

**POLICY ON SEX  
DISCRIMINATION  
INVOLVING SEXUAL  
ASSAULT, SEXUAL AND  
GENDER-BASED  
HARASSMENT, OTHER  
FORMS OF  
RELATIONSHIP  
VIOLENCE AND  
RETALIATION**

## **A. PURPOSE**

1. The University of La Verne is an institution built upon honor, integrity, trust, and respect. Consistent with these values, the University is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community. The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities. To that end, this policy prohibits specific forms of behavior that violate Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964 ("Title VII"); and/or federal and California laws. Such regulations also require the University to fulfill certain obligations under the Violence Against Women Reauthorization Act of 2013 ("VAWA"), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), and various California laws
2. The University adopts this policy with a commitment to: (1) eliminating, preventing, and addressing the effects of Sexual Misconduct; (2) fostering the University's Community of Trust, in which Sexual Misconduct is not tolerated; (3) cultivating a climate where all individuals are well-informed and supported in reporting Sexual Misconduct; (4) providing a fair and impartial process for all Parties; and (5) identifying the standards by which violations of this policy will be evaluated and disciplinary action may be imposed. Employees or students who violate this policy may face disciplinary action up to and including termination of employment and/or expulsion from the University. The University will take prompt and equitable action to eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects. The University conducts ongoing prevention, awareness, and training programs for employees and students to facilitate the goals of this policy.
3. It is the responsibility of every member of the University Community to foster an environment free of Sexual Misconduct. All members of the University Community are encouraged to take reasonable and prudent actions to prevent or stop an act of Sexual Misconduct. The University will support and assist community members who take such actions.

## **B. SCOPE**

1. This policy and attendant Title IX jurisdiction applies to students who are registered or enrolled for credit or non-credit-bearing coursework and admitted students participating in University programs, All University employees, including all full-time and part-time faculty, administrative professionals, classified staff, temporary employees; and independent contractors, vendors, visitors, guests and other persons having dealings with the University Community. The University of La Verne consists of eleven campuses in California, wherever located.
2. This policy pertains to acts of Sex-Based Discrimination, Sexual Harassment, and Retaliation, as defined by this policy, that is committed by or against students, employees, and third parties when the conduct:
  - a. Takes place in a University Program or Activity, and

- b. Is against a person in the United States at the time the conduct occurred.
- 3. This policy includes, but is not limited to, Sexual Misconduct that takes place in person, over the phone, online, via email or by use of any other electronic mediums. University Community members should be aware that online postings such as blogs, web postings, chats, and social networking sites are in the public sphere and are not private. These postings can subject a University Community members to allegations of conduct violations under this policy if they are determined to adversely affect any member of the University community in a manner prohibited by this policy. While the University of La Verne does not monitor such electronic mediums for this type of conduct, the University may take action based on such conduct if and when such matter is brought to the attention of University officials.

## **C. DEFINITIONS**

### **Actual Knowledge**

Notice of Sex-Based Discrimination, Sexual Harassment, or Retaliation allegations to the University's Title IX Coordinator or any University official with the authority to institute corrective measures. A conclusion that the University "should have known" does not meet this standard.

### **Advisor**

An individual that is permitted to accompany a Party to all stages of the Title IX process and may conduct cross examination on behalf of a Party during a Hearing. The Advisor may be, but is not required to be, an attorney.

### **Affirmative Consent**

Informed, affirmative, conscious, voluntary, and mutual agreement to engage in a sexual activity. Silence or lack of protest is not affirmative consent. Affirmative consent cannot be given by someone incapable of giving consent, including when due to status as a minor, incapacity, familial relationship, or the application or threat of force. Affirmative Consent may be communicated through clear words or action.

### **Appeals Officer**

An individual appointed by the University to evaluate and issue final decisions regarding appeals of the Written Determination.

### **Complainant**

A University Community Member who is the recipient or victim of, or alleged to be the recipient or victim of, conduct prohibited by this policy.

### **Confidential Reporting Source**

Any University employee who is a clergy, or a licensed medical, clinical or mental-health professional and those performing services under their supervision or as their administrative or operational support, when acting in their professional role in the provision of services to a patient.

### **Dating Violence**

Violence committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the recipient or victim of the violence. Dating violence is not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, as such conduct is sufficiently serious to deprive a person of equal access.

### **Decision Maker**

An individual appointed by the University to make determinations regarding relevance of evidence, Respondent Responsibility, Sanctions, Remedies, and appeals.

### **Domestic Violence**

Violence committed by a current or former spouse, current or former intimate partner, current or former cohabitant of the Complainant, someone with whom the Complainant shares a child, or a person similarly situated under California domestic or family violence law. A cohabitation relationship must be romantic in nature and may not merely consist of roommates. Domestic Violence is not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, as such conduct is sufficiently serious to deprive a person of equal access.

### **Emergency Removal**

The immediate suspension of student privileges to be on any University campus or participate in any in-person University program or event.

### **Expert**

A witness permitted to submit a written report and testify during a Hearing regarding their opinion based specialized professional knowledge and not regarding personal knowledge of facts.

### **Fondling**

The touching of the private body parts of another person, including the buttocks, groin, and breasts, for the purpose of sexual gratification that is unwelcome and/or without Affirmative Consent.

### **Formal Complaint**

A document filed by the Complainant or signed by the Title IX Coordinator against a Respondent alleging conduct which would constitute a violation of this policy and requesting that the University investigate the allegation(s). The document may be in a physical or electronic format so long as the document includes a physical or digital signature indicating the indicating that the Complainant is filing the form of their own behalf.

### **Formal Grievance Process**

The equitable process by which the University investigates and adjudicates Formal Complaints of Sexual Misconduct.

### **Hearing**

A live, virtual proceeding during which the University and the Parties present evidence before a Hearing Panel subject to the Hearing Rules.

### **Hearing Chair**

A member of the Hearing Panel specifically tasked with ruling on issues of Relevance before and during a Hearing.

### **Hearing File**

All Relevant evidence and documents gathered by the investigator and available to the Hearing Panel to use in making findings of Responsibility in the Written Determination.

### **Hearing Officer**

An individual appointed by the University to facilitate the Hearing process and maintain the Hearing Rules. The Hearing Officer is not a Decision Maker.

### **Hearing Panel**

A panel of Decision Makers, including a Hearing Chair, that evaluate evidence in a Hearing and issue a Written Determination.

### **Hostile Environment Harassment**

A type of sexual harassment in which subjectively unwelcome conduct is determined to be such that a reasonably person would consider it so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to an educational program or activity of the University on the basis of sex or gender. Determinations are made considering the totality of the circumstances.

### **Incapacitation**

The physical and/or mental inability to make an informed, rational decision and may include mental or physical

disability, lack of sleep, alcohol or drug use, unconsciousness, being blacked out, or being involuntarily physically restrained. Having consumed alcohol or drugs does not necessarily render a person incapacitated.

### **Informal Resolution**

An equitable resolution process that will generally take the form of mediation before a neutral mediator.

### **Notice**

Notification by the University. Notice will be deemed received upon the sending of any electronic communication to a recognized email account or portal, such as Maxient.

### **Party**

The Complainant or the Respondent. The Title IX Coordinator and the University are not Parties.

### **Preponderance of the Evidence Standard**

That it is more likely than not that a violation of this policy occurred, based on all the reasonable evidence and reasonable inferences from that evidence.

### ***Quid pro Quo* Harassment**

The conditioning of access to educational benefits on unwelcome sexual conduct. *Quid pro Quo* is not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, as such conduct is sufficiently serious to deprive a person of equal access.

### **Rape**

Penetration, however slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, that is unwelcome and/or without Affirmative Consent.

### **Relevant**

Evidence that is directly related to a matter at hand and tends to make the existence of any fact that is of consequence to the outcome more or less probable.

### **Remedies**

Individualized measures implemented after a Hearing or as part of an Informal Resolution that are designed to restore or preserve equal access to University Programs or Activities, and may include Supportive Measures, but need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. See Appendix B.

### **Respondent**

An individual reported to be the perpetrator of conduct that may constitute a violation of this policy.

### **Responsible Employee**

Any University Employee who is not a Confidential Reporting Source. Responsible Employees include all faculty and staff. Responsible Employees also include Resident Assistants, Graduate Teaching Assistants, and all other student-employees, when disclosures are made to any of them in their capacities as employees.

### **Responsibility/Non-Responsibility**

A finding based on a Preponderance of the Evidence indicating that it is more likely than not or not more likely than not that the Respondent violated this policy.

### **Retaliation**

A materially-adverse action performed directly or through others, aimed to dissuade a reasonable person from engaging in, or done in retribution for engaging in, exercising rights under this policy, reporting in good faith a possible violation of this policy, or participating in an investigation or proceeding in good faith pursuant to this policy. Retaliation may arise whether or not the underlying allegation of Sexual Misconduct was found to be substantiated. Retaliation does not include good faith actions pursued in response to a report of Sexual Misconduct.

### **Sanctions**

Individualized measures implemented after a Hearing that may be disciplinary in nature. Sanctions will take into account aggravating and mitigating factors as appropriate. See Appendix B.

### **Sex-Based Discrimination**

Adverse action or conduct towards any University employee or student in the terms or conditions of employment, University admission, education, access to a University program, services, or activity; or other University benefits or services, on the basis of inclusion or perceived inclusion in the protected classes of sex, pregnancy, pregnancy-related conditions, sexual orientation, gender, gender identity, or gender expression, which has the effect of denying or limiting participation in a University program or activity; or used as the basis for University decisions affecting the individual.

### **Sexual Assault**

Any Penetration or Sexual Contact of a person that is unwelcome and/or without Affirmative Consent, including Rape, Sodomy, Sexual Assault with an Object, or Fondling. Sexual Assault is not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, as such conduct is sufficiently serious to deprive a person of equal access.

### **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 when such conduct is unwelcome and/or without Affirmative Consent.

### **Sexual Contact**

Any form of intentional sexual touching, not including Penetration, however slight, with any object or body part performed by a person upon another person. It includes intentional touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally another with or on any of these body parts, or making another touch the actor or themselves with or on any of these body parts.

### **Sexual Exploitation**

When an actor engages in non-consensual or abusive conduct not otherwise proscribed by this policy by which he or she takes sexual advantage of another for the actor's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. It includes, but is not limited to, recording private sexual activity or intimate body parts of another without Affirmative Consent, engaging in voyeurism, disseminating images or recordings of private sexual activity or intimate body parts of another without Affirmative Consent, sexual trafficking, and possession, production, distribution, sale, or purchase of child pornography.

### **Sexual Harassment**

Conduct committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved which is either *Quid pro Quo* Harassment, Hostile Environment Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Exploitation.

### **Sexual Misconduct**

Sex-Based Discrimination, Sexual Harassment, or Retaliation occurring within the University's Title IX jurisdiction.

### **Stalking**

Engaging in an unwanted course of conduct of two or more acts directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress and includes acts in which the actor directly, indirectly or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, harasses or communicates to or about a person or interferes with a person's property. Stalking is not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, as such conduct is sufficiently serious to deprive a person of equal access.

### **Supportive Measures**

Actions taken by the University designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party, including measures designed to protect

the safety of all Parties or the University's educational environment, or deter Sexual Harassment, Discrimination, and/or Retaliation.

**Title IX Coordinator**

A University employee authorized and designated by the University to coordinate its efforts to comply with Title IX responsibilities under federal law.

**University**

The University of La Verne, including eleven campuses in California wherever located.

**University Community**

Students who are registered or enrolled for credit or non-credit-bearing coursework and admitted students participating in University Programs; All University employees, including all full-time and part-time faculty, Administrative Professionals, Classified staff, temporary employees; and independent contractors, vendors, visitors, guests and other persons having dealings with the University community.

**University Officials**

Members of the University Community with authority to institute corrective measures on behalf of the University, including administrators, administrative faculty, directors, supervisors, and coaches. The ability or obligation to report Sexual Misconduct or to inform a student about how to report Sexual Misconduct, or having been trained to do so, does not qualify an individual as one who has the authority to institute corrective measures on behalf of the University.

**University Program or Activity**

Includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

**Written Determination**

The report prepared by the Hearing Panel following the Hearing summarizing the matter and explaining findings.

**D. POLICY**

1. Prohibition of Sex-Based Discrimination, Sexual Harassment, and Retaliation
  - a. The University does not discriminate, and explicitly prohibits discrimination, on the basis of sex or gender in any education program or activity that it operates, including admission and employment.
  - b. The University prohibits sexual harassment, including *Quid pro Quo* Harassment, Hostile Environment Harassment, Sexual Exploitation, Sexual Assault, Dating Violence, Domestic Violence, and Stalking.
  - c. The University prohibits Retaliation by any person as defined in this policy.
2. Consent Responsibility
  - a. Affirmative Consent requires the clear expression in words or actions that another individual consents to participating in the sexual activity.
  - b. Affirmative Consent may be withdrawn once given, so long as the withdrawal is reasonably and clearly communicated.
  - c. A participant in a sexual activity is responsible for ensuring Affirmative Consent is received from all other individuals engaging in the sexual activity and for each activity engaged in. Affirmative Consent for one type of sexual activity does not imply consent for any others.
  - d. Engaging in prior sexual activity does not imply consent to current or future sexual activity.
  - e. The existence of Affirmative Consent will be evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar

circumstances, including the context in which the alleged incident occurred.

### 3. Reporting Options

- a. There are multiple channels for reporting Sexual Misconduct. A Complainant may choose to report to the University, to law enforcement, to both, or to neither. These reporting options are not exclusive.
  - i. Complainants have the right to notify or decline to notify law enforcement, and are not required to report to law enforcement in order to receive assistance from, or pursue any options with, the University or community resources.
  - ii. Complainants have the right to notify or decline to notify University authorities in order to report to and receive assistance from law enforcement and/or receive outside resources. In such case, the University will not be able to investigate.
  - iii. If the Complainant desires, the University will facilitate reporting to law enforcement.
- b. A Complainant may elect to report Sexual Misconduct to a Confidential Reporting Source, in which case, the report will not be shared with the University's Title IX Coordinator or law enforcement, subject to any relevant legal requirements, including obligations to report child abuse.
- c. Reporting Sexual Misconduct through the University's online reporting form provides the University with the best opportunity to expediently offer appropriate support, resources, and resolution.
  - i. Complainants may also submit a report by contacting the University's Title IX Coordinator or any Deputy Title IX Coordinators directly by phone, email, or in-person.
- d. The University will accept anonymous reports and respond to such reports to the extent possible. Individuals should be aware that the University's ability to fully investigate and respond may be inhibited by anonymous reports.
- e. There is no time limit for reporting Sexual Misconduct, but individuals are encouraged to make a report as soon as possible after the incident in order to maximize the University's ability to provide Supportive Measures and investigate effectively.
- f. Responsible Employees are required to report Sexual Misconduct to the Title IX Coordinator; however, only reporting to University Officials will be considered to provide the University with Actual Knowledge of the report.

### 4. Supportive Measures

- a. The University will offer, and in writing describe to the Complainant, Supportive Measures upon learning of alleged Sexual Misconduct and to the Respondent upon notice of a Formal Complaint.
  - i. A Complainant does not need to file a Formal Complaint to receive Supportive Measures.
  - ii. A Complainant and/or Respondent does not need to accept any Supportive Measures proposed by the University.
- b. The University will consider, and approve if appropriate, Supportive Measures suggested by the Complainant and/or the Respondent.
- c. Supportive Measures may include, but are not limited to, counseling services, medical services, academic support, schedule adjustments, housing adjustments, extensions of deadlines, course or program withdrawals, leaves of absence, financial aid counseling, increased personal or campus security, and mutual



restrictions on contact (“no-contact orders”).

5. Report Resolution Options

- a. After submitting a report, a Complainant may elect to file a Formal Complaint or end the process.
  - i. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in one of the University’s Programs or Activities.
  - ii. In addition to offering Supportive Measures upon receiving a report of Sexual Misconduct, the University will explain to the Complainant the procedures associated with filing a Formal Complaint as well as the Formal Grievance and Informal Resolution processes.
  - iii. The Title IX Coordinator may also file a Formal Complaint even if the Complainant does not wish to do so.
- b. A Formal Complaint may give rise to either a Formal Grievance or Informal Resolution process.
- c. The Complainant’s resolution of choice will be honored and they may change their mind about filing or withdrawing a Formal Complaint, or electing a Formal Grievance Process or an Informal Resolution at any point prior to the close of the Hearing, informal resolution, or other final resolution process.
  - i. The Respondent must still agree if the Complainant changes their mind and elects an Informal Resolution.
- d. At any point described in this policy, the Title IX Coordinator may determine that there is no longer a reasonable basis to conclude that the matter is within the University Title IX jurisdiction.
  - i. In such case, the Title IX Coordinator will dismiss the matter as to Title IX and may refer it to other University offices, including student conduct or human resources.
  - ii. The Parties may appeal a dismissal by the Title IX Coordinator using the same standards and procedures as for appeal of a final Written Determination.
- e. At the discretion of the Title IX Coordinator, and subject to any other rights retained by the Parties, allegations against a single Respondent by multiple Complainants or against multiple Respondent by a single Complainant, or against multiple Respondents by multiple Complainants may be consolidated into a single process.

6. Process Participants

- a. The Parties and any witness may bring an Advisor for any meeting, interview, Hearing, or other proceedings under this policy.
  - i. For the purposes of cross examination during the Hearing, the University will provide without fee or charge an Advisor to any Party not electing to retain their own. The Advisor will be appropriately trained.
  - ii. The Advisor will conduct cross examination directly, verbally, and in real time during the Hearing.
  - iii. An Advisor may conduct cross examination if their Party does not appear at the Hearing.
  - iv. Except during cross examination in the Hearing, the Advisor may not disrupt a meeting, interview, or other proceeding or speak on behalf of the Party in any meeting, interview, or other proceeding, including

- the Hearing. The Advisor may listen, take notes, and quietly confer with the Party.
- v. Advisors may be excluded from any meeting, interview, or other proceeding if unable to conform to the requirements of policy, including the Hearing Rules.
- b. The Parties may procure their own witnesses, including character and expert witnesses.
  - i. Testimony from character and expert witnesses will allowed at the Hearing except to the extent that it is determined by the Chair of the Hearing Panel to not be relevant.
- c. Parties and witness will not be subject to disciplinary Sanctions for minor violations of University policy in the Code of Student Conduct at or near the time of the incident and in connection with the investigation, unless it is determined 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.
  - ii. This amnesty does not apply to employee conduct.
- d. Except for individuals serving in a role as a reasonable accommodation and one Advisor, a Party or witness may not bring any additional persons to any meeting, interview, or Hearing after a Formal Complaint has been filed.
  - iii. The Title IX Coordinator should make all reasonable efforts to allow as many support persons to be present for an initial intake meeting as requested by the Complainant.
- e. All Parties and witnesses
  - iv. Have the responsibility to be truthful, to cooperate with the process, and to follow the directions of University representatives responsible for administering the process.
  - v. Are prohibited from Retaliating against any individual who has reported Sexual Misconduct or who has participated as a Party, witness, or administrator of the process.
  - vi. Must keep private all documents, materials, and information received from the University during the process, except as allowed for Advisors and must destroy such materials if instructed to do so by the University.

## 7. Formal Grievance

- a. A Formal Grievance is a formal process that includes
  - i. Investigation by a trained investigator;
  - ii. A live, virtual Hearing in front of a Hearing Panel;
  - iii. A written Hearing Determination describing of Responsibility, sanction, and Remedies by the Hearing Panel; and
  - iv. The opportunity to appeal.
- b. The burden of proof in a Formal Grievance process is on the University and will be determined using the Preponderance of the Evidence standard. The University presumes the Respondent is not Responsible for the alleged Sexual Misconduct until the final decision is rendered by the Hearing Panel.
  - i. Likewise, the burden of gathering evidence is on the University.
- c. The investigation will be thorough, neutral, and trauma-informed.
  - i. The University appreciates that both Parties and any witnesses may have trauma related to the matter under investigation.

- ii. The investigator will use professional discretion in determining appropriate areas of inquiry. So long as the investigator remains thorough and neutral, the investigator is not compelled to investigate every possible lead or interview every possible witness.
  - iii. The investigator will not have a conflict of interest. Concerns regarding potential conflicts of interest will be presented to the Title IX Coordinator, who will determine whether a conflict exists.
- d. The investigator will produce a draft and final written Investigative Report that will be made equally available to the Parties for review and comment.
- e. A Hearing Panel will be appointed by the Title IX Coordinator.
  - i. The Hearing Panel will be trained, neutral and not have any conflict of interest. Concerns regarding potential conflicts of interest will be presented to the Title IX Coordinator, who will determine whether a conflict exists.
- f. The Hearing will be conducted in a live, virtual setting that allows the Parties and Hearing Panel to see and view each other in real time.
- g. One individual will serve as the Chair of the Hearing Panel.
  - i. The Chair will issue decisions on the relevance of evidence and may exclude any evidence that is not relevant.
- h. The Hearing Officer will enforce the Hearing Rules.
- i. The Hearing Panel will provide a Written Determination to the Title IX Coordinator that includes
  - i. Each of the allegations potentially constituting Sexual Misconduct;
  - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the Written Determination;
  - iii. Findings of fact;
  - iv. Conclusions about whether the alleged Sexual Misconduct occurred, applying the definitions set forth in this policy;
  - v. The rationale for the result as to each allegation;
  - vi. Any disciplinary Sanctions imposed on the Respondent;
  - vii. Whether Remedies or Supportive Measures will be provided to the Complainant; and
  - viii. Information on how to file an appeal
- j. The Title IX Coordinator will provide the Written Determination to the Parties.
  - i. The Title IX Coordinator will also provide the Written Determination Report to other University offices as necessary for record maintenance.
  - ii. The Title IX Coordinator will determine whether Sanctions and Remedies will go into immediate effect or will be delayed pending a possible appeal.
- k. Both Parties have the right to appeal the Written Determination only on the following grounds:
  - i. A substantive procedural error or omission occurred that significantly impacted the outcome of the Formal Grievance process. A deviation from procedure alone is not a sufficient basis for appeal unless significant prejudice is alleged to have resulted.
  - ii. The Title IX Coordinator, the investigator, or any Hearing Panel member has a conflict of interest or substantiated bias that affected the outcome.

- iii. New evidence, unknown and not reasonably available during the original Formal Grievance process, which could substantially impact the outcome.
- iv. The Sanctions imposed fall outside the range of Sanctions the University has designated for the offense and the cumulative record of the Respondent.

## 8. Evidence

- a. All evidence used, considered, and upon which outcomes and Sanctions are determined must be Relevant.
- b. Inculpatory and exculpatory evidence will be subjected to the same requirements and treatment throughout the process.
- c. Credibility of evidence will not be based on an individual's status as a Complainant, Respondent, or witness.
- d. The following evidence is considered not Relevant and may not be accessed, considered, disclosed, or otherwise used in a Formal Grievance without written consent to do so:
  - i. A Party's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or supporting that capacity, and which are made and maintained in connection with the provision of treatment to the Party.
  - ii. A Party's records protected by a legally recognized privilege, such as attorney-client privilege.
  - iii. Evidence about a Complainant's prior sexual behavior except if offered to prove that someone other than the Respondent committed the alleged Sexual Misconduct or if the question or evidence concerns sexual behavior between the Complainant and the Respondent and is offered to prove Affirmative Consent ("Rape Shield Protections").
  - iv. Evidence that is unreasonably duplicative.
  - v. Evidence in a Hearing that goes beyond the scope of the Investigative Report and Hearing File.
- e. Any questions asked on cross examination during a Hearing that would elicit evidence excluded as not Relevant will not be permitted.
- f. The Hearing is not a court proceeding and is not bound by legally recognized rules of evidence.
  - i. Evidence that might be excluded in a court proceeding, such as "hearsay" evidence, will be permitted equitably and in accordance with the Hearing Rules.
- g. Parties may object to evidence included in the Hearing File, the Investigative Report, or at the Hearing.
  - i. The standard for appeals based on included or excluded evidence to which a Party objected, will be whether the evidentiary decision was clearly erroneous and substantially affected the Hearing Panel's decision to the detriment of the appealing Party.

Parties may offer testimony from expert witnesses to assist the Hearing Panel to understand a technical matter such as forensic evidence, so long as the expert witness' testimony is relevant and is accompanied by a written report signed by

the expert witness that includes the subject matter, facts, and expert opinions about which the expert will testify, a summary of the grounds for each opinion and the qualifications of the expert. The expert must have been interviewed and their written report reviewed by the investigator and included in the Hearing File.

- h. Expert witnesses should be able to demonstrate their recognized expertise in the field, including academic and professional experience.
  - ii. The Hearing Panel can determine Party and witness credibility without technical assistance. As such, polygraph examinations and similar truth detection examinations will not be permitted.
- i. If a Party or witness does not submit to cross examination at the Hearing, the Hearing Panel may not rely on any statement of that Party or witness in reaching a decision regarding Responsibility; provided, however, the Hearing Panel cannot draw an inference about the determination regarding Responsibility based solely on a Party's or witnesses absence from the Hearing or refusal to answer cross examination or other questions.
  - i. Evidence of a Party's spoken words, such as security camera evidence and the other Party's hearing testimony is not considered a statement and may be relied upon even in the absence of the Party's cross examination.

#### 9. Informal Resolution

- a. An Informal Resolution may take many forms, but will generally be a mediation process before a neutral mediator or mutual agreement of the Parties and the Title IX Coordinator.
  - i. An Informal Resolution may not be used when an employee is alleged to have committed Sexual Misconduct against a Student.
- b. Both Parties must agree to an Informal Resolution. If one Party does not agree, then the matter will proceed as a Formal Grievance process.
  - i. Either Party may withdraw their consent to the Informal Resolution at any time before agreeing to and signing the terms of the final resolution.
- c. The University will not place any conditions upon consent to participate in an Informal Resolution, including promises of continued enrollment or employment in exchange for consent to an Informal Resolution.

#### 10. Title IX Coordinator

- a. The University will appoint a Title IX Coordinator who will oversee all matters pertaining to Title IX compliance, including ensuring appropriate education and training; coordinating the University's investigation, response, and resolution of all reports under this policy; and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.
- b. The Title IX Coordinator will be considered a University Official with authority to institute corrective measures on the University's behalf, and triggers the University's response obligations upon Actual Knowledge of Sexual Misconduct.
- c. The Title IX Coordinator may not serve as a Decision Maker in any proceeding conducted under this policy.
- d. If the Title IX Coordinator has a conflict of interest or other barrier to overseeing any Title IX matter, a designee will be assigned.
- e. The Title IX Coordinator may delegate the handling of a matter under this policy to a Deputy Title IX Coordinator or other designee as appropriate.

#### 11. Title IX Information

- a. The University will notify applicants for admission or employment, students, employees, with the name or title, office address, email address, and telephone number of the employee designated as the Title IX Coordinator; the University's nondiscrimination policy statement, the University's grievance process defined in this policy, including how to report a complaint of Sex-Based Discrimination, Sexual Harassment, and/or Retaliation, and how the University will respond to such report.
  - i. This information will be made available on the University's Title IX webpage and in each handbook or catalog that is made available to applicants for admission and employment, students, and employees of the University.

#### 12. Confidentiality and Privacy

- a. Employees of the University that are Confidential Reporting Sources will maintain as confidential any report disclosed to them to the greatest extent permitted by law.
- b. The University will maintain as private any supportive measures provided to either Party, to the extent that maintaining such privacy does not impair the University's ability to provide the supportive measures.
- c. The University will maintain as private the identity of any individual who has made a report of Sexual Misconduct, including any individual who has filed a Formal Complaint, any Complainant, any individual who has been reported to be in violation of this policy, and Respondent, and any witness except as may be permitted or required by the *Family Educational Rights and Privacy Act* (FERPA), its regulations, or other law, or as necessary to carry out the purposes of Title IX, including the University's process of any investigation, Hearing, or adjudicative process arising under Title IX.
- d. Should a Complainant make a request that the University not disclose the Complainant's identity to the Respondent, the Title IX Coordinator will inform the Complainant that the University's ability to respond to the allegations and investigate may be limited if the request is granted. A Complainant who initially requests confidentiality may later request that the University conduct a full investigation.

#### 13. Training

- a. The University will ensure that Title IX Coordinators, investigators, Decision Makers, and any person who facilitates an informal resolution process, receive training on the definition of
  - i. sexual harassment;
  - ii. The University's programs and activities;
  - iii. This policy;
  - iv. How to conduct an investigation and grievance process including Hearings, appeals, and informal resolution processes; and
  - v. How to serve impartially.
- b. Any materials used to train Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Sexual Misconduct.
- c. Training Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates an informal resolution process will include information about

- i. The definitions of prohibited conduct, including Sexual Harassment; How both formal and informal processes work;
  - ii. How to conduct remote Hearings; and
  - iii. How to serve impartially, including avoiding prejudgment of facts at issue, conflicts of interest, and bias.
- d. Decision Makers will be trained on how to determine issues of Relevance of questions and evidence, including when questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant, on evidentiary standards, and on live Hearing procedures.
- e. The University will use trauma-informed investigation approaches and training on such approaches in a fair, neutral manner.
- f. Training materials will be maintained and posted on the institution's website for seven years after they were presented.

#### 14. Record Keeping

- a. The University will maintain any relevant records regarding Sexual Misconduct allegations and investigations for at least seven years.
  - i. Relevant records include investigations and any required recording or transcription, determinations regarding Responsibility, disciplinary actions, Remedies provided, appeals, and informal resolutions.
- b. For each report of Sexual Misconduct or Formal Complaint, the University will document and maintain for seven years any Supportive Measures it provided, the basis on which it determined that its response was not deliberately indifferent, and measures that it took to restore or preserve access to its education program or activity.
  - i. If Supportive Measures were not provided, the University will document why its response was not clearly unreasonable given the known circumstances.
- b. There is no time limit for reporting Sexual Misconduct to the University under this policy; however, the University's ability to respond may diminish over time, as evidence may erode, memories may fade, and the University may no longer have jurisdiction over the Respondent.
- c. The University urges any third party who becomes aware of Sexual Misconduct to report the incident immediately to the University.

#### 15. Disability Accommodation in the Title IX Process

- a. The University is committed to providing reasonable accommodations and support to qualified students, employees, and others with disabilities to ensure equal access to the University's Title IX process.
- b. Students needing accommodations or support should contact the University's Accessibility Services Department and employees should contact the University Office of Human Resources.

#### 16. Interpretation

- a. This policy will be interpreted to comply with applicable federal, state, and local laws, regulations, Office of Civil Rights guidance, and judicial orders.
- b. This policy will go into effect on August 14, 2020.
- c. The University may update or amend this policy by publishing it on the University's Title IX website.
- d. Conduct occurring before the implementation of this policy and reported after its effective date will be considered according to the definitions and standards of the then-existing policy, but will be processed in accordance with the requirements of

this policy.

- e. Title IX matters ongoing at the time this policy goes into effect will proceed in compliance with this policy based on where the matter is in the process.
  - i. E.g., matters having completed the investigation phase under the prior policy will go on to the Hearing phase according to this policy, but the investigation and prior steps will not be reinitiated.



## **E. PROCEDURES**

### **Reporting**

1. Upon receiving a report of alleged Sexual Misconduct from the Complainant, a University Community Member, or an external third party, the Title IX Coordinator will promptly attempt to contact the Complainant to discuss:
  - a. The availability of Supportive Measures with or without filing a Formal Complaint, including on and off-campus resources;
  - b. The process for filing a Formal Complaint;
  - c. The processes of a Formal Grievance and an Informal Resolution;
  - d. Other reporting options, including law enforcement;
  - e. Confidential Reporting Sources;
  - f. The University's Title IX Obligations
2. The University may place a non-student Respondent on administrative leave after notice of a report of Sexual Misconduct and during the pendency of a resolution process.

### **Violence Risk Assessment**

3. As necessary, the Title IX Coordinator will have the University's Behavior Intervention Team conduct a Violence Risk Assessment.
  - a. If it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct, the University may determine that Emergency Removal, if a student, or administrative leave, if an employee, is appropriate.
    - i. If the University determines that Emergency Removal is appropriate, the Respondent will be provided with Notice and an opportunity to challenge the decision immediately following the Emergency Removal.
  - b. The University will also use the Violence Risk Assessment, in part, to determine whether the allegation involves or indicates violence, threat, pattern, predation and/or weapon use, in which case a timely warning may be issued pursuant to Clery Act requirements.

### **Formal Complaint**

4. The Title IX Coordinator may file a Formal Complaint on behalf of the University over the wishes of the Complainant not to file a Formal Complaint if the Title IX Coordinator determines that doing so is not clearly unreasonable in light of the known circumstances.
  - a. In determining whether to file a Formal Complaint, the Title Coordinator will consider:
    - i. The status of the Respondent and whether the Respondent has authority over students and/or employees.
    - ii. Whether there have been multiple reports of Sexual Misconduct or other violations of University policy related to the Respondent.
    - iii. The seriousness of the alleged Sexual Misconduct, including the level of threat to physical health and safety;
    - iv. Whether there is a likelihood that the Respondent would be a danger to the Complainant or the University community;
    - v. Whether the report of Sexual Misconduct can be effectively

- addressed through another type of intervention; and
    - vi. The ability of the University to obtain Relevant evidence without the cooperation of the Complainant.
  - b. Filing a Formal Complaint does not make the Title IX Coordinator a Party.
- 5. If the Complainant elects to file a Formal Complaint, the Formal Complaint must be signed by the Complainant and must include sufficient factual allegations to identify the Respondent, the conduct alleged to be Sexual Misconduct, and the date and location of the alleged incident.
- 6. The Title IX Coordinator will make a preliminary evaluation of the factual allegations to determine if the matter falls within Title IX jurisdiction.
  - a. If the Title IX Coordinator determines that the allegations do not fall within Title IX jurisdiction because the allegations, if true, would not meet the definition of Sexual Misconduct, did not occur in the University's Programs or Activities, or did not occur against a person in the United States, then the Title IX Coordinator may close or refer the matter to the Student Conduct or Human Resources offices as appropriate.
    - i. The University may still respond, investigate, and adjudicate incidents of sex- or gender-related misconduct that violates other University policies using other procedures.
    - ii. The Title IX Coordinator will still be involved in response, investigation, and adjudication of sex- and gender-related misconduct, but the matter will be formally dismissed as to the Title IX process.
    - iii. By filing a Formal Complaint, a Complainant is giving consent for the Title IX Coordinator or designee and any other University official with a need to know to discuss the information provided with other persons who may have pertinent factual knowledge of the circumstances of the Formal Complaint, and is authorizing the collection and examination of all records and other documentation pertinent to the circumstances of the Formal Complaint, and is authorizing the collection and examination of all records and other documentation pertinent to the Formal Complaint.
  - b. If the Complainant elects not to file a Formal Complaint, the Complainant will still be offered Supportive Measures.
    - i. The Complainant may change their mind and file a Formal Complaint even if they initially elected not to do so.
- 7. Upon receiving a Formal Complaint, the Title IX Coordinator will send a Notice of Allegation to both Parties. The Notice of Allegation will:
  - a. Describe the factual and policy basis of the allegations;
  - b. List the possible Sanctions if the Respondent is found Responsible for the allegations;
  - c. State each Party's rights during the Title IX process;
  - d. Include a statement that the Respondent is not presumed Responsible for the alleged conduct and that a determination regarding Responsibility is made at the conclusion of a Hearing;
  - e. Inform the Parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and who will perform cross examination in a Hearing;
  - f. Detail the Formal Grievance and Informal Resolution processes;

- g. Instruct the Parties to preserve all potentially relevant evidence;
- h. Request that the Parties respond in writing within five business days with:
  - i. A preference for a Formal Grievance Process or an Informal Resolution; and
  - ii. A list of any significant academic, employment, or other scheduling conflicts that would affect the timing of the investigation and Hearing.
- 8. Beyond any limitations imposed pursuant to Emergency Removal procedures, no academic holds will be placed on a Respondent during the pendency of a Title IX resolution process.
- 9. The University may dismiss a Formal Complaint if at any time during the investigation or Hearing
  - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or any allegations therein;
  - b. The Respondent is no longer enrolled or employed by the University; or
  - c. Other circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or exercise necessary control over the Parties.
  - d. Upon a dismissal of the Formal Complaint, the Title IX Coordinator will promptly provide written Notice of the dismissal and the reasons therefor to the Parties simultaneously.

#### **Informal Resolution**

- 10. If both Parties elect an Informal Resolution, the Title IX Coordinator will confer with both Parties and determine the form of Informal Resolution most appropriate.
  - a. The Title IX Coordinator will send a summary of the Informal Resolution process agreed upon to both Parties.
    - i. The Parties must sign the summary to indicate their informed consent to engage in the specific Informal Resolution process.
- 11. If the Informal Resolution process is successful and the Parties agree on the resolution outcome, the Parties will immediately sign a summary of the resolution to indicate their consent to the terms of the resolution, including any obligation on the Parties.
  - a. The facilitator will forward the terms of the resolution to the Title IX Coordinator for final approval.
  - b. Upon approval by the Title IX Coordinator, the agreed upon terms of the resolution will be binding on the Parties.
  - c. The Parties' compliance with the terms of the resolution will be monitored by the Title IX Coordinator and failure to abide may be grounds for a renewed Title IX process.

#### **Formal Grievance—Investigation**

- 12. If one or both Parties elect a Formal Grievance process, the Title IX Coordinator will assign an investigator and provide a Notice of Investigation to both Parties.
  - a. If, at any time during the investigation, the University determines a need to investigate additional allegations of Sexual Misconduct not included in the Formal Complaint, additional Notice will be provided to the Parties.
    - i. Additional allegations of non-Sexual Misconduct concerns will be referred to Student Conduct or Human Resources Offices as applicable.
- 13. The assigned investigator will contact the Parties and any identified witnesses to schedule interviews.

14. Upon preliminary conclusion of investigative fact-finding, the investigator will provide the Parties a draft report that summarizes the Complainant's allegations and Respondent's responses, summarizes the relevant evidence and the material witnesses supporting or opposing the allegations, and includes preliminary factual findings.

  - a. The factual findings will not draw conclusions about whether the conduct constituted Sexual Misconduct as defined by this policy.
  - b. The Parties will have equal opportunity to review the investigator's preliminary findings and any evidence collected during the investigation that is directly related to the Formal Complaint.
    - i. Relevant evidence containing otherwise not relevant material may be redacted as necessary and appropriate.
15. The Parties will have ten business days after being provided with the investigator's preliminary findings to submit a written response or any additional information to the investigator for consideration in the final investigative report.
16. The investigator will prepare a final written investigative report that contains the factual allegations and the responses of the Parties, which fairly summarizes all of the relevant evidence, contains the names of material witnesses, and descriptions of the procedural steps taken during the investigation.

  - a. If Formal Complaints for multiple Complainants and/or Respondents have been consolidated, the investigator may only prepare one written investigative report, which will be redacted as appropriate.
  - b. The investigator will provide this final written investigative report to the Title IX Coordinator to ensure compliance with this policy.
17. Upon approval by the Title IX Coordinator, the final written investigative report will be provided to the Parties.
18. The Parties will have ten business days to submit any additional written comments on the final written investigative report to the Title IX Coordinator and provide a list of witnesses and documents they plan to present at the Hearing.

  - a. Both Parties may also elect to submit written impact statements with their comments, witnesses, and documents.
    - i. No other additional evidence or documents may be submitted with this response unless requested by the Title IX Coordinator.

**Formal Grievance—Pre-Hearing**

19. The University will schedule a live, virtual Hearing for a date not less than fifteen business days after providing the final written investigative report and all evidence directly related to the Formal Complaint to the Parties.

  - a. The University will take into account the scheduling conflicts disclosed by the Parties, but absent a showing of good cause, the Parties are obligated to follow the schedule provided by the University.
  - b. The Title IX Coordinator will assign a Hearing Panel, Hearing Panel Chair, and Hearing Officer for the Hearing.
  - c. The Title IX Coordinator will provide a Notice of Hearing containing all relevant information, including:
    - i. The date, time, and virtual location of the Hearing;
    - ii. The names of the Hearing Panel members; and
    - iii. The Hearing Rules (See Appendix A)
20. Not less than seven business days before the Hearing, the Title IX Coordinator will provide to the Hearing Officer the lists of witnesses and documents provided by the Parties as well as

the witnesses and documents the University is planning to present at the Hearing.

- a. The Hearing Officer will then submit the three lists to the Parties and the Hearing Panel.
  - i. The Hearing Officer will also provide the final written investigative report, the Parties associated comments, the Hearing File, and their impact statements to the Hearing Panel for review.

21. Not less than seven days before the Hearing, the Parties will notify the Title IX Coordinator if they intend to bring their own Advisor for cross examination.

- a. If a Party does not provide notice that they intend to bring their own advisor, the University will have an Advisor available to conduct cross examination.

22. If a Party objects to Relevance or permissibility of evidence included in the investigator's Investigative Report or Hearing File, the Party may submit an objection and a request to exclude the evidence from the Hearing to the Title IX Coordinator within five business days of receiving the Investigative Report.

- a. The Title IX Coordinator will provide the objections to the Hearing Panel Chair, who will determine whether the indicated evidence should be excluded from consideration.
- b. If the Hearing Panel Chair determines that evidence will be excluded, Notice will be provided to the Parties and the Parties will have the opportunity to submit additional Relevant evidence directly related to the excluded evidence.
  - i. The Parties will receive Notice of any exclusion at least five business days before the Hearing.

#### **Formal Grievance—Hearing**

23. The Hearing will be recorded and that recording will be retained by the University for seven years.

24. The Hearing Officer will organize and conduct the Hearing in accordance with this policy, presenting the Parties and witnesses in the following order:

- a. Hearing Officer procedural instructions, statement of Hearing Rules, and statement of alleged policy violations;
- b. Complainant opening statement;
- c. Respondent opening statement;
- d. Hearing Panel calls witnesses of their choosing in the order of their choosing.
  - i. After the Hearing Panel is finished questioning a witness, the Complainant's Advisor will conduct cross examination followed by the Respondent's Advisor.
  - ii. The Hearing Panel may recall a witness followed by additional cross examination by the Complainant's and Respondent's Advisors.
- e. The Hearing Officer will confirm with the Hearing Panel that they have sufficient evidence to make a determination of Responsibility, Remedies, and Sanctions;
- f. The Hearing Panel will convene in an unrecorded meeting to discuss Responsibilities, Remedies, and Sanctions.
- g. The Hearing Officer will excuse the Parties, Advisors, and witnesses;

25. The Hearing Panel is not obligated to hear testimony from all witnesses.

26. Cross Examination will be conducted by the Advisor, never by a Party, and the witness will not answer the question asked until the Hearing Panel Chair confirms it is Relevant.

27. The Parties may jointly agree in advance of the Hearing to waive oral cross examination and instead submit written cross examination questions to the Hearing Officer to conduct

the cross examination.

- a. Each Party must still have an Advisor at the Hearing.

28. The Hearing Panel will promptly issue a Written Determination to the Title IX Coordinator.

- a. After ensuring compliance with this policy, the Title IX Coordinator will provide the Written Determination to the Parties and provide associated information regarding Sanctions and Remedies as applicable.

29. The University will strive to complete the Formal Grievance process, from the Title IX Coordinator receiving the Formal Complaint to Parties receiving the Written Determination, in less than 120 business days.

- a. This objective does not take into account delays due to University breaks, unforeseen circumstances, and extensions approved for good cause.
- b. The University will not compromise a thorough and fair process in order to meet the 120 day objective.

### **Appeal**

30. Either Party may appeal the Written Determination by submitting a written Statement of Appeal, stating the grounds and including any supporting evidence to the Title IX Coordinator within ten business days of the issuing of the Written Determination.

- a. Within five business days, the Title IX Coordinator will notify both Parties of the appeal and assign an Appeals Officer, who will evaluate the appeal.
- b. Within ten business days of notification of the appeal, both Parties may submit written statements regarding the appeal to the Title Coordinator, who will provide them to the Appeals Officer.
- c. The Title IX Coordinator may also provide a written response to any appeal and will provide such response to the Appeals Officer and the Parties.

31. As applicable to the written grounds for appeal, the Appeals Officer may review the Written Determination, the recording of the Hearing, and any evidence introduced by the Parties.

32. The Appeals Officer's written Decision on Appeal may affirm or modify the Written Determination, remand the matter back to the Hearing Panel for reconsideration, order a new investigation, or overturn the Written Determination in whole or in part.

33. Unless the matter is remanded, the written Decision on Appeal is final and concludes the Formal Grievance process.

- a. The policy violations adjudicated in the Formal Grievance process may not be reconsidered under a different University proceeding, such as Student Conduct or Human Resources, but related allegation outside of Title IX jurisdiction may still be processed in such proceedings.

34. Minor deviations from any procedure, including deadlines, will be allowed so long as the Parties receive reasonable Notice and the deviation is equitable and does not prejudice to either Party.

## **APPENDIX A**

### **HEARING RULES**

- The Hearing Officer will at all times interpret and enforce these rules.
- The Hearing Officer may implement additional reasonable rules as necessary so long as such rules do not materially prejudice either party.
- The Parties, witnesses, Advisors, Hearing Panel, Hearing Officer, Title IX Coordinator, investigator, and all other participants in the Hearing will be treated in a respectful manner at all times.
- There will be no yelling or abusive language.
- All requests to address the Hearing Panel will be first directed to the Hearing Officer.
- The Hearing Panel Chair will rule on all evidence and objections.
- An advisor may request clarification of a procedural matter or make an objection after being recognized by the Hearing Panel Chair.
- Any participant not complying with these rules may be excluded from the Hearing at the discretion of the Hearing Officer.
- The Hearing Officer will make determinations regarding the efficient proceeding of the Hearing, including announcing breaks and continuances.

## APPENDIX B

### REMEDIES

- Remedies relating to the all Respondents may include:
  - Directive not to contact the Complainant directly or indirectly
  - Limiting or denying access to all or parts of University property
  - Limiting or denying participation in University programs or activities
  - Limiting or denying the opportunity to hold leadership positions
  - Affirmative requirements for personalized education, training, coaching, or meetings
- Remedies relating to student Respondents may include:
  - Limiting or denying University housing
  - Requiring the Respondent not to enroll in a course that the Complainant is enrolled in or teaching
  - Limiting or prohibiting attendance at University activities or events
- Remedies relating to teaching Respondents may include:
  - Limiting or denying certain advising activities
  - Limiting or denying certain teaching activities
  - Limiting or denying access to students in private spaces
- Remedies for Complainants may include:
  - Academic or workplace accommodations
  - Safety accommodations
  - Other reasonable and appropriate accommodations

### SANCTIONS

- Sanctions for Respondents found Responsible may range from expulsion or termination of the student or employee relationship to a written warning and include:
  - For students
    - Expulsion
    - Suspension
    - Delay in the conferral of a degree if the student is in their final semester
    - Probation with a suspended suspension
    - Probation
    - Denying the opportunity to hold leadership positions
    - Community service hours
    - Warning
    - Personalized education, training, coaching, or meetings
  - For employee
    - Termination
    - Suspension
    - Denying a pay raise for a period of time
    - Denying the opportunity to hold committee or community roles
    - Denying the opportunity for promotion
    - Letter in personnel file
    - Censure
    - Warning
    - Personalized education, training, coaching, or meetings
- The University considers the following offenses to be particularly egregious and likely warrant expulsion or termination unless there are significant mitigating circumstances that overcome the presumption.
  - Sexual Assault
  - Domestic Violence with serious injury



- Dating Violence with serious injury
  - Any violation including two or more aggravating factors
- Aggravating Factors
  - The conduct is accomplished by force, violence, or duress
  - Inducing incapacitation through involuntary ingestion or knowingly taking advantage of an incapacitated person
  - Past violations of University policy, especially relating to prohibited sexual conduct
  - More than one perpetrator acting in concert
  - Acts committed in the context of initiation into membership and/or hazing
  - Knowingly using the Respondent's power or authority within the University to obtain submission or to accomplish the violation
- Mitigating Factors
  - The Respondent did not have the intent to violate University policy
  - The Respondent takes responsibility for their actions
  - Other considerations that a reasonable Decision Maker would rely on

## APPENDIX A

### CALIFORNIA SENATE BILL 493 COMPLIANCE

- A. California Senate Bill 493 ("SB 493") is a law concerning California universities' sexual misconduct prevention and response responsibilities. This appendix is intended to update the University of La Verne Policy on Sex Discrimination Involving Sexual Assault, Sexual and Gender-Based Harassment, Other Forms of Relationship Violence and Retaliation (the "main policy") to comply with additional requirements under SB 493. This law is generally consistent with or augments current requirements under Title IX, but, as noted in this appendix, there are areas of conflict. When the requirements of Title IX and SB 493 conflict, Title IX will govern. The following jurisdiction, definitions, rights, responsibilities, procedures, and other sections specifically govern the University's policy when SB 493 applies. The University's primary concern will be student safety. Any disciplinary measures imposed by the University for conduct prohibited by this appendix will be investigated in accordance with the procedures described herein.
- B. Jurisdiction
1. Persons Covered: These requirements apply to the protection of students from and providing students with procedural protections relating to complaints of sexual harassment.
  2. Locations Covered: These requirements apply to incidents of sexual harassment involving individuals subject to the University's policies that occur in connection with any educational activity or other program of the University, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile environment or otherwise interfere with a student's access to education.
- C. Definitions of Prohibited Conduct
1. Rape: Penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.
  2. Sexual Battery: The intentional touching of another person's intimate parts without 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.
  3. Sexual Exploitation: 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 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.
  4. Sexual Harassment:
    - Unwelcome sexual advances, or
    - Requests for sexual favors, or
    - Other verbal, visual, or physical conduct of a sexual nature,
    - Made by someone in the work or educational setting,
    - Under any of the following conditions:
      - Submission to the conduct is explicitly or implicitly made a condition of an individual's employment, academic status, or progress, or

- Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or, 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 or educational environment, 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 University.
- 5. Sexual Misconduct: Sexual Harassment, Sexual Exploitation, and Sexual Violence as defined in this appendix.
- 6. Sexual Violence: Rape and Sexual Battery as defined in this appendix.
- D. Affirmative Consent
  1. Affirmative consent definitions and associated requirements, including incapacitation and revocation provisions, from the main policy apply equally to conduct covered by this appendix.
- E. Employee Reporting Obligations
  1. In addition to potential sexual misconduct subject to Title IX jurisdiction, all employees, except those designated as Confidential Resources, must report directly to the Title IX Coordinator any potential sexual misconduct subject to SB 493 jurisdiction.
- F. Response to Reports of Sexual Misconduct
  1. The University shall take reasonable steps to respond to each incident of Sexual Misconduct involving individuals subject to the University's policies that occur in connection with any educational activity or other program of the University, as well as incidents that occurred outside of those education programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile environment or otherwise interfere with a student's access to education.
    - There will be no time limitation on reporting Sexual Misconduct, however, the University's ability to respond may be limited.
  2. If the University knows, or reasonably should know, about possible Sexual Misconduct involving individuals subject to this appendix at the time, the University will promptly investigate to determine whether the alleged conduct or likely than not occurred, or otherwise respond if the University determines that an investigation is not required.
  3. If the University determines that the alleged conduct more likely than not occurred, it will immediately take reasonable steps to end the Sexual Misconduct, address the hostile environment, if one has been created, prevent its recurrence, and address its effects.
  4. The University will consider and respond to requests for accommodations relating to prior incidents of Sexual Misconduct that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the University's policies.
- G. Confidentiality
  1. If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action by pursued to address alleged sexual harassment, the institution shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including the complainant.
    - The University will generally grant such request.
    - In determining whether to disclose the complainant's identity or proceed to an investigation over the objection of the complainant, the University may consider whether any of the following apply:
      - There are multiple or prior reports of Sexual Misconduct against the respondent.
      - The respondent reportedly used a weapon, physical restraints, or engaged in battery.
      - The respondent is a faculty or staff member with oversight of students.
      - There is a power imbalance between the complainant and respondent.

- The complainant believes that the complainant will be less safe if the complainant's name is disclosed or an investigation is conducted.
  - The University is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.
- 2. If the University determines that it can honor the student's request for confidentiality, it will still take a reasonable steps to respond to the complainant, consistent with the request, to limit the effects of the alleged Sexual Misconduct and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. These steps may include:
  - Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred;
  - Providing additional training and educational materials for students and employees;
  - Conducting climate surveys regarding sexual violence
- 3. The University will also take immediate steps to provide for the safety of the complainant while keeping their identity private as appropriate. The complainant will be notified that the steps the University will take will be limited by the request for confidentiality.
- 4. If the University determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The institution will also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the University inform the respondent that the student asked the University not to investigate or seek discipline, the University will honor this request.
- H. Supportive Measures
  1. Supportive Measures, including No Contact Orders, as described in the main policy apply equally to conduct covered by this appendix.
- I. Emergency Removals
  1. Emergency Removals as described in the main policy apply equally to conduct covered by this appendix.
- J. Preponderance of the Evidence Standard
  1. Conduct adjudicated under provisions of this appendix shall use the same preponderance of the evidence standard as described in the main policy.
- K. Grievance Process
  1. The investigation and adjudication of alleged misconduct under this appendix is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for the University to comply with obligations under existing law. The complainant does not have the burden to prove, nor does the respondent have the burden to disprove, the underlying allegations of misconduct.
  2. The investigation and adjudication of alleged misconduct under this appendix will be conducted in the same manner as the grievance processes described in the main policy, except as detailed below:
    - Student parties will be informed that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing.
    - The investigator or hearing officer shall not consider the past sexual history of a complainant or respondent except as specifically identified below.
    - The investigator or hearing officer shall not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual
    - The investigator or hearing officer will not consider the existence of a dating relationship or prior or subsequent consensual sexual relationship between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations.

- Where the investigator or hearing officer allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent, the mere fact that the complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.
- Before allowing the consideration of any past or subsequent dating or consensual sexual relations, the investigator or hearing officer will provide a written explanation to the parties as to why consideration of the evidence is consistent with requirements of this appendix.
- The University will decide whether or not a hearing is necessary to determine whether any Sexual Violence more likely than not occurred. In making this decision, the University may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation.
- In addition to non-conflicting rules described in the main policy, any hearing subject to this appendix will comply with the following rules:
  - Any cross-examination of either party or any witness shall not be conducted directly by a party or a party's advisor.
  - Parties will have the opportunity to submit written questions to the hearing officer in advance of the hearing.
  - At the hearing, a party will have an opportunity to note an objection to questions posed by the other party.
  - Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.
  - Waiting periods related to the post-investigation/pre-hearing time described in the main policy do not apply to proceedings under this appendix.
  - The University will not unreasonably deny a party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.
  - The University will provide for periodic status updates on the investigation consistent with the timelines provided to the parties.
  - The University will not mandate mediation to resolve allegations of Sexual Misconduct and will not permit mediation, even on a voluntary basis, to resolve allegations of Sexual Violence. Other forms of informal resolution, however, may be used to resolve allegations of Sexual Violence.
  - The University will not require that a complainant enter into a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures which safeguard the complainant's access to education.