

## UNIVERSITY POLICIES AND PROCEDURES

<b>Title:</b>	Interim <sup>1</sup> Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation
<b>Replacing Policy:</b>	Sexual Misconduct (Title IX) Policy & Non-Discrimination Policy
<b>Date Approved:</b>	<b>July 16, 2014 Last Revised October 6, 2023</b>
<b>Effective Date:</b>	Upon Approval
<b>Date of Amendments:</b>	August 1, 2024 (Interim)
<b>Issuing Authority:</b>	Board of Trustees
<b>Responsible Office:</b>	The Office of Human Resources and Title IX

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### Policy Summary

This Woodbury University (“University”) policy applies to ***all*** faculty, staff, students, student employees, contractors, vendors, volunteers, and visitors to any University campus, facility, and/or property and to University-sponsored activities and events, whether or not on University premises.

This Policy includes definitions, resources, complaint procedures and processes for:

- Title IX Sex-Based Harassment or discrimination, which are specific legal definitions.
- Non-Title IX Equity Matters, which includes non-Title IX sex-based harassment, discrimination and related retaliation.

This Policy covers acts of discrimination, harassment, sexual harassment (quid pro quo harassment by a University employee, unwelcome conduct, sexual assault, and other forms of sexual misconduct), and retaliation as defined by the policy (collectively “Prohibited Conduct”). It outlines the process to report Prohibited Conduct. It includes information on making a report,

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<sup>1</sup> In order to comply timely with U.S. Department of Education Regulations, *see* 89 Fed. Reg. 33,474 (April 29, 2024) (to be codified at 34 C.F.R. pt. 106), this Policy is effective in its “Interim” form as of August 1, 2024, and until it is formally approved by the University’s Board of Trustees in September 2024.

supportive measures available, and the procedures available for resolving, including alternative resolution or investigation and decision-making procedures.

The University can only act to remedy and prevent specific acts of discrimination, harassment, or retaliation from reoccurring if it is made aware of such conduct. As such, all employees (excluding those who have been designated as confidential) are required to report potential violations of this Policy that they know or reasonably should know about.

Additional information and resources are available at <https://woodbury.edu/policies-disclosures/>.

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### I. Policy Statements

These policy statements set forth the conduct that is prohibited in our community. The statements support the University’s commitments to equality of opportunity and maintaining an academic environment and workplace that is free from discrimination, harassment, and related retaliation (collectively “Prohibited Conduct”), as defined by this Policy. The University will take appropriate action to prevent prohibited discrimination, harassment, and related retaliation, and where such behavior is found to have violated this Policy, to prevent its recurrence and remedy its effects, including through disciplinary measures. Each person to whom this Policy applies shares a responsibility for upholding and enforcing this Policy.

#### A. No Discrimination

The University prohibits and will not tolerate discrimination (as defined in Section III. A., below) on the basis of age, color, race (including hair texture and protective hair styles), ethnicity,

national origin, ancestry,<sup>2</sup> sex (including sex stereotypes, sex characteristics, pregnancy or related conditions), marital status (including domestic partner status), pregnancy and related conditions, medical conditions (including cancer or genetic characteristics), sexual orientation, gender, gender identity or expression, physical or mental disability, genetic information, religion/creed (including religious dress and grooming practice), citizenship status (except to comply with legal requirements for employment), military/veteran status, status as a domestic violence victim, reproductive health decision-making (including, but not limited to, a decision to use or access a particular drug, device, product, or medical service for reproductive health), or any other characteristic protected by law. These characteristics are referred to as “Protected Characteristics” throughout the rest of this Policy.

## **B. No Harassment**

The University prohibits and will not tolerate harassment (as defined below) on the basis of the Protected Characteristics. Sexual harassment is defined differently under federal and state law. The applicable definitions under these laws also depend on your status in the University’s community as a student, faculty, staff, volunteer, or third-party. Non-sexual harassment based on other protected categories is also treated differently under the law and is processed under a separate definition. Please do not let the legal complexities deter you from bringing a concern to the attention of the University’s Title IX Coordinator. If you are the subject of a Complaint of discrimination, harassment, or related retaliation, please do not let the legal complexities deter you from asking questions about the applicable definitions and procedures that will apply to you. The University’s Title IX Coordinator can explain which definitions and procedures will apply.

## **C. No Retaliation**

The University prohibits and will not tolerate retaliation (as defined below).

## **D. Reporting Obligation**

With two exceptions, the University requires all University employees (faculty, staff, student employees, and administrators) to report any discrimination, harassment, or retaliation that they witness or have a reasonable basis to suspect. The reports should be made to the Title IX Coordinator, whose name, biographical information, and contact information is on the University’s Title IX webpage, located at <https://woodbury.edu/policies-disclosures/>. **The Office of Human Resources and Title IX is on the first floor of Hensel Hall, Room 102. The Title IX Coordinator also can be reached by email ([naira.zakarian@woodbury.edu](mailto:naira.zakarian@woodbury.edu)) or by phone (818-252-5110).**

This reporting obligation also applies to University contractors or volunteers who are responsible for the welfare of students. The University endeavors to state this commitment for contractors in

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<sup>2</sup> Protection from race, color or national origin discrimination extends to discrimination, including harassment, based on their actual or perceived (i) shared ancestry or ethnic characteristics or (ii) citizenship or residency in a country with a dominant religion or distinct religious identity. In cases in which an individual Respondent cannot be identified, the University reserves the right to address hostile climate claims that do not involve a particular Respondent through other means outside of this Policy.

written agreements where it applies. Students are *strongly encouraged* to report discrimination, harassment, or retaliation, even though they are not *required* to do so, (unless the student is required within their role as a student-employee). Without robust student participation and engagement, the University’s commitment to equality is more difficult to fulfill.

A Confidential Employee shall inform each individual who reports information regarding Prohibited Conduct of the individual’s ability to report to a Responsible Employee or the Title IX Coordinator and direct the individual to those specific reporting resources.

**E. Employment Compliance**

The University complies with all applicable Federal and State laws and regulations that prohibit discrimination, harassment, and retaliation in employment because of a legally Protected Characteristic. This includes but is not limited to Title VI, Title VII of the Civil Rights Act of 1964 (“Title VII”), and all other federal civil rights laws dealing with employment and the California Fair Employment and Housing Act. The University prohibits and will not tolerate unlawful employment discrimination, harassment, or retaliation.

**F. Title IX Compliance**

The University complies with Title IX of the Education Amendments of 1972 (“Title IX”), a Federal civil rights law and its implementing regulations. Title IX prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, prohibited sex discrimination includes, but is not limited to, sex-based harassment, sexual harassment, and other forms of sexual misconduct as defined in this Policy. The University prohibits and will not tolerate sex discrimination in its employment or educational programs and activities.

External inquiries or reports may be made to:

<b>Office for Civil Rights (OCR): California</b>	<b>Office for Civil Rights (OCR): U.S. Department of Education</b>
U.S. Department of Education San Francisco Office 50 Beale Street, Suite 7200 San Francisco, CA 94105-1813 Telephone: (415) 486-5555 Facsimile: (415) 486-5570 Email: <a href="mailto:OCR.SanFrancisco@ed.gov">OCR.SanFrancisco@ed.gov</a>	U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202-1100 Customer Service Hotline #: (800) 421-3481 Facsimile: (202) 453-6012 TDD#: (877) 521-2172 Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a> Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a>
<b>Equal Employment Opportunity Commission (EEOC) (Employment Concerns)</b>	<b>Department of Fair Employment and Housing (DFEH) (Employment Concerns)</b>

Los Angeles District Office Roybal Federal Building 255 East Temple Street, 4 <sup>th</sup> Floor Los Angeles, CA 90012 Telephone: (800) 669-4000 Facsimile: (213) 894-1118 Web: <a href="http://www.eeoc.gov">www.eeoc.gov</a>	Los Angeles District Office 320 West 4 <sup>th</sup> Street, 10 <sup>th</sup> Floor Los Angeles, CA 90013 Telephone: (800) 884-1684 Email: <a href="mailto:contact.center@dfeh.ca.gov">contact.center@dfeh.ca.gov</a> Web: <a href="http://www.dfeh.ca.gov">www.dfeh.ca.gov</a>
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## II. Statement of Jurisdiction

The University prohibits several forms of discrimination, harassment, and retaliation, referred to collectively in this Policy as “Prohibited Conduct.” The definitions are below. This Policy will apply to individuals by relationship to the University as follows:

- **Students or Participants in the University’s Education Programs and Activities:** any Prohibited Conduct by a Respondent, in connection with any educational activity or other program of the University, as well as incidents that occurred outside of those educational activities or programs, whether they occurred on or off-campus, if, based on the allegations, there is any reason to believe that the incident(s) could contribute to a hostile educational environment or otherwise interfere with a student’s access to education.
- **Employees (as defined by this Policy):** any Prohibited Conduct experienced by an employee that occurs:
  - In the workplace (including the remote workplace during working time) or anywhere on the University’s property while employees are working;
  - Off-campus, if the Prohibited Conduct occurred in connection with University event, activity, program, or event; or
  - Off-campus, if the off-duty Prohibited Conduct is committed by a supervisor and has or reasonably may have the effect of creating a hostile work environment for the employee.

## III. Definitions of Prohibited Conduct

### A. Discrimination

“Discrimination” involves an adverse action, impact, or decision against, or harassing treatment of, a person or class of persons *because of*, or because of a perception of, a Protected Characteristic or because of perceived or actual affiliation/association with other individuals based on a Protected Characteristic. Adverse actions include, but are not limited to: denying raises, benefits, promotions, or leadership opportunities; demoting, disciplining, or terminating a person’s employment; interfering with the use of University facilities or services; or denying access to an educational program. “Discrimination” under this Policy does not include all unfair or

inappropriate behavior, only those behaviors that take place because of a protected characteristic and cause an adverse action. The requirement not to discriminate on the basis of sex in the University's education programs and activities extends to admissions and employment.

## **B. Non-Sexual Harassment in Educational Programs and Activities**

Harassment in educational programs and activities means any unwelcome behavior (physical, verbal, graphic, or written) based on a Protected Characteristic (other than sex) that, based on the totality of the circumstances, is subjectively and objectively offensive and is sufficiently severe, pervasive or persistent that it denies or limits the ability of an individual to participate in or benefit from the services, activities or privileges provided by the University. A person can commit harassment without intending to create these outcomes.

In evaluating the severity, persistence, or pervasiveness of the conduct, the University considers whether the target(s) of the conduct, as well as an objectively reasonable person considering the conduct from the perspective of the target(s), would find the conduct to be severe, persistent, or pervasive. Relevant factors for consideration may include, but are not limited to, the context, nature, scope, frequency, duration, and location of the harassment based on the Protected Characteristic, as well as the identity, number, age, and relationships of the persons involved. Generally, the less pervasive the harassing conduct, the more severe it must be to establish a hostile environment. In some instances, a single act may be sufficiently severe as to be prohibited by this Policy.

## **C. Non-Sexual Harassment in Employment (Hostile Work Environment)**

Harassment in employment means any unwelcome behavior from a co-worker, supervisor, manager, student or third party with whom the employee comes into contact as part of their duties that is reasonably regarded as offensive, that is based on a Protected Characteristic, and that:

- Sufficiently offends, humiliates, distresses, or intrudes upon the individual, so as to disrupt the individual's emotional tranquility in the workplace; or
- Affects the individual's ability to perform the job as usual; or
- Otherwise interferes with and undermines the individual's personal sense of well-being.

A single incident of harassing conduct may create a hostile work environment if the harassing conduct has unreasonably interfered with the employee's work performance or created an intimidating, hostile, or offensive work environment. Whether or not the person meant to give offense or believed their comments or conduct were welcome is not significant. Rather, the policy is violated when other individuals, whether recipients or mere observers, are actually offended by comments or conduct based on any protected category and the conduct is considered offensive by a reasonable person. Examples of conduct based on a Protected Characteristic that may constitute harassing conduct may include, but are not limited to:

- Making gestures, threats, derogatory comments, or slurs that may be reasonably regarded as offensive to individuals in a particular group;
- Bullying behavior that is threatening, intimidating, verbally abusive or results in other disruptive actions in the workplace; or
- Displaying derogatory objects, photographs, cartoons, calendars, or posters.

#### **D. Non-Title IX Sexual Harassment and Sexual Violence in Educational Activities**

In addition to sex-based harassment prohibited by Title IX, the University also prohibits sexually harassing conduct prohibited by the California Education Code. If the conduct falls under the definition and jurisdiction of Title IX Sex-based Harassment, it will also be processed under that definition. In either case, the Title IX Coordinator shall assess each report of alleged Prohibited Conduct and provide outreach, as appropriate, to each identifiable student who is alleged to be the victim of reported Prohibited Conduct.

- **Non-Title IX Sexual Violence in Education**, defined as physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include both of the following:
  - **Rape**, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the affirmative consent of the victim;
  - **Sexual battery**, defined as the intentional touching of another person's intimate parts without affirmative consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.
- **Sexual Exploitation**, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:
  - the prostituting of another person;
  - the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
  - the recording of images, including video or photograph, or audio or the creation through artificial intelligence or other means of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure;

- the viewing of another person’s sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person’s consent, for the purpose of arousing or gratifying sexual desire.

#### **E. Non-Title IX Sexual Harassment in Employment**

Sexual Harassment in Employment is a particular type of harassment under Title VII and California law. Certain types of sexual harassment may also be addressed by Title IX Sexual Harassment. Sexual Harassment in Employment can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to such conduct meets the definition of harassment as stated above (*Hostile Work Environment; Part III.C*).

Examples of conduct that may constitute prohibited Sexual Harassment in Employment may include but are not limited to:

- Unwanted physical touching;
- Telling sexually explicit jokes or stories;
- Making comments or gestures reasonably regarded as lewd or offensive;
- Displaying sexually suggestive objects, cartoons, or pictures;
- Sending sexually explicit messages by letter, notes, electronic mail, social media posting, or telephone;
- Making unwelcome comments reasonably regarded as offensive about a person’s body, physical appearance, or clothing;
- Frequent use of unwelcome terms of endearment;
- Repeatedly asking an individual for a date or meetings outside of working hours after they have indicated an unwillingness to go; or
- Sexual Exploitation, as defined in Sexual Harassment in Education.

#### **F. Title IX And California Law (Education Code and Fair Employment and Housing Act) Sex-Based Harassment**

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, as defined by Title IX and applicable state law, including harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Under this Policy, prohibited Sex-based Harassment includes the following conduct:



- **Quid Pro Quo Harassment.** Quid pro quo harassment occurs when someone from or in the work or educational setting, including an employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or implicitly actually attempts to or purports to provide and condition an aid, benefit, or service under the recipient's University education program or activity on an individual's participation in unwelcome sexual conduct, which includes but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, including under any of the following conditions:
  - Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress;
  - Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; 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 at or through the educational institution.
  
- **Sex-Based Hostile Environment Harassment in Programs and Activities.** Sex-based Hostile environment harassment in Programs and Activities is defined as:
  - Unwelcome sex-based conduct (where sex includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's education program or activity (i.e. creates a hostile environment); or
  - Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting where 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 or educational environment.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the individual's ability to access the University's education program or activity;
- The type, frequency, and duration of the conduct;

- The parties' ages, roles within the University's education program or activity, previous interactions, and other factors about a party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the University's education program or activity.

Harassment involving a University student or employee outside of these conditions may be dealt with pursuant to the University's other definitions of prohibited sex-based harassment.

### **G. Title IX Sexual Assault**

Sexual Assault is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Affirmative Consent is required.

For the purpose of these definitions, a Sexual Act is defined as conduct between persons consisting of:

- Contact between the penis and the vulva, or between penises and vulvas;
- Contact between the penis and the anus;
- Contact between the mouth and the penis;
- Contact between the mouth and the vulva;
- Contact between the mouth and anus;
- Contact between anuses; or,
- Contact involving any of the above or the buttocks or breasts.

Private body parts include all of the body parts specified above, including genitals, groin area, breasts, and buttocks.

Sexual Assault includes:

- **Rape.** A "rape" is defined as the 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 affirmative consent of the victim. Prohibited Conduct includes attempted rape.
- **Fondling.** A "fondling" is defined as the touching of the private parts of another person for the purpose of sexual gratification, without the affirmative consent of the victim, including instances where the victim is incapable of giving consent because

of the victim's age or because of the victim's temporary or permanent mental incapacity.

- **Incest.** "Incest" is defined as sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- **Statutory Rape.** "Statutory rape" is defined as sexual intercourse with a person who is under the statutory age of consent. In California, the statutory age of consent is eighteen (18). In California, there is no close-in-age exception.
- **Dating Violence.** "Dating Violence" is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined by consideration of the totality of the circumstances including length and type of relationship and the frequency of interaction between the persons involved in the relationship. "Violence" means physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault. "Violence" can include patterns of abusive behavior that may consist of or include non-physical tactics (such as threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).
- **Domestic Violence.** "Domestic Violence" is 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. Under California law, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Domestic violence includes physical battery and bodily injury, as well as threats of injury.

Conduct by a party in defense of self or another is not Dating or Domestic Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX decision-makers will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.

- **Stalking.** "Stalking" is engaging in a course of conduct based on sex directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking conduct can include willfully, maliciously, or repeatedly following or harassing a person, even if the accused does not intend harm.

## H. Retaliation and Other Prohibited Conduct

"Retaliation" is adverse action taken against an individual because that individual has, in good faith, with respect to Prohibited Conduct under this Policy: (1) personally complained of, or opposed, actual or perceived discrimination, harassment, or retaliation; (2) testified, assisted, or

participated in (or refused to participate in) an investigation, proceeding, hearing, or legal action involving a claim of discrimination, harassment, or retaliation; or (3) exercised legal rights under a relevant statute, regulation, or policy that involves a Protected Characteristic. “Retaliation” also includes adverse actions or threats or other actions that are intended to, or would, dissuade a reasonable person from engaging in the above-protected activities, including indirectly encouraging retaliation on one’s behalf. Adverse action does not include perceived or petty slights, or trivial annoyances.

In addition to the actions prohibited above, retaliation includes intimidation, threats, coercion, violence or discrimination against any individual for the purpose of interfering with any right established by this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a proceeding under this Policy does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

#### **I. Other Conduct Prohibited by the Violence Against Women Act and the Clery Act**

The University also prohibits sexual assault, dating violence, domestic violence and stalking as required by law. If reported conduct does not fall within the scope of this Policy, the University reserves the right to address this conduct under the equity procedures of this Policy, using the same definitions of Prohibited Conduct as the Title IX definitions. In these cases, as required by the Violence Against Women Act, the parties shall be entitled to have an advisor of choice at any meetings or proceedings and to receive simultaneous notice of the outcome and results and the available appeal procedures. The University’s victim’s resource packet is available from the Title IX Coordinator.

#### **IV. Definitions of Terms Referenced in Policy**

The following definitions are intended to provide a better understanding of the meaning of certain terms as used within this Policy:

- **Affirmative Consent.** For “affirmative consent” to be present, the following characteristics must be met:
  - Consent can be communicated by word or action;
  - Consent must be mutually understandable;
  - Consent must be informed, knowing, voluntary, and freely and actively given.

Consent must be obtained for every sexual activity and at each escalation in the level of sexual activity (e.g., consent to kissing is not consent to fondling; consent to fondling is not consent to intercourse).

Consent cannot result from force, threat, intimidation, duress, manipulation, or coercion.

Consent cannot be given by minors, mentally disabled individuals, or individuals who are mentally or physically incapacitated (such as by alcohol or other drugs); see “Incapacitation” definition, below. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent at one time does not imply affirmative consent to another time (e.g., consent to intercourse last night is not consent to intercourse tonight). The existence of a dating relationship or the fact of a past sexual relationship should never, by itself, be assumed to be an indicator of consent. Consent can be withdrawn at any time before or during sexual activity by expressing in words or actions that an individual no longer wants the act(s) to continue. When consent is withdrawn, the other person must stop the act(s) immediately. Lack of protest or resistance does not mean consent, nor does silence mean consent.

Because individuals may experience a particular interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity and throughout the duration of the activity.

The Respondent’s belief that the Complainant affirmatively consented to the sexual activity is not a valid defense unless the Respondent actually had that belief and that belief was reasonable. Consent is not a valid defense if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

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

In addition, it shall not be a valid defense to an alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent;

- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.
- **Incapacitation.** “Incapacitation” exists when an individual lacks the physical or mental ability to make informed, rational judgments (e.g., to understand the “who, what, when, where, why, or how” of their sexual interactions), and thus cannot give affirmative consent to sexual activity. Incapacitation may be temporary or permanent and may result from mental disability as well as states including, but not limited to: sleep, unconsciousness, disorientation, helplessness, blackouts, etc. Incapacitation may also occur in persons who appear to be functional or coherent but still may not be able to make rational decisions or give affirmative consent. The impact of consuming alcohol or drugs will vary from person to person and being intoxicated is not the same thing as being incapacitated (although intoxication can lead to incapacitation). Evaluating incapacitation due to the use of substances requires an assessment of each individual. Warning signs that a person may be approaching incapacitation may include, but are not limited to: slurred speech, lack of balance, loss of dexterity/coordination, decreased alertness/confusion, vomiting, combativeness, and emotional instability. If, under the circumstances, it was reasonable for a Respondent to rely on another person’s capacity to consent, and if affirmative consent is actually provided, there will not be a finding of incapacitation. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution; when in doubt, assume the other person is incapacitated and therefore unable to give affirmative consent.
- **Complainant.** A Complainant is any individual, including a University student or employee (including applicants for employment, student-employees, unpaid interns, volunteers, contractors), or a participant in the University’s education program and activities who has reported being, or is alleged to be, impacted by Prohibited Conduct as defined by this Policy, and who was employed, enrolled, or participating or attempting to participate in a program or activity offered by the University at the time of the alleged misconduct.
- **Respondent.** A Respondent is an individual, or individuals, who are subject to the University’s disciplinary authority, and who has been reported to have engaged in conduct that could constitute Prohibited Conduct, as defined by this Policy. In some situations, an individual does not have to be enrolled or employed by the University to qualify as a Respondent under this Policy and may be a third-party participant against whom the University has the ability to take corrective action.
- **Reporter.** A “Reporter” is an individual who makes a report of a violation (or potential violation) of this Policy. A Reporter may or may not be a Complainant.
- **Advisor.** An “Advisor” is any person chosen by a Complainant or Respondent to assist the party in navigating the procedures called for in this Policy. Commonly, an Advisor is a professor or other University employee, a parent/relative, a friend, or

an attorney. Any costs for an Advisor (e.g., an attorney's fee or travel for a member of the family) are at the Complainant's or Respondent's own expense. Advisors do not directly participate in proceedings under this Policy but provide emotional support and behind-the-scenes guidance.

- **Support Person.** A support person may accompany the parties to meetings and hearings but may not actively participate in the process. An individual who has a conflict of interest cannot simultaneously serve as a Support Person. For example, a friend who is a witness in a matter cannot serve as a Support Person for that matter.

## V. Reporting a Concern Under This Policy & Supportive Measures

### A. Making a Report

The University can only act to remedy and prevent specific acts of Prohibited Conduct from reoccurring if it is made aware of such conduct. Reports also give the University the opportunity to ensure that appropriate Supportive Measures are offered, consistent with the legal parameters for Supportive Measures. **For these reasons, the University requires its employees to report conduct prohibited by this Policy that they know or should have reason to know about to the Title IX Coordinator.** It is for these reasons as well that the University strongly encourages student reports. Reports should contain the name(s) of the reporter, the Complainant, and the Respondent, a concise statement of the Prohibited Conduct, a detailed statement of the facts supporting the report, and the names of any witness(es). A Complainant may make an anonymous report. It is helpful, but not required, for reports to be made in writing. No matter who is reporting, prompt reporting is strongly encouraged. The earlier the University knows about alleged Sexual Harassment, and the more the University knows about the alleged participants, the more effective the University's investigation and response is likely to be.

A student who participates as a Complainant or witness in a proceeding under this Policy will not be subject to disciplinary sanctions for a violation of the University's Community Standards Policy at or near the time of the incident, unless the University determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

**Please note:** Some behaviors that violate the University's policy may also be criminal. A report to the University is not the same as a complaint to a law enforcement agency. The University can assist individuals in reporting to appropriate law enforcement agencies should the individual choose to file a criminal complaint. Individuals also are free to contact outside law enforcement agencies directly.

### B. Supportive Measures

Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Complaint or where no Complaint has been filed. Such measures are designed to provide support during the resolution procedures under this Policy,

including: during an alternative resolution process; to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party; and including measures designed to protect the safety of all parties or the recipient's educational or working environment, or deter prohibited behavior.

Upon notice of an allegation of Prohibited Conduct, the Title IX Coordinator, or designee, may provide reasonable Supportive Measures. These Supportive Measures can be put in place with or without a Complaint and before a determination that the conduct in the report violates this University policy; accordingly, Supportive Measures are not to be viewed as punitive or a negative finding against any particular party and may be offered, as appropriate, to either party. Supportive Measures will also be offered to Respondents when they are notified of the allegations. Any Supportive Measures put in place will be kept confidential, except when doing so impairs the ability of the University to provide the Supportive Measures.

The Title IX Coordinator, or designee, will maintain communication with the parties to ensure that concerns about safety or emotional and physical wellbeing are being addressed. Depending on the circumstances, supportive measures could include measures from this non-exhaustive list:

- Access to counseling services and assistance in setting up the initial appointment;
- Access to medical services;
- Imposition of a University "No Contact Order" (in accordance with the requirements of Title IX and the California Education Code, depending on the nature of the conduct);
- Rescheduling of exams and assignments;
- Alternative course completion options;
- Campus escort services;
- Leave of absence;
- Increased security and monitoring in certain areas of the campus;
- Change of class or section, or ability to drop the course without penalty;
- Change of work schedule or job assignment;
- Change in student housing assignment;
- Assistance in completing residence relocation;
- Limiting an individual's access to University property, facilities, or activities;
- Change of office space;



- Emergency Removal and Administrative Leave.

When a report of Prohibited Conduct reveals a potential ongoing risk of harm to the safety of an individual or members of the campus community, the University may remove a Respondent from its education programs and activities on an emergency basis. This means that, pending the outcome of the Complaint, campus access may be limited or completely restricted. Emergency removal for Title IX Sex-Based Harassment will be an option only after an individualized safety and risk assessment is made and it will be structured (e.g., for a Respondent employee, paid vs. unpaid) as the University deems appropriate. When an emergency removal is imposed, the University will provide written notice to the Respondent, allow for an opportunity to challenge the decision immediately following the removal and will make reasonable efforts to complete the investigation in an expedited manner.<sup>3</sup> Nothing in this section alters the University's ability to place an employee on administrative leave.

All individuals are encouraged to report failures of an individual to abide by the direction(s) put in place by a supportive measure. The University will take prompt and responsive action to enforce a previously implemented measure. Any Party's non-compliance with the parameters of Supportive Measures, such as no contact orders, may be referred by the Title IX Coordinator to the appropriate department for review and investigation as to whether the alleged conduct violates the University's applicable policies. Violations may result in sanctions or discipline.

### **C. Challenges to Supportive Measures**

A Party may challenge, in writing, the Title IX Coordinator's decision to provide, deny, modify, or terminate Supportive Measures when such measures are applicable to them. An impartial employee will be designated to consider modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate Supportive Measures. The individual who authorized the Supportive Measure(s) shall not be authorized to decide any challenge to the same Support Measure(s). The impartial employee will typically respond to the challenge within two (2) business days. Information regarding the process to challenge any Supportive Measure will be provided to the Party in writing by the individual providing, denying, modifying, or terminating the Supportive Measures.

## **VI. Principles Applicable to All Procedures Under this Policy**

When reviewing reports of behavior prohibited by this Policy, the University shall adhere to the following procedures. Except where prohibited by applicable law, the University reserves the right to modify these procedures as needed for an efficient process toward correct outcomes, as the individual circumstances of cases dictate.

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<sup>3</sup> An interim suspension or leave decision can be immediately appealed in writing within two (2) business days of the decision as follows: students may appeal to the University Dean of Student Affairs; faculty may appeal to the Provost; non-faculty employees may appeal to the Vice President for Finance and Administration. The Director of Equity & Title IX Coordinator shall be included on the submission and shall provide the Complainant with a copy of the decision. The Complainant shall have two (2) business days from receiving the appeal to provide a submission, but they are not required to do so. Unless unusual or complex circumstances exist, a written decision on interim suspension shall be issued within two (2) business days of the submission from the Complainant.

## **A. Implementation of These Procedures**

To ensure that the procedures are implemented in a legally compliant manner, the University shall:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties, provided that the University cannot 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 University obtains that party's voluntary, written consent to do so; or
  - are protected under a privilege as recognized by federal or state law or evidence provided to an employee designated by the University as a confidential resource, unless the University obtains that party's voluntary, written consent to do so.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Designate investigations or hearings conducted under this Policy as confidential. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act governing confidentiality of student information. This means that the University will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know and in order to process Complaints under this Policy.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; provided that to maintain the privacy of evidence gathered as part of any resolution process, access to materials under the procedures in this Policy will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this Policy. Parties may request to review a hard copy of materials, and the University will make that available in a supervised or monitored setting. Inappropriately sharing materials provided during this process may constitute Retaliation under this Policy.
- Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice, who may be an attorney only

where the University is required by law to permit a party's attorney to be present. The University may establish restrictions regarding the extent to which the Advisor may be present during interviews or otherwise participate in the proceedings, as long as the restrictions apply equally to both parties. All parties have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so, but, where permitted by law, the refusal to answer questions in order to consult with attorneys or upon the advice of counsel may be considered by the University factfinder when assessing credibility.

- Provide written notice to a party whose participation is invited or expected, of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- Require an objective evaluation of all relevant evidence by any decision-maker—including both inculpatory and exculpatory evidence—and require that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- Require that any individual designated as a Title IX Coordinator, investigator, decisionmaker, or any person to facilitate an informal resolution process, to be appropriately trained, neutral, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- Ensure trauma-informed and impartial investigations. Require a fair, timely, and thorough fact-finding investigation that provides all parties appropriate and fair process and reaches reasonable conclusions based on the evidence collected. The University may use internal personnel or external parties in the informal resolution process or the fact-finding process, provided that they meet this requirement.
- Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.
- Use the following standard of evidence to determine responsibility: the preponderance of the evidence standard. The standard of evidence shall be the same for Complaints against students as for Complaints against faculty and staff.
- Where mandated by law, not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- Ensure that the investigation and adjudication of alleged Prohibited Conduct is not an adversarial process between the Complainant, the Respondent(s), and the

witnesses. The investigation and adjudications processes are established for the University to comply with existing laws and to determine correct outcomes.

- Provide for the privacy of the individuals involved, subject to the need to disclose information to those who have a legitimate need to know.
- Allow for brief extensions of the process. The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Such requests will not be unreasonably denied by the University where the request is related to a period of examination or school closure.
- Provide periodic updates on the process to the Complainant and Respondent consistent with the timelines referenced in this Policy.
- Provide notice of a formal investigation, including the allegations and policy definitions under review. If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of investigation, the University will provide notice of the additional allegations to the parties whose identities are known.
- Share expectations of decorum to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all parties and advisors. The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or Advisor who does not comply with these expectations and any other applicable University rules.
- Provide notice to the parties regarding appropriate counseling resources developed and maintained by the University for parties in misconduct matters involving sexual harassment in any form.
- Generally utilize the single investigator/adjudicator model in this Policy. The Title IX Coordinator has the discretion to appoint themselves as the investigator/adjudicator, or to appoint more than one investigator/adjudicator in appropriate cases.

## **B. Consolidation of Complaints**

The University may consolidate Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the

same facts or circumstances. If one or more of the Complaints to be consolidated is a Complaint of sex-based harassment involving a student as a party, the procedures for resolving Complaints of sex-based harassment in Section VI.C. of this Policy must be used. Where a matter involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. Where multiple definitions of Prohibited Conduct may be implicated by the same set of facts or circumstances, the University may bifurcate the proceedings in accordance with the requirements of the law.

## **VII. Complaint Procedures for Investigating and Resolving Title IX Sex-Based Harassment, Harassment in Employment Based on Sex, and Non-Title IX Sexual Harassment and Sexual Violence in Educational Activities**

A Complaint of Sex-Based Harassment can be initiated by either the Complainant or the Title IX Coordinator.

A Complaint may be filed with the Title IX Coordinator in person, by phone or videoconference, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator above. A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Complaint. Where the Title IX Coordinator signs a Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Complaint shall trigger an investigation except as specified below. The Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known. When a Complaint of Title IX Sexual Harassment is initiated, the following procedures will be followed.

The University shall investigate the allegations in a Complaint under this section, except as follows:

### **1. Dismissal**

The University may dismiss a Complaint if the conduct alleged:

- would not constitute Prohibited Conduct as defined by this Policy, even if proved; or
- did not occur within the jurisdiction of this Policy.

Subject to its obligations under the relevant employment laws, the University may also dismiss a Complaint under this section if:

- At any time during the investigation, a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations therein and the University determines that it does not need to legally proceed;

- At any time during the investigation, the Respondent is no longer enrolled in or employed by the University;
- At any time during the investigation, specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or allegations therein;
- The alleged Prohibited Conduct occurred prior to August 1, 2024, in which case, the University's Title IX procedures and definitions then in effect shall be used.

The University may dismiss a Complaint at any time in the process if it becomes known that one of the foregoing reasons for dismissal applies. Prior to dismissing the Complaint, the University shall make reasonable efforts to clarify the allegations with the Complainant.

Upon a dismissal required or permitted under this section, the University will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties and notify the parties of their rights to appeal, as set forth in this section. The University may also refer the matter to the appropriate department for resolution under other policies pertaining to Prohibited Conduct.

This dismissal does not preclude action under another policy or procedure of the University.

## **2. Notice of Allegations**

All parties must receive a copy of the notice of allegations containing the legally required elements before the investigation begins.

## **3. Investigation**

The Title IX Coordinator will oversee the investigation and will designate an investigator to conduct a fair, thorough, and impartial investigation. When an investigation takes place, the University will attempt to complete it promptly, typically within sixty (60) calendar days from the date the Complaint is received. Parties can submit any evidence or witnesses they believe is directly related to the allegations raised in a Complaint. During the investigation (and any following proceedings), any Complainant and any Respondent is entitled to an Advisor of their choice.

During the investigation, the Investigator will then gather from parties, witnesses, and other sources, all relevant evidence. At the initial interview with each party, the Investigator will invite the parties to provide, in writing and in advance of the individual interviews, questions to ask of the parties and witnesses that are relevant and not otherwise permissible, including questions exploring credibility. Upon receiving the question list, the Investigator will determine whether a proposed question is relevant and not otherwise impermissible and will explain, in writing in advance of the individual interview, any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Investigator must give a party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the party

sufficiently clarifies or revises a question, the question will be asked. An Investigator will not permit questions that are unclear or harassing of any party or witness being questioned.

The individual interviews may be conducted with all participants physically present in the same geographic location, or at the University's discretion, with all participants joining virtually through a video conferencing option. All interviews will be recorded, and an audio record or transcript of these meetings will be provided to the parties during evidence review.

The Investigator will determine whether identified witnesses are likely to provide relevant information about the allegations and may determine which witnesses to call to an interview. The Investigator may conduct follow-up interviews as they deem appropriate.

#### **4. Investigator Determination of Relevance**

The Investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

#### **5. Evidentiary Rules for Fact-Finding**

An Investigator and/or hearing officer shall not consider the past sexual history of a Complainant or Respondent except in the following limited circumstances:

- Only where prior or subsequent sexual history between the Complainant and anyone other than the Respondent is directly relevant to provide that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual;
- Where the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and Respondent is relevant to how the parties communicated consent in prior or subsequent sexual relations.

Where an investigator allows consideration of evidence of a dating relationship or prior or subsequent consensual sexual relations between Complainant and Respondent pursuant to the above, the mere fact that Complainant and Respondent engaged in other consensual sexual

relations with one another is never sufficient, in isolation, to establish that the conduct in question was consensual.

Prior to allowing consideration of any evidence described in this section, the investigator shall provide a written explanation to the parties as to why consideration of this evidence is consistent with these standards.

## **6. Evidence Review**

Prior to completing the investigation report, the Title IX Coordinator will send to each party (and any Advisor) the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten (10) calendar days to review evidence and submit to the investigator any written response to that evidence, which the investigator will consider prior to completion of the investigation report.

## **7. Investigation Report**

The Investigator will issue an investigation report (“Investigation Report”) to the Title IX Coordinator within thirty (30) calendar days after the close of the Evidence Review, unless unusual or complex circumstances exist. The Investigation Report shall fairly summarize the evidence that is directly related to the allegations in the Notice of Allegations, including the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The Investigation Report will reach a conclusion of whether a Respondent is, or is not, responsible for violating University policy.

The Investigator’s factual findings in the Investigation Report will be based on whether it is “more likely than not” that the University’s policy was violated.

Within fourteen (14) days of receiving the Investigation Report, the Investigator will issue a written decision that will include a description of the Prohibited Conduct, the policy and procedures used to address the Prohibited Conduct, evaluation of the relevant and not otherwise impermissible evidence, whether the Prohibited Conduct was found to have occurred, any discipline and/or remedies, and the procedures to appeal.

Consequences for a student who is found responsible for violating this Policy may include educational sanctions and disciplinary action from a written reprimand up to and including suspension or expulsion/dismissal from the University. Consequences for an employee who is found responsible for violating this Policy may include educational sanctions such as additional training and reflection papers and disciplinary action from a written reprimand up to and including suspension or termination of University employment. This written decision shall be issued simultaneously to the parties.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The Title IX Coordinator is responsible for effective implementation of any remedies.



## **8. Appeal(s)**

Both the Complainant and Respondent have a right to appeal a decision reached by a Decisionmaker under this section. An appeal must be submitted in writing to the Title IX Coordinator, within seven (7) calendar days from the date the person received the Hearing Panel's written decision. Appeals are not for the purpose of having a second investigation or a second review of available facts. Proper bases for appeal are limited to: (1) new evidence that could affect the outcome of the matter if that new evidence was not previously available to, and not withheld by, the appealing party; (2) a procedural irregularity that affected the outcome; (3) an allegation that the Title IX Coordinator or the Investigator, had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome or (4) consideration of whether the Hearing Panel's sanction(s) is substantially disproportionate to its findings. The written appeal must be submitted to the Title IX Coordinator who will forward the appeal to the appropriate University official selected to hear the appeal. The official considering the appeal has seven (7) calendar days to provide a written response to the appeal. All decisions of the University official who rules on the appeal are final.

## **9. Alternative Resolutions**

Whether or not an investigation is initiated, if both parties agree, voluntarily and in writing, and if the Title IX Coordinator approves, the matter can be addressed through an alternative resolution process instead of an investigation process. When resolving Sexual Harassment in Education, the University cannot mandate mediation to resolve allegations of Non-Title IX Sexual Harassment in Education and cannot allow mediation, even on a voluntary basis, to resolve allegations of Sexual Violence. Alternative resolutions do not include extensive investigation or a determination of the validity of a report. The goal of alternative resolution is to achieve a resolution that is acceptable to both the Complainant and Respondent. Typically, alternative resolution is done through mediation or restorative justice, but the specific method of alternative resolution will be agreed to by the parties and approved by and arranged through the Title IX Coordinator. Until an alternative resolution is completed, either party may withdraw their agreement and institute, or reinstitute, the applicable investigation process.

## **VIII. Complaint Procedures – All Other Prohibited Conduct Under this Policy**

After receiving a report of Prohibited Conduct (other than Prohibited Conduct processed under Section VI of this Policy), the Title IX Coordinator will gather information about the reported conduct and respond to any immediate health or safety concerns raised by the report. The Title IX Coordinator will assess the nature and circumstances of the report to determine whether the reported conduct raises a potential Policy violation, whether the reported conduct is within the scope of this Policy, and the appropriate manner of resolution under this Policy.

The Title IX Coordinator will consider the wishes and request of the Complainant in determining the appropriate manner of resolution and will proceed with one of the following options:

- Proceed with an investigation and resolution under the procedures outlined below. This will occur when a Complainant requests an investigation, and the Title IX

Coordinator determines that it is appropriate and that the alleged conduct falls under this Policy or determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued or when Alternative Resolution is not appropriate or available.

- Proceed with an Alternative Resolution process as outlined in Section VI.C.10. This will always require the consent of the Complainant. The consent of the Respondent is also required when the form of resolution involves the Respondent.
- If the conduct is outside the scope of this Policy, refer the matter to another appropriate office, committee, or department for resolution under the relevant policy.
- Close the report with the option to re-open it at another time if the Complainant requests resolution or if the University subsequently determines there is a need to further investigate the alleged misconduct.

## **A. Complaints**

When the University has notice of a good-faith report of conduct prohibited by this Policy (other than conduct processed under Section VI of this Policy) alleged to have been committed by a student, employee, participant in the University's education programs or activities, or other individual over whom the University exercises disciplinary authority or otherwise meet the definition of Respondent under this Policy, the following procedures will be followed:

### **1. Notice of Allegations**

Except under exceptional circumstances, such as where advance notice would inhibit the integrity of the fact-finding process or implicate a student or employee's health or safety, all parties must receive a copy of the notice of allegations containing the legally required elements before the investigation begins.

### **2. Investigation**

The University will investigate under this section. When an investigation takes place, the University will attempt to complete it quickly, typically within sixty (60) calendar days from the date the report is received. The investigation will include, whenever possible, an interview with the reporter, Complainant, Respondent, and any relevant witness(es). Written statements may be requested. Any other available evidence will also be sought. Parties can submit any evidence or witnesses they believe to be relevant to the investigation. The investigator will attempt to document the investigation as appropriate. While every effort will be made to be sensitive to the confidentiality concerns of all people who participate in the investigation, privacy cannot be guaranteed. During the investigation (and any following proceedings), the Complainant and Respondent are each entitled to an Advisor of their choice. Except where prohibited by law, the investigator may draw an inference regarding responsibility based solely on a party's or witness's absence or refusal to answer questions.

### 3. Written Determination

As soon as practicable after the conclusion of the investigation, the Investigator(s) will issue a written determination to the Title IX Coordinator. The written determination will contain investigation findings, which includes factual findings and a determination of whether this Policy was violated because Prohibited Conduct was established by a preponderance of the evidence and recommend sanctions if a violation is found. The Title IX Coordinator will provide the written determination to the parties, who will have ten (10) calendar days to respond in writing. If any response is received from the parties, the Investigator will have ten (10) calendar days to determine whether any revision to the written determination is appropriate and then submit the final written determination to the Title IX Coordinator.

### 4. Consequences for Policy Violations

If the Investigator finds that a Respondent is responsible for violating this Policy, the recommended sanctions will be referred to the relevant University official as indicated below, depending on the status of the Respondent. These officials, or their designees, will then adopt, reject, or adopt with modifications, the recommended sanctions. The Director of Equity will send a final written decision to the parties with the official's determination on the sanctions. Consequences for a student who is found responsible for violating this Policy may include educational sanctions and disciplinary action from a written reprimand up to and including suspension or expulsion/dismissal from the University. Consequences for an employee who is found responsible for violating this Policy may include educational sanctions and disciplinary action up to and including suspension or termination of University employment.

- **For Students.** If the Respondent is a student, the University official who will determine the appropriate consequence/sanction will be the University Dean for Student Affairs, or designee.
- **For Faculty.** Consistent with the Faculty Handbook, if a Respondent is a member of the University faculty, the University official who will determine the appropriate consequence/sanction will be the respective dean of the college/school in which the faculty member holds a primary appointment, or designee.
- **For Staff and Administrators.** If the Respondent is a non-faculty employee, the University official who will determine the appropriate consequence/sanction will be the Associate Vice President for Talent, Diversity & Culture/Chief HRD, or designee.
- **For Members of the President's Cabinet.** If the Respondent is a member of the President's Cabinet, the University official who will determine the appropriate consequence/sanction will be the President.
- **For the President.** If the Respondent is the President, the University official who will determine the appropriate consequence/sanction will be the Chair of the Board of Trustees.

## 5. Appeal(s)

Both the Complainant and Respondent have a right to appeal any decision. An appeal must be submitted, in writing, to the Title IX Coordinator within seven (7) calendar days from the date the party received the written decision. Appeals are not for the purpose of having a second investigation or a second review of available facts. Proper bases for appeal are limited to: (1) new evidence that could affect the outcome of the matter if that new evidence was not previously available to, and not withheld by, the appealing party; (2) a procedural irregularity that affected the outcome; (3) an allegation that the investigator had a conflict of interest that affected the outcome of the matter; or (4) consideration of whether the imposed consequence/sanction(s) is substantially disproportionate to the findings. The official considering the appeal has twenty-one (21) calendar days to provide a written response to the appeal. All decisions of the University official who rules on the appeal are final.

- **For Students.** If the Respondent is a student, the University official who will hear the appeal will be the Vice President for Student Affairs, or designee.
- **For Faculty.**<sup>4</sup> Consistent with the Faculty Handbook, if a Respondent is a member of the University faculty, the University official who will hear the appeal will be the Provost, or designee.
- **For Staff and Administrators.** If the Respondent is a non-faculty employee, the University official who will hear the appeal will be the Vice President for Finance and Administration, or designee.
- **For Members of the President's Cabinet.** If the Respondent is a member of the President's Cabinet, the University official who will hear the appeal will be the Chair of the Board of Trustees, or designee.
- **For the President.** If the Respondent is the President, the entity that will hear the appeal will be the full Board of Trustees.

## 6. Alternative Resolutions

Whether or not a Complaint is initiated, if both parties agree, voluntarily and in writing, subject to the approval of the Title IX Coordinator who shall ensure compliance with all related employment laws, the matter can be addressed through an alternative resolution process instead of an investigation process. When resolving Sexual Harassment in Education, the University cannot mandate mediation to resolve allegations of Non-Title IX Sexual Harassment in Education and cannot allow mediation, even on a voluntary basis, to resolve allegations of Sexual Violence. Alternative resolutions do not include extensive investigation or a determination of the validity of a report. The goal through alternative resolution is to achieve a resolution that may be acceptable to both the Complainant and Respondent, and to counsel and educate one or more individuals.

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<sup>4</sup> In determining corrective action related to faculty, no faculty member's contract can be revoked or contract abrogated without following the process outlined in the *Faculty Handbook*. However, this does not limit the use of other protective measures, such as paid administrative leave or other interim measures.

Typically, alternative resolution is done through mediation or restorative justice, but the specific method of alternative resolution will be agreed to by the parties. Until an alternative resolution is completed, either party may withdraw their agreement and institute, or reinstitute, the investigation process.

## **IX. Additional Issues**

### **A. Divergence from Policy**

The University is committed to enforcing this policy in reasonable, responsible, and fair ways. Despite the University's efforts to draft a good policy, there are times when a divergence from the listed procedures may be necessary. For example, there may be times (e.g., school breaks, illness or accident, travel obligations, witness unavailability) when an individual who has a responsibility to act within a deadline cannot meet that obligation. There may be times when a listed individual should be recused or substituted because of a personal relationship or other conflict of interest. Or there may be unique circumstances that require an adjustment to the procedure outlined above. If and when a divergence to the policy is appropriate and lawful, the University will communicate with the Complainant and Respondent to inform them of the divergence and explain the reason(s) for it. If a party believes that any divergence is not fair or reasonable, that party should explain the reasons for that belief to the Title IX Coordinator.

### **B. Conflicts of Interest**

When designating individuals to perform roles under the procedures identified in this Policy, the University seeks to avoid any conflicts of interest and appoint neutral individuals. If any party becomes aware of a conflict of interest, or bias, of an individual who is participating in the procedures identified above, that party should inform the Title IX Coordinator, unless the Title IX Coordinator is the one with the alleged conflict or bias, in which case that party should inform the Vice President for Institutional Integrity and Strategy and General Counsel.

### **C. False Reporting**

Because the University takes reports of Prohibited Conduct so seriously, false reports or reports made in bad faith will have serious consequences. Any person who makes a report, or offers testimony or information on a material issue, that is later found to be intentionally false or made maliciously without regard for truth will be subject to disciplinary action, up to and including expulsion (if a student) or termination of employment (if an employee). This provision does not apply to reports made in good faith, even if the report is not substantiated through an investigation or decision.

### **D. Alternate Policies and Procedures Superseded**

Provisions in University Policies relating to Prohibited Conduct including discrimination, harassment, and retaliation or any Prohibited Conduct as defined by this Policy that are inconsistent with anything in this Policy are superseded and do not apply. Any grievance policies and procedures in the Employee Handbook or the Faculty Handbook are not applicable to matters addressing Prohibited Conduct that are covered by this Policy. Proceedings addressing claims

under the Policy Prohibiting Discrimination, Harassment, and Retaliation will be handled by these procedures and not alternate University procedures except where proposed remedial actions might involve the loss of tenure or the termination of faculty employment.

#### **E. Recordkeeping**

All reports and results of proceedings dealing with Prohibited Conduct under this Policy must be reported, for compliance purposes, to the University's Title IX Coordinator. For any Respondent, the complete investigative file, including a copy of any decision and/or appeal decision, along with any record of consequences or corrective actions, shall be maintained by the University (typically in the appropriate academic department, Student Affairs office, Human Resources office, or Title IX Coordinator's office) during that Respondent's employment or academic enrollment and for seven (7) years employment/enrollment concludes. For any Complainant, a record of any Supportive Measures and remedies shall also be maintained by the University's Title IX Coordinator for the same period.

#### **F. Relationship to Other Laws**

There may be times when activities under this Policy confront matters about which there are additional legal responsibilities. For example, some records implicated in an investigation or proceedings under this Policy might be protected by the Family Educational Rights and Policy Act ("FERPA"). The University will comply with all of its legal obligations, including but not limited to FERPA, which may entail redacting or not disclosing certain documents that might otherwise be shared. Title IX obligations also sometimes overlap with obligations under Title VII of the Civil Rights Act of 1964. Where obligations overlap, adjustments to specific details of how the policies and procedures may be made, but the University will work diligently to ensure that all legal obligations are met in a manner that is faithful to both the spirit and the letter of its legal requirements. Compliance with the Clery/VAWA amendments does not constitute a violation of FERPA.

#### **G. Relationship to Principles of Academic Freedom and Freedom of Speech**

The success of the University depends on an environment that fosters vigorous thought and intellectual creativity – an atmosphere in which diverse ideas can be expressed and discussed. The University seeks to provide a setting that respects the contributions of all individuals composing its community, encourages intellectual and personal development, and promotes the free exchange of ideas. This Policy is not intended to regulate the content of speech, discussion, and debate in the classroom, on campus, or in any University forum reasonably related to academic activity or political, artistic, and visual arts expression. The University will protect academic freedom and artistic expression in administering this Policy. However, using speech or expression to engage in discrimination or harassment is prohibited.

#### **H. Relationship to Law Enforcement**

The University has an independent obligation to investigate, stop, and remedy acts of discrimination, harassment, and retaliation. The University chooses to meet this independent

obligation while still cooperating, when possible, with appropriate law enforcement officials and agencies. That cooperation will sometimes alter the University's typical timing or procedures, but **referrals to law enforcement do not stop the University's proceedings altogether.** Ultimately, the University desires that Complainants of discrimination, harassment, and retaliation – and the Respondents accused of engaging in those behaviors – receive fundamental fairness from the University in the course of the University's attempts to enforce its policy. Readers of this Policy should be reminded that the definitions and standards used by the University may be different, and in some respects are different, than the standards and definitions used by law enforcement and the criminal justice system.

### **I. Required Acknowledgment and Training**

Every employee upon hire and annually thereafter is required to review this Policy and acknowledge they have read and understand its content. Supervisors undergo mandatory sexual harassment prevention training within six (6) months of initial employment and biennially thereafter. Additionally, all non-supervisory employees (including temporary employees and volunteers) must complete a one-hour workplace sexual harassment prevention training within six (6) months of their initial start date and biennially thereafter. The California Civil Rights Department offers sexual harassment training at: <https://calcivilrights.ca.gov/shpt/>.

### **J. Counting Days and Deadlines**

Unless otherwise stated herein, all references to days are to a business day, which is any day that the University's Registrar's Office is open for business. Any deadlines in this Policy may be extended by the Office of Equity & Title IX to account for holidays or other University closures.