing board members receive specific training about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy of all individuals involved.

Individuals also always have the right to file a complaint with the Office for Civil Rights, United States Department of Education, 50 United Nations Plaza, San Francisco, CA. 94102; Phone: 415.486.5555; Email: OCR.SanFrancisco@ed.gov.

Additionally, any employee who believes that he or she has been the victim of sexual misconduct may file a complaint with the California Department of Fair Employment and Housing at www.dfeh.ca.gov or the United States Equal Employment Opportunity Commission at www.eeoc.gov.

Confidential Resources

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.

Students who wish to speak to someone on a strictly confidential basis may do so by contacting on-campus mental health counselors in Counseling Services. Counselors are available to all students free of charge, and may be reached at (818) 252-5237 or via email at counseling.services@woodbury.edu.

Faculty and staff seeking confidential support may contact Employee Assistance Program by CompPsych Guidance Resources:

Tell: 800.311.4327

TDD: 800.697.0353

Online: guidanceresources.com your company Web ID: GEN311

Additionally, any individual may contact 24-hour off-campus rape crisis counselors at (626) 793-3385.

Amnesty for Alcohol or Other Drug Use

Woodbury University encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many incidents as possible are reported, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual misconduct, either as a Complainant or third-party witness, will not be subject to disciplinary action by the University for his or her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

Bystander Intervention

The University encourages all community members to take reasonable and prudent action to prevent or stop an act of sexual misconduct. Taking action may include direct intervention (if it is safe to do so), calling law enforcement, 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.

Federal and State Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (under the Clery Act). All personally identifiable information is kept confidential, but statistical information regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given) is compiled for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. Mandated federal reporters include any faculty or staff member (including student staff such as Resident Advisors) except for Counseling Services staff.

The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the Complainant and may be done anonymously.

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.

Federal Timely Warning Reporting Obligations

Complainants of sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

Prohibited Conduct and Definitions

Prohibited misconduct includes, but is not limited to:

1. Sexual Harassment (including sexual assault, dating/domestic violence and stalking)
2. Sexual Misconduct (including sexual exploitation)
3. Retaliation

All policies encompass actual and/or attempted offenses.

1. **Sexual Harassment**

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

The University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

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

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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

- 1) **Quid Pro Quo**: An employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome¹ sexual conduct.
- 2) **Sexual Harassment**: Unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to an education program or activity.
- 3) **Sexual assault**: defined as:
 - a. **Sex Offenses, Forcible**: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. A "sexual act" is specifically defined by federal regulations to include one or more of the following:
 - i. **Forcible Rape**: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
 - ii. **Forcible Sodomy**: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent

¹Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

mental or physical incapacity.

- iii. **Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - iv. **Forcible Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- b. **Sex Offenses, Non-forcible:**
- i. **Incest:** Sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by California law.
 - ii. **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years of age in California.

- 4) **Dating Violence:** Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- 5) **Domestic Violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse, domestic partner, or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.²
- 6) **Stalking:** Engaging in a course of conduct, on the basis of sex, directed at a specific person,

² California defines "domestic violence" as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. In California, dating violence is included within the definition of domestic violence.

that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress. For the purposes of this definition — (a) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant; (c) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.³

2. **Sexual Misconduct**

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

Sexual Misconduct is any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal, or physical conduct of a sexual nature when:

- Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, and/or
- Submission to or rejection of the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, and/or
- 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 through the University, and/or
- The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work, educational, or living environment.

Sexual misconduct can occur regardless of the relationship, position, or respective sex of the parties. It can occur between equals (e.g., student to student, staff to staff, faculty member to faculty member) or between persons of unequal power status (e.g., supervisor to subordinate, faculty member to student).

Sexual misconduct based on gender, gender identity, gender expression, sex or gender stereotyping, or sexual orientation, but does not involve conduct of a sexual nature, is also prohibited by this policy. This policy also prohibits harassment of a faculty or staff member by a student.

The conduct alleged to constitute sexual misconduct under this policy will be evaluated from the

³ Under California law, "any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking," which is applicable to criminal prosecutions, but may differ from the definition used on campus to address policy violations.

perspective of a reasonable person similarly situated to the Complainant and considering all of the facts and circumstances.

A single or isolated incident of sexual misconduct may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the misconduct is physical.

Examples of behavior that might be considered sexual misconduct include, but are not limited to:

- Pressure for a date or a romantic or intimate relationship;
- Unwelcome touching, kissing, hugging, or massaging;
- Pressure for or forced sexual activity;
- Unnecessary and unwelcome references to various parts of the body;
- Belittling remarks about a person's gender or sexual orientation;
- Inappropriate sexual innuendos or humor;
- Obscene gestures of a sexual or gender-based nature;
- Offensive sexual graffiti, pictures, or posters;
- Sexually explicit profanity;
- Use of email, the internet, or other forms of digital media to facilitate any of the above-referenced behaviors.

Sexual Misconduct also includes the following conduct, to the extent that it is not included in the definition of Sexual Harassment above:

Sexual Exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute sexual harassment under this policy.

Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to

sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity

- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

Other Civil Rights Offenses Based on Sex/Gender

- **Discrimination**, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- **Bullying**, defined as: Repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally that is not speech or conduct otherwise protected by the First Amendment.

Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

3. Retaliation

The University prohibits individuals from engaging in retaliatory behavior, which is defined as any materially adverse action taken against a person for making a good faith report of behavior prohibited by this policy or for participating in any proceeding under this policy. Adverse action includes conduct that threatens, intimidates, harasses, coerces or in any other way seeks to discourage a reasonable person from engaging in activity protected under this policy.

Retaliation can be committed by or against any individual or group of individuals, not just a Respondent or Complainant.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be

promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Consent: Force, Coercion, Incapacitation, Drugs and Alcohol

Consent: Consent means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

Consent consists of an affirmative, conscious, voluntary decision by each participant to engage in mutually agreed-upon sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other to engage in said activity. The following are essential elements of effective consent:

- **Informed and reciprocal:** All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.
- **Freely and actively given:** Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.
- **Mutually understandable:** Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.
- **Not indefinite:** Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually

understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

- **Not unlimited:** Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

The age of consent in California is 18 years old. See California Penal Code Section 261.5.

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

In assessing consent, the Respondent's belief is not a valid excuse for a lack of consent where:

- Respondent's belief arose from the Respondent's own intoxication, being under the influence of drugs, alcohol, or medication, and/or recklessness; or
- Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
- Respondent knew or a reasonable person should have known that the Complainant was unable to consent because the Complainant could not understand the fact, nature, or extent of the sexual activity because they were asleep or unconscious; incapacitated due to the influence of drugs, alcohol, or medication; or unable to communicate due to a mental or physical condition.

Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").

Coercion: Coercion is unreasonable pressure for sexual activity. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation: Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when,

where, why or how” of their sexual interaction).

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. The question of whether the Respondent knew or should have known of the Complainant's lack of consent or incapacity to give affirmative consent is an objective inquiry as to what a reasonable person, exercising sober judgment, would have known, in the same or similar circumstances.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

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

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

Evaluating incapacitation also requires an assessment of whether an individual knew, or should have known, that the other party was incapacitated.

Alcohol and Other Drugs: In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not diminish one's responsibility to obtain consent.

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 non-disciplinary, non-punitive individualized services offered as appropriate, as available, and without fee or charge, to either or both the Complainant and Respondent involved in an incident of sexual misconduct, prior to or while a complaint resolution process is pending. 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.

Potential supportive measures include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus;
- Imposition of a campus “no contact” letter;
- Rescheduling of exams and assignments (in consultation with appropriate faculty);
- Providing alternative course completion options (with the agreement of appropriate faculty);
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of appropriate faculty);
- Change in work schedule or assignment;
- Change in on-campus housing;
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies;
- Assistance from University staff in completing housing relocation;
- Limit an individual or organization’s access to certain University facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Interim suspension or University-imposed leave;
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

The imposition of supportive measures is not indicative of a determination of responsibility or any other outcome. In the case of students, such measures shall be applied to the fullest extent possible to avoid depriving any student of their education. Supportive measures may be modified at any time at the discretion of the University.

Emergency Suspension

The University may also suspend a student or employee pending the completion of a 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 3 business days of the notice of the suspension, to meet with the University's Title IX Coordinator (or designee), to request re-consideration of the interim suspension. The University's Title IX Coordinator (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.

Procedures for Complaint Resolution

The specific procedures for resolution of a complaint of sexual misconduct will vary based upon the identity of the Respondent and whether the complaint falls within the scope of Title IX:

- For a *complaint against a student*, disciplinary action may be taken by the Associate Dean of Students or his/her designee following a finding of responsibility by a Hearing Officer or Hearing Board in accordance with the Sexual Misconduct Resolution Process outlined below.
- For a *complaint against a staff member*, disciplinary action may be taken at the conclusion of the investigation by the VP, Administrative Services / Human Resources or his/her designee in accordance with procedures outlined in the Employee Handbook. Complaints that fall within Title IX may be subject to the Sexual Misconduct Resolution Process outlined below.
- For a *complaint against a faculty member*, disciplinary action may be taken at the conclusion of the investigation by the Senior Vice President, Academic Affairs or Faculty Executive Committee in accordance with procedures outlined in the Faculty Handbook. Complaints that fall within Title IX may be subject to the Sexual Misconduct Resolution Process outlined below.
- For a *complaint against a person other than a student, staff member, or faculty member*, the procedure will vary, depending on the circumstances. Complaints that fall within Title IX may be subject to the Sexual Misconduct Resolution Process outlined below.

Sexual Misconduct Resolution Process

Overview

As outlined in the *Reporting* section of this policy, an individual who wishes to make a report of sexual misconduct is encouraged to make a report directly to a member of the Title IX team. In every instance

under this policy, the University, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.

At the conclusion of the Title IX Assessment, the Title IX Coordinator will offer any appropriate supportive measures, refer the matter for Informal Resolution and/or refer the matter for Investigation to determine if there is sufficient information to proceed with Formal Resolution.

Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion or termination.

Initial Assessment

Upon receipt of a report, the University, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment, typically within one to five business days. The first step of the assessment will usually be a preliminary meeting between the Complainant and Title IX Coordinator. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and supportive measures.

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

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being needs;
- Notify the Complainant of the right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence;
- Explain and provide the Complainant with written information about on- and off-campus resources, as well as the range of possible supportive measures;
- Explain the procedural options, including Informal Resolution and Formal Resolution;
- Discuss the Complainant's preference for manner of resolution and any barriers to proceeding;
- Explain the University's policy regarding retaliation;
- Determine the respective ages of the complainant and respondent, and if one is a minor, make the appropriate notifications under California's child abuse and neglect reporting requirements; and
- If the conduct is potentially criminal in nature, arrange to enter non-identifying information about the report into the University's daily crime log.
- Notify the Complainant of his/her right to have an Advisor;
- If the Complainant has not already done so, determine if the Complainant wishes to make a formal complaint. A formal complaint is a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting

that the University investigate the allegation(s).

This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may continue depending on a variety of factors, such as the Complainant's wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.

*Note, the University's definition of prohibited sexual misconduct is broader than the current regulations interpreting Title IX. If the University determines at any time that a complaint of sexual misconduct does not fall within Title IX and must or may be dismissed, the University may nonetheless proceed to resolve the complaint in accordance with the procedures below. Under the 2020 Title IX regulations (34CFR §106.45), the University **must** dismiss a formal complaint, or any allegations within it if, at any time during the process, it is determined that the conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or (1) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or (2) The conduct did not occur against a person in the United States; and/or (3) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University. The University **may** dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing: (1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or (2) The Respondent is no longer enrolled in or employed by the University; or (3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. If a complaint or particular allegations are dismissed under Title IX, the University will promptly send written notice of the dismissal and rationale for doing so simultaneously to the parties, and may continue to resolve the complaint under this policy in accordance with these procedures.*

At the conclusion of the Title IX assessment, the Title IX Coordinator will determine the appropriate manner of resolution and, if appropriate, refer the report for further Investigation, Informal Resolution, or Formal Resolution.

The determination as to how to proceed will be communicated to the Complainant in writing.

Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University takes action that would impact a Respondent, such as the imposition of supportive measures that impact the Respondent or the decision to initiate Informal or Formal Resolution proceedings.

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 all agree to pursue an informal resolution, the Title IX Coordinator will attempt to facilitate a resolution that is agreeable to all parties. The role of the Title IX Coordinator 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 thirty (30) 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.

Notice of Investigation and Allegations

Upon receipt of a formal Title IX Complaint and/or if a decision is made to proceed an investigation and/or formal resolution, the Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A copy of this policy and/or other information relevant to alleged sexual misconduct,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Advisors

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 hearings at which the party is entitled to be present, including intake and interviews.

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 advisor 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 to schedule the proceedings at the convenience of the advisor.

Investigation

Following the initial Title IX assessment and NOIA, the University may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The University will designate an investigator who has specific training and experience investigating allegations of sexual misconduct. The investigator may be an employee of the University or an external investigator engaged to assist the University in its fact gathering. The University may use a team of two investigators, which may include the pairing of an external investigator with a University employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, the Title IX Coordinator will assign another trained administrator. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University President.

The investigator will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator generally will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the investigator obtains that party's voluntary, written consent to do so. The investigator may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an

equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information, and to suggest questions to the investigator to ask witnesses.

The investigator, not the parties, is responsible for gathering relevant evidence. When participation of a party is expected, the investigator will provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.

At the conclusion of the investigation the investigator will prepare a draft investigation report summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included. The investigator will provide the parties and any respective Advisors the draft investigation report and an opportunity to inspect and review all of the evidence (inculpatory and exculpatory) obtained as part of the investigation that is directly related to the reported misconduct for a ten (10) business day review and comment period. The investigator will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The investigator should document all rationales for any changes made after the review and comment period. The investigator may share the report with the Title IX Coordinator for review and feedback. The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to any hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

The investigation will usually be completed within thirty (30) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.

Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report.

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

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Threshold Determination for Non-Title IX Sexual Harassment Claims

For a claim that is found to not fall within Title IX, the investigator will, at the conclusion of the investigation, prepare a written report synthesizing the facts for review by the Title IX Coordinator. The investigator is not charged with reaching a determination as to responsibility, which is a function reserved for the University Committee on Student Behavior or other hearing body as designated by the Title IX Coordinator.

Upon receipt of the investigative report, the Title IX Coordinator will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has not been established, the Title IX Coordinator will issue a notification letter to the Respondent and the Complainant and dismissing the complaint.

If the complaint is dismissed, the Complainant will have the opportunity to seek review by the Senior Vice President of Academic Affairs (SVPAA) (or designee) by submitting a written request for review within five (5) business days of receipt of the notification. If an appeal is filed, the Respondent will be notified and have the opportunity to respond. The SVPAA may affirm the threshold finding, reverse the finding, or remand the matter for additional investigation as warranted. The SVPAA will render a decision in writing, to both parties, at the same time, within ten (10) business days of receipt of the request for review. The decision of the SVPAA is final. Where a designee is chosen, the identity of this individual will be shared with both parties.

Formal Resolution

Formal resolution of a complaint against a student under the Sexual Misconduct Policy will occur at a live hearing through the University Committee on Student Behavior or a single Chair/Decision-maker. The Title IX Coordinator, in consultation with appropriate University administrators, may refer matters subject to Formal Resolution to an external adjudicator, in cases that the relevant Coordinator, in his or her sole discretion, deems appropriate. A typically consists of four members (three voting members/Decision-makers and one, non-voting Chair) who are drawn from a pool of trained faculty, staff, and students. All Decision-makers must participate in annual training on the dynamics of sexual misconduct, the factors relevant to a determination of credibility, the appropriate manner in which to receive and evaluate sensitive information, the manner of deliberation, evaluation of consent and incapacitation, the application of the preponderance of the evidence standard, sanctioning, and the University's policies and procedures. The training is coordinated by the Title IX Coordinator in conjunction with campus and external partners. If conducted by an external adjudicator, such as JAMS, the Decision-maker may consist of a single individual who may also serve as the Chair.

The Formal Resolution process to resolve sexual misconduct complaints, which provides a mechanism by the accused may cross-examine witnesses through an Advisor at a hearing in which the witnesses appear in person or by other means (such videoconferencing) and a neutral adjudicator or Decision-maker has

the power independently to find facts and make credibility assessments.

If the hearing must be heard at or after the end of the semester or academic year and/or a full u cannot reasonably be convened, case may be heard by a single Decision-maker or Chair, or the University may substitute an alternate appropriate method of adjudication at its discretion.

Hearing Procedures

1. Pre-Hearing Meeting with Complainant and/or Respondent

After the investigation report is finalized, the Title IX Coordinator may contact the Complainant and Respondent to schedule combined or separate meetings with each party. At any pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have Advisors throughout the hearing process, the Advisor is encouraged to accompany the Complainant/Respondent to such meetings.

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

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

The pre-hearing meeting(s) will generally not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/advisors with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the parties to establish the format.

2. **Notice of Hearing**

When the Chair is ready to proceed with a hearing, Notice of Hearing is sent to the Complainant and the Respondent. The Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case, identifies all pertinent documentary evidence, and provides the final investigation report to the parties at least ten (10) business days prior to the hearing.

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

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

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

3. **Objections to the Chair and/or Composition of the UCSB**

The Complainant and the Respondent may submit a written request to the Title IX Coordinator that the Chair and/or any member of the UCSB be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing.

4. **Witnesses**

The Complainant, Respondent, UCSB, and/or Chair all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and should not be called solely to speak about an individual's character.

In general, neither party will be permitted to call as a witness anyone who was not interviewed by

the investigator as part of the University's investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the University's investigation, the following must be submitted no later than seven (7) business days before the hearing to the Chair via e-mail or in hardcopy format:

- The names of any witnesses that either party intends to call;
- A written statement and/or description of what each witness observed, if not already provided during investigation;
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and,
- The reason why the witness was not interviewed by the investigator, if applicable.

The Chair will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Chair may also require the investigator to interview the newly proffered witness, and/or may postpone the hearing.

If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than ten (10) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the Chair, UCSB, and/or their Advisor), regardless of who called them to the hearing.

5. **Prior Sexual History and/or Pattern Evidence**

Prior Sexual History of a Complainant: In general, a Complainant's prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

Pattern Evidence by a Respondent: Where there is evidence of pattern of 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 deemed relevant and probative to the panel's determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in

making a determination as to responsibility and/or assigning of a sanction.

The University, through the Chair, may choose to introduce this information with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Chair. The Chair will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.

6. **Evidentiary Considerations in the Hearing**

Any evidence that the Chair or Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility.

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

7. **Request to Reschedule Hearing**

Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Chair with an explanation for his or her request at least three (3) business days prior to the hearing.

8. **Consolidation of Hearings**

At the discretion of the Title IX Coordinator, multiple reports may be consolidated against a Respondent in one hearing if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under this policy or the Code of Student Conduct.

9. **Alternative Testimony Options**

All parties have the right to a range of options for providing testimony and participating in the hearing process. If a party or parties prefer not to attend or cannot attend the hearing in person, the

party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing. Alternate arrangements will enable the parties and the decision-maker(s) to hear and see each other.

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

Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor.

10. **Recording Hearings**

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Decision-maker(s), the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

11. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

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

The Decision-maker(s) will review the statements and any pertinent conduct history provided by appropriate administrator and will recommend/determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Decision-makers will then prepare a written statement of outcome (“outcome”) and deliver it to the Title IX Coordinator, 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 outcome; (iii) the findings of fact; (iv) conclusions as to whether the findings of facts evidence a violation of the policy; and (v) a statement of, and rationale for an outcome regarding responsibility and any disciplinary sanctions imposed.

This outcome shall be submitted to the Title IX Coordinator within ten (10) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

12. Notification of Outcome

The outcome and information concerning the appeal process will be shared with the parties simultaneously. The outcome may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties’ University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

13. **Sanctions**

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

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

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

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

a. Student Sanctions

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the University.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma:* The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

b. Employee Sanctions/Responsive Actions

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*

- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions

The University may assign any other responsive actions as deemed appropriate.

14. **Withdrawal or Resignation While Charges Pending**

a. **Students:** If a student has an allegation pending for violation of the sexual misconduct policy, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student. However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. A hold will be placed on the ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.

b. **Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee. However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

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

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

15. **Appeals**

Either party may appeal the outcome in writing to the Title IX Coordinator's designee (the "Appeals Officer"). The appeal will be conducted in an impartial manner by an impartial Decision-maker. The appeal must be filed in writing within five (5) business days of receiving the outcome. The appeal should consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. The Complainant and/or Respondent may appeal only the parts of outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal.

The only grounds for appeal are:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the outcome regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- C. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given ten (10) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeals Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in ten (10) business days, which will be circulated for review and comment by all parties.

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

A Notice of Appeals Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeals Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal

law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

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

If the appeal is based on procedural or substantive error, the Appeals Officer may return the complaint to the original Decision-maker(s) with instructions to reconvene to remedy the error, or in rare cases where the error cannot be remedied, the Appeals Officer can ask that a new hearing occur before a new Decision-maker or newly constituted UCSB. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original Decision-maker or UCSB to assess the weight and effect of the new information and render an outcome after considering the new facts. The reconsideration of the Decision-maker or UCSB is final.

Appeals are not intended to be full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because he or she disagrees with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

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

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

16. Records

The University will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;

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

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

17. **Disabilities Accommodations in the Resolution Process**

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

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