

**SOKA UNIVERSITY OF AMERICA**

**Equal Opportunity, Harassment, and  
Nondiscrimination Policy**

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## **Equal Opportunity, Harassment, and Nondiscrimination Policy**

*This policy covers all forms of unlawful harassment, discrimination and retaliation prohibited under SUA's Notice of Nondiscrimination and is intended to comply with the Title IX regulations effective August 14, 2020, and California SB 493 effective January 1, 2022.*

### **1. Policy on Nondiscrimination**

Soka University of America (SUA) does not discriminate on the basis of race, color, ancestry, national or ethnic origin, citizenship, religious creed, sex or gender, sexual orientation, gender identity, age, disability, veteran status, status as a disabled veteran, marital status, medical condition, genetic information, or any other characteristic protected under applicable federal, state, or local law in the administration of its educational policies, admissions policies, scholarships and loan programs, athletic programs, other university-administered programs and activities, and university employment and related activities. Sexual harassment and sexual violence are types of sex discrimination. This policy applies to conduct on and off campus and protects students, faculty, staff, and others.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the SUA community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the SUA community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the SUA policy on nondiscrimination.

When brought to the attention of SUA, any such discrimination will be promptly and fairly addressed and remedied by SUA according to the appropriate grievance process described below.

This policy is intended to comply with the Title IX regulations effective August 14, 2020, and California SB 493 effective January 1, 2022.

Title IX of the 1972 Federal Education Amendments provides that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Definitions of terms used in this policy appear in Section 17 below.

### **2. Rationale for Policy**

SUA is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, SUA has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. SUA values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

### **3. Applicable Scope**

SUA's primary concern is student and employee safety, and the core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged policy violation is reported, the allegations are subject to resolution using SUA's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the SUA community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the SUA community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.

### **4. Title IX Coordinator**

The Title IX Coordinator and ADA/504 Coordinator identified below oversee implementation of SUA's policy on equal opportunity, harassment, and nondiscrimination and disability compliance. The Title IX Coordinator has the primary responsibility for coordinating SUA's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

### **5. Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the SUA President [949-480-4133; [feasel@soka.edu](mailto:feasel@soka.edu)]. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Katherine King  
Title IX and Section 504 Coordinator for Faculty, Staff and Others  
1 University Drive  
Founders 100/309  
Aliso Viejo, CA 92656  
(949) 480-4161  
[kking@soka.edu](mailto:kking@soka.edu)

Hyon Moon  
Title IX and Section 504 Deputy Coordinator for Students  
1 University Drive  
Library 140/303  
Aliso Viejo, CA 92656  
(949) 480-4139  
[hmoon@soka.edu](mailto:hmoon@soka.edu)

Officials With Authority (OWA):

SUA has determined that the President, Vice Presidents, and Deans are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority may also accept notice or complaints on behalf of SUA.

SUA has also classified all employees (excluding non-supervisory student employees and Confidential Resources) as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

For complaints involving employee-on-employee conduct:

Equal Employment Opportunity Commission (EEOC):  
<http://eeoc.gov/>  
California Department of Fair Employment and Housing (DFEH):  
<https://www.dfeh.ca.gov/complaintprocess/>

**7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made by filing a report or Formal Complaint with, or giving verbal notice to, the Title IX Coordinator, Title IX Deputy Coordinator or another Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address above, or by mail to the office address of the Title IX Coordinator, Title IX Deputy Coordinator, or other Official With Authority, including the following:

Katherine King  
Title IX and Section 504 Coordinator for Faculty Staff and Others  
1 University Drive  
Founders 100/309  
Aliso Viejo, CA 92656  
(949) 480-4161  
[kking@soka.edu](mailto:kking@soka.edu)

Hyon Moon  
Title IX and Section 504 Deputy Coordinator for Students  
1 University Drive  
Library 140/303  
Aliso Viejo, CA 92656  
(949) 480-4161  
[hmoon@soka.edu](mailto:hmoon@soka.edu)

Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. Anonymous reports will be investigated to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits SUA's ability to investigate, respond, and provide remedies, depending on what information is shared. SUA tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report where the Complainant cannot be identified.

As used in this Policy, the term "Formal Complaint" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that SUA investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **8. Resources & Support**

***If there is any immediate danger, call 911.***

### **On Campus**

Title IX Coordinator (For Faculty, Staff and Others)	
Katherine King: <a href="mailto:kking@soka.edu">kking@soka.edu</a>	(949) 480-4161
Deputy Title IX Coordinator (For Students)	
Hyon Moon: <a href="mailto:hmoon@soka.edu">hmoon@soka.edu</a>	(949) 480-4139
Director of Student Services	
Brian Durick: <a href="mailto:bdurick@soka.edu">bdurick@soka.edu</a>	(949) 480-4018
Counseling Services (Students)	(949) 480-4192
Health Services (Students): <a href="mailto:healthservices@soka.edu">healthservices@soka.edu</a>	(949) 480-4143
Public Safety (24 hours):	(949) 480-4100
Human Resources: <a href="mailto:humanresources@soka.edu">humanresources@soka.edu</a>	(949) 480-4766
Residential Life Staff (24 hours)	(949) 480-4658 or (949) 480-4664

**Off Campus:**

Sexual Assault Victim Services/Prevention Program	(714) 957-2737
RAINN: National Sexual Assault Crisis Hotline	(800) 656-4673
National Domestic Violence Hotline	(800)799-7233
GLBT National Help Center	(888) 843-4564
Trans Lifeline	(877) 565-8860
24-Hour Crisis Hotline	(949) 831-9110
Orange County Sheriff's Department	(949) 425-1800
Employee Assistance Program (AETNA)	(800) 221-0945

Saddleback Medical Center  
24451 Health Center Drive  
Laguna Hills, CA 92653  
(949) 837-4500

Mission Hospital  
27700 Medical Center Road  
Mission Viejo, CA 92691  
(949) 364-1400

**9. Prevention and Outreach Programs**

SUA has implemented comprehensive prevention and outreach programs to address issues of sexual harassment, sexual violence, domestic violence, dating violence, and stalking. These programs include, but are not limited to, information about SUA's policies and procedures, rights and responsibilities, the practical implications of an affirmative consent standard, empowerment programming, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction programs. Prevention and outreach programs are included as part of incoming student and new employee orientation. In addition, all employees must complete ongoing prevention and intervention training and education.

**10. Supportive Measures**

SUA will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to SUA's education program or activity, including measures designed to protect the safety of all parties or SUA's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice of a complaint. At the time that supportive measures are offered, SUA will inform the Complainant, in writing, that they may file a formal complaint with SUA either at that time or in

the future, if they have not done so already.<sup>3</sup> The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

SUA will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair SUA's ability to provide the supportive measures. SUA will act to ensure as minimal an academic/occupational impact on the parties as possible. SUA will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

When requested by a Complainant or otherwise determined to be appropriate, SUA will issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The institution will not issue an interim mutual no-contact directive automatically, but instead will consider the specific circumstances of each situation to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made as a remedy will be unilateral and only apply against the party found responsible.

Upon the issuance of a mutual no-contact directive, the institution will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution will provide the parties with an explanation of the terms of the directive.

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<sup>3</sup> Throughout this policy, the pronouns "they," "them" and "their" are used intentionally to be inclusive of all genders and gender identities.

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this policy.

### **11. Emergency Removal**

SUA can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with other appropriate offices.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator to show cause why the action/removal should not be implemented or should be modified. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

SUA will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural/club athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, or a student employee, accused of misconduct in the course of their employment, existing provisions for interim action are applicable instead of the above emergency removal process.

## **12. Promptness**

All allegations are acted upon promptly by SUA once it has received notice or a formal complaint. Complaints typically take sixty to ninety (60-90) business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but SUA will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in SUA procedures will be delayed, SUA will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **13. Confidentiality/Privacy**

Every effort is made by SUA to preserve the privacy of reports.<sup>4</sup> SUA will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

SUA reserves the right to determine which SUA officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Counseling Office, Deans' Offices, Public Safety and Employee's supervisor. Information will be shared as necessary with Investigators, Decision-makers,

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<sup>4</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of SUA employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in SUA's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in SUA's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. SUA has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see below. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

SUA may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

#### **14. Jurisdiction**

This policy applies to the education program and activities of SUA to conduct that takes place on the campus or on property owned or controlled by SUA, at SUA-sponsored events, or in buildings owned or controlled by SUA's recognized student organizations. The Respondent must be a member of SUA's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to SUA's educational program. SUA may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial SUA interest.

Regardless of where the conduct occurred, SUA will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial SUA interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace and/or causes social disorder;
- d. Any situation that substantially interferes with the educational interests or mission of SUA.

If the Respondent is unknown or is not a member of the SUA community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of SUA's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, SUA may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from SUA property and/or events.

All vendors serving SUA through third-party contracts are subject to the policies and procedures of their employers and/or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to SUA where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **15. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to SUA's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, SUA will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

### **16. Online Harassment and Misconduct**

The policies of SUA are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on SUA's education program and activities or use SUA networks, technology, or equipment.

Although SUA may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to SUA, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute nude or semi-nude photos or recordings, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the SUA community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of SUA's control (e.g., not on SUA networks, websites, or between SUA email accounts) will only be subject to this policy when such

online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

## 17. Definitions

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- *Appeal Decision-maker* means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic; or retaliation for engaging in a protected activity.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when SUA is in normal operation, if not otherwise specified.
- *Decision-maker* means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- *Directly Related Evidence* is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the Decision-maker(s).
- *Education Program or Activity* means locations, events, or circumstances where SUA exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by SUA.
- *Final Determination*: A conclusion by a preponderance of the evidence standard that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by a preponderance of the evidence standard that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Complaint* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that SUA investigate the allegation(s)

- *Formal Grievance Process* means the formal hearing process described in “Process A,” a method of formal resolution designated by SUA to address certain conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45). See [Appendix A](#).
- *Informal Resolution* is a complaint resolution agreed to by the parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- *Investigator* means the person or persons authorized by SUA to gather facts about an alleged violation of this policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and file of Directly Related Evidence.
- *Mandated Reporter* means an employee of SUA who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or Deputy Title IX Coordinator.<sup>5</sup> SUA has classified all employees (excluding non-supervisory student employees and Confidential Resources) as Mandated Reporters.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of SUA who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of SUA.
- *Parties* means the Complainant(s) and Respondent(s), collectively.
- *Process A* means the grievance process detailed below and in [Appendix A](#).
- *Process B* means the administrative resolution and other procedures detailed in [Appendix B](#) that apply when Process A does not, as determined by the Title IX Coordinator.
- *Relevant Evidence* is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to SUA’s educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic; or retaliation for engaging in a protected activity under this policy.

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<sup>5</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

- *Resolution* means the result of an informal resolution or Formal Grievance Process.
- *Sanction* means a consequence imposed by SUA on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence. See Section 19.B., for greater detail.
- *Student* means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with SUA.
- *SUA* means Soka University of America.
- *Title IX Coordinator* is at least one official designated by SUA to ensure compliance with Title IX and SUA's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, Deputy Coordinators, investigators, hearing officers, appeal officers and Advisors.

#### **18. Policy on Disability Discrimination and Accommodation**

SUA is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by SUA, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Vice President for Human Resources has been designated as SUA's ADA/504 Coordinator for Faculty, Staff and Others, and the Dean of Students as Deputy ADA/504 Coordinator for Students, and they are responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations in SUA's resolution process, see below.

## **A. Students with Disabilities**

SUA is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of SUA.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Student Services, who coordinates services for students with disabilities.

The Director of Student Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with SUA's applicable policies.

## **B. Employees with Disabilities**

Pursuant to the ADA, SUA will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to SUA.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 Coordinator and providing necessary documentation. The ADA/504 Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with SUA's applicable policies.

## **19. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under SUA policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of SUA policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

### **A. Discriminatory Harassment**

Discriminatory harassment -- defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law -- is a form of prohibited discrimination under SUA's policy.

SUA does not tolerate discriminatory harassment of any employee, student, visitor, or third party. SUA will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that unreasonably

interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, SUA may impose sanctions on the Respondent through application of the appropriate grievance process below.

SUA reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not necessarily result in the imposition of discipline under SUA policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Vice President for Human Resources, and students should contact the Director of Student Services.

## **B. Sexual Harassment**

The U.S. Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

SUA has adopted the following definitions of sexual harassment to address the unique environment of an academic community. One definition is required by state law (sexual harassment under California law) and the other by federal law (Title IX sexual harassment). Both definitions apply, and while they overlap, they are not identical.

### **Sexual Harassment Under California Law**

Under California law, sexual harassment is defined as 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, under any of the following conditions:

- a. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
- b. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
- c. 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.

- d. 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.

Under California law, sexual harassment includes sexual violence, rape, sexual battery and sexual exploitation, defined as follows:

**Sexual Violence** means physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include rape and sexual battery as follows:

**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 consent of the victim, and

**Sexual battery**, defined as 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.

**Sexual exploitation** means 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:

- a. The prostituting of another person.
- b. 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.
- c. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
- d. The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
- e. 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.

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

### **Title IX Sexual Harassment**

Title IX sexual harassment, as an umbrella category, includes specific definitions of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, as follows:

Conduct on the basis of sex (including gender identity, gender expression, sexual orientation, and sex stereotypes) or that is sexual in nature, that satisfies one or more of the following:

1) **Quid Pro Quo:**

- a. an employee of SUA
- b. conditions (implicitly or explicitly) the provision of an aid, benefit, or service of SUA
- c. on an individual's participation in unwelcome sexual conduct.

2) **Sexual Harassment:**

- a. unwelcome conduct
- b. determined by a reasonable person
- c. to be so severe
- d. pervasive, and
- e. objectively offensive
- f. that it effectively denies a person equal access to SUA's education program or activity.<sup>7</sup>

3) **Sexual Assault**, defined as:

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<sup>7</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

- a. Any sexual act<sup>9</sup> directed against a Complainant<sup>11</sup> without their consent, or instances in which the Complainant is incapable of giving consent.
- b. **Incest:**
  - o Non-forcible sexual intercourse,
  - o between persons who are related to each other,
  - o within the degrees wherein marriage is prohibited by California law.
- c. **Statutory Rape:**
  - o Non-forcible sexual intercourse,
  - o with a person who is under the statutory age of consent (18 years of age in California).

4) **Dating Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,

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<sup>9</sup> A “sexual act” is specifically defined by federal regulations to include one or more of the following:

**Rape:**

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sodomy:**

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**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 the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>11</sup> This would include having another person touch you sexually, forcibly, or without their consent.

- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence**<sup>12</sup>, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse, domestic partner, or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California , or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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<sup>12</sup> California defines "domestic violence" as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. In California, dating violence is included within the definition of domestic violence.

6) **Stalking**<sup>13</sup>, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person’s safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

SUA reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

**C. Force, Coercion, Consent, and Incapacitation**<sup>14</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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<sup>13</sup> Under California law, “any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking,” which is applicable to criminal prosecutions, but may differ from the definition used on campus to address policy violations.

<sup>14</sup> The state definition of consent is “positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act and the transaction involved.” A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is an issue. This definition of consent is applicable to criminal prosecutions for sex offenses in California but may differ from the definition used on campus to address policy violations.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Affirmative Consent<sup>15</sup> is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

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

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>16</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force,

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<sup>15</sup> California Education Code Section 67386 /SB 967 establishes an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity.

<sup>16</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

violence, or even saying “no” may be part of the kink and thus consensual, so SUA’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption.

In the evaluation of complaints, it shall not be a valid defense that the Respondent believed that the Complainant affirmatively consented to the sexual activity 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:

- a. The Complainant was asleep or unconscious.
- b. 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.
- c. The Complainant was unable to communicate due to a mental or physical condition.

Thus, it is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. In the evaluation of complaints, it shall not be a valid defense to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- a. The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- b. 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 occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

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

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

#### **D. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, SUA additionally prohibits the following conduct that may constitute discrimination within or outside of Title IX when the act is based upon the Complainant’s actual or perceived protected characteristic.

- Threatening to cause or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the SUA community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally, that is not speech or conduct otherwise protected by the First Amendment

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

Sanctions for Civil Rights Offenses range from reprimand through expulsion/ termination.

## **20. Retaliation<sup>17</sup>**

Protected activity under this policy includes reporting alleged misconduct that may implicate this policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. SUA will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

SUA and any member of SUA's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 and procedure.

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

Pursuing a code of conduct violation against a party for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that the determination of responsibility by itself is not sufficient to conclude that any party has made a materially false statement in bad faith.

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<sup>17</sup> Retaliation allegations can be routed exclusively through Process B if SUA so elects, but where retaliation and sexual harassment allegations are both alleged, SUA may use Process A to resolve all together.

## **21. Mandated Reporting**

All SUA employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, though there are some limited exceptions, e.g. non-supervisory student employees and Confidential Resources.

SUA has determined that the following administrators are Responsible Employees who have a duty to address and correct harassment, discrimination, and/or retaliation, or who have the duty to report sexual harassment to an appropriate SUA official who has that authority. Responsible Employees have received appropriate training and have been trained on how to report prohibited conduct under this policy.

- Residential advisors, while performing the duties of employment by the institution.
- Housing directors, coordinators, or deans.
- Student life directors, coordinators, or deans.
- Athletic directors, coordinators, or deans.
- Coaches of any student athletic or academic team or activity.
- Faculty and associate faculty, teachers, instructors, or lecturers.
- Graduate student instructors, while performing the duties of employment by the institution.
- Laboratory directors, coordinators, or principal investigators.
- Internship or externship directors or coordinators.
- Study abroad program directors or coordinators.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the reporting options at SUA for a Complainant or third-party (including parents/guardians when appropriate):

### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors (Students)
- On-campus health service providers (Students)
- Off-campus (Student, staff, and others):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors

- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors (for Students) and/or the Employee Assistance Program (for Employees) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Campus counselors who are confidential and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client.

### **B. Mandated Reporters and Formal Notice/Complaints**

All employees of SUA, with the exception of non-supervisory student employees and those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from SUA.

Supportive measures may be offered as the result of such disclosures without formal SUA action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of SUA policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though SUA is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **22. Notice to Law Enforcement**

There may be circumstances where SUA is obliged to report an incident of violent crime, hate crime, or sexual assault immediately, or as soon as practicably possible, to local law enforcement. SUA has a Memorandum of Understanding with the OC Sheriff's Department to enhance communication, coordination, collaboration. The signatories of the MOU have instituted specialized, trauma-informed responses developed in consultation with campus and community-based victim advocates to remedy sexual assault and violence and hate crimes, and to respect the Complainant's request for confidentiality.

### **Requests for Confidentiality**

Complainants have the right to decide if they want to make a report to the police and/or speak with the police. SUA will honor requests for confidentiality. Local law enforcement agencies are prohibited from disclosing information about most sexual assaults if the Complainant requests anonymity. When information is shared with law enforcement, such reports will include (when the Complainant has consented to being identified):

- The name and characteristics of the alleged victim;
- The name and characteristics of the alleged perpetrator, if known;
- Description of the incident, including location and date and time; and
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency.

### **Mandatory Reporting Requirements for Health Practitioners in California**

Any licensed health care provider in the State of California providing services in a health facility, clinic or physician's office is required to make a report if they provide *medical treatment for a physical condition* to a patient whom they know or reasonably suspect is the victim of assaultive or abusive conduct or a firearm injury. The health practitioner is required to make a report by telephone as soon as practically possible and send a written report to a local law enforcement agency within two working days. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained. This includes student health services.

## **23. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether SUA proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a

grievance process upon completion of an appropriate violence risk assessment to help determine whether to proceed. The Title IX Coordinator may sign a Formal Complaint to initiate a grievance process after reviewing any violence risk assessment results and weighing the following factors:

- a. Multiple or prior reports of sexual misconduct against the Respondent.
- b. The Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- c. The Respondent is a faculty or staff member with oversight of students.
- d. There is a power imbalance between the Complainant and Respondent.
- e. The Complainant believes that the Complainant will be less safe if the Complainant's name is disclosed, or an investigation conducted.
- f. The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

In instances where the Complainant's request for confidentiality or no investigation is granted, SUA will provide supportive measures to the Complainant and take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged Respondent or revealing the identity of the Complainant. These steps may include but are not limited to:

- Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred
- Providing additional training and education materials for students and employees
- Conducting climate surveys regarding sexual violence

SUA will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential, as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The Complainant will be notified that the steps SUA will take to respond to the complaint will be limited by the request for confidentiality.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When SUA proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. SUA will inform the Complainant prior to initiating the Formal Grievance Process and take immediate steps to provide for the safety of the Complainant, where appropriate. In the event the Complainant requests that Recipient inform the Respondent that the Complainant asked Recipient not to investigate or seek discipline, Recipient will honor this request.

Note that SUA's ability to remedy and respond to notice may be limited if the Complainant does not want SUA to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing SUA's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow SUA to honor that request, SUA will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by SUA, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

#### **24. Federal Timely Warning Obligations**

SUA must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

SUA will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

#### **25. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official investigating can be subject to discipline under SUA policy.

#### **26. Amnesty for Complainants and Witnesses**

The SUA community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to SUA officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the SUA community that Complainants choose to report misconduct to SUA officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, SUA maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact

that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

**Students:** Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to Public Safety).

SUA maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, SUA may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are hesitant to report harassment, discrimination or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to SUA officials.

SUA may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

## **27. Federal Statistical Reporting Obligations**

Certain institutional officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- b. Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- c. VAWA-based crimes,<sup>18</sup> which include sexual assault, domestic violence, dating violence, and stalking
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations

All personally identifiable information is kept private, but statistical information must be shared with Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, public safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources

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<sup>18</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## **28. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders, and is particularly time-sensitive. SUA will inform the Complainant of the importance of preserving evidence by taking the following actions such as the following:

### **Sexual Assault**

- Seek forensic medical assistance at a hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **Stalking**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail or social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

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## APPENDIX A: PROCESS “A”

### PROCESS “A”

#### 1. Overview

SUA will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator<sup>19</sup> or any other Official with Authority by applying these procedures, known as “Process A.”

The formal hearing procedures described below generally apply only to qualifying allegations of “Title IX sexual harassment” (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If other policies are involved, such as policies on harassment, discrimination and/or retaliation based on non-Title IX sexual harassment or protected categories other than sex, see Appendix B for a description of the procedures generally applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator, and as discussed below. The Title IX Coordinator may, in his or her sole discretion apply the hearing procedures of Process A when he or she determines it is appropriate.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

#### 2. Notice/Complaint

Upon receipt of a complaint or notice of an alleged policy violation, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps SUA needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint. This contact with Complainant will include the following information:

- SUA has received a report that the Complainant may have been subjected to sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited.
- Counseling resources within the institution or the community.
- Notice that the Complainant has the right, but not the obligation, to report the matter to law enforcement.

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<sup>19</sup> Anywhere this procedure indicates “Title IX Coordinator,” SUA may substitute a trained designee.

- SUA’s investigation procedures.
- A list of potential supportive measures, such as no-contact directives, housing changes, and academic schedule changes.
- The importance of preserving evidence.
- A request for Complainant to meet with the Title IX Coordinator to discuss options for responding to the report.
- Information on how SUA responds to reports of sexual harassment and a description of potential disciplinary consequences.

The Title IX Coordinator will then generally initiate at least one of three responses:

- 1) Offer supportive measures (if the Complainant does not want to file a Formal Complaint)
- 2) Informal resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint).

SUA uses the Formal Grievance Process described below to determine whether or not its Policy has been violated for complaints that fall within the jurisdiction of Title IX. SUA will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

If the Title IX Coordinator receives notice from a third party who is not the actual Complainant, the Coordinator will take appropriate steps to address and remedy any potential hostile environment, to the extent possible based on the information received.

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>20</sup> engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

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<sup>20</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the alleged misconduct falls within the scope of Title IX:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue, based on the nature of the complaint.
  - If alleged misconduct does not fall within the scope of Title IX, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit SUA’s authority to address a complaint with an appropriate process and remedies.

#### **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to permit a voluntary withdrawal by the Respondent
- 8) Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
- 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
- 10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader

term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by but not limited to psychologists, clinical counselors, social workers, case managers, law enforcement officers and student conduct officers. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

**B. Dismissal (Mandatory and Discretionary)<sup>21</sup>**

SUA must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by SUA (including buildings or property controlled by recognized student organizations), and/or SUA does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of SUA<sup>22</sup>

SUA may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by SUA
- 3) Specific circumstances prevent SUA from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, SUA will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

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<sup>21</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>22</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

#### **4. Counterclaims**

SUA is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. SUA permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor<sup>23</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>24</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

##### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the SUA community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor offered by SUA, the Advisor will be trained by SUA and be familiar with SUA's resolution process. SUA may use the services of one or more external sources for an Advisor, such as external dispute resolution service provider JAMS.

If the parties choose an Advisor outside of those identified by SUA, the Advisor may not have been trained by SUA and may not be familiar with SUA policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

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<sup>23</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>24</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

## **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

SUA cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, SUA is not obligated to provide an attorney.

## **C. Advisors in Hearings/SUA-Appointed Advisor**

Under the Title IX regulations, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, SUA will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, SUA may appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

## **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and SUA's policies and procedures.

## **E. Advisor Violations of SUA Policy**

All Advisors are subject to the same SUA policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by SUA. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address SUA officials or investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s), except during a hearing proceeding, during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with the SUA's established rules of decorum for the hearing, will be warned. If the Advisor continues to

disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including SUA requiring the party to use a different Advisor or providing a different SUA-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**F. Sharing Information with the Advisor**

SUA expects that the parties may wish to have SUA share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

SUA provides a consent form that authorizes SUA to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before SUA is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, SUA will comply with that request at the discretion of the Title IX Coordinator.

**G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by SUA. SUA may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by SUA's privacy expectations.

**H. Expectations of an Advisor**

SUA generally expects an Advisor to adjust their schedule to allow them to attend SUA meetings, interviews, or hearings when planned, but may change scheduled meetings, interviews, or hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

SUA may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting, interview, or hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

**I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are

expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **J. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

### **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with SUA policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. SUA encourages parties to discuss any sharing of information with their Advisors before doing so.

#### **A. Informal Resolution**

Three options for Informal Resolution are detailed in this section.

- **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- **Alternative Resolution.** When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, facilitated dialogue, etc., usually before a formal investigation takes place; see discussion in B., below.
- **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and

begin or resume the Formal Grievance Process. The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, SUA will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by SUA.

SUA will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **B. Alternate Resolution**

Alternate Resolution is an informal approach, including mediation or restorative practices, etc. by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternate Resolution approach.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternate Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and SUA are able to agree on responsibility, restrictions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of SUA policy and implements agreed-upon restrictions and/or remedies, and determines the appropriate sanctions(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all resolution terms, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

### **D. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and SUA. Negotiated Resolutions are not appealable.

## **7. Formal Grievance Process**

The Formal Grievance Process relies on trained administrators to carry out the process. These administrators are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

SUA may use the services of one or more external dispute resolution services, such as JAMS, to carry out the process, or to carry out various duties under the process, including addressing any appeal. If SUA uses the services of an external dispute resolution service, the individuals involved will be trained in SUA policies and procedures. References to Administrators in this policy include individuals who are associated with such external dispute resolution services who serve in such roles.

### **A. Administrator Roles**

Administrators are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties

- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To investigate complaints
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

## **B. Administrator Training**

Administrators receive comprehensive, trauma-informed annual training based on their respective roles. This training includes, but is not limited to:

- The scope of SUA's Equal Opportunity, Harassment and Nondiscrimination Policy
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and racial inequities, both broadly and in school disciplinary processes
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by SUA with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or Complainants, and on the basis of sex, race, religious, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

- Statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (only those who are SUA employees), Chairs, and other SUA employees responsible for carrying out the procedures of this Policy. The materials used to train administrators are publicly posted.

## **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that SUA presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that the investigation and hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses, but rather a process SUA uses to comply with its obligations under existing law
- A statement that the Complainant does not have the burden to prove, nor does the Respondent have a burden to disprove, the underlying allegations(s) of misconduct
- A statement that any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing if intentionally withheld
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained during the review and comment period
- A statement about SUA’s policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that SUA’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how the party may request disability accommodations during the resolution process

- Notice to student parties regarding appropriate counseling resources developed and maintained by the institution
- A copy of this Policy and/or other information relevant to alleged sexual harassment
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

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

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

## **9. Resolution Timeline**

SUA will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

SUA will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

## **10. Commencing the Investigation**

Once the decision to commence a formal investigation is made, the Title IX Coordinator and/or his or her designee appoints the investigator(s), usually within two (2) business days of determining that an investigation should proceed. Investigators may include the Title IX Coordinator, Deputy Title IX Coordinator, Assistant Director of Student Code of Conduct and Resolution, Vice President of Human Resources, an external investigator, and/or one or more other individuals designated by the Title IX Coordinator.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, the Title IX Coordinator will assign another trained administrator. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

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

## **12. Investigation Timeline**

Investigations should be completed expeditiously, normally within sixty (60) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

SUA will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

## **13. Delays in the Investigation Process and Interactions with Law Enforcement**

SUA may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

SUA will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. SUA will promptly resume its investigation and resolution process as soon as feasible. During such a delay, SUA will implement supportive measures as deemed appropriate.

SUA action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## **14. Steps in the Investigation Process**

All investigations should be thorough, reliable, trauma-informed, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed earlier in the process (and not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). Notice should inform the parties of their right to have the assistance of an Advisor. The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which SUA does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator for review and feedback.
- Incorporate any relevant feedback, and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from parties) who are employees of SUA are strongly encouraged to cooperate with and participate in SUA's investigation and resolution process. Student witnesses and witnesses from outside the SUA community are encouraged to cooperate with SUA investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are preferable, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. SUA will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of and consent to audio and/or video recording.

### **17. Evidentiary Considerations in the Investigation**

Neither the investigation nor the hearing will consider: 1) incidents not relevant or not directly related to the possible violation, unless they evidence a pattern, or 2) questions and evidence about the Complainant's sexual predisposition, or (3) questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

#### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker – unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct. SUA may use the services of one or more external dispute resolution services, such as JAMS, to serve as Decision-maker or Decision-makers, and/or to serve in any other roles under this policy.

#### **19. Hearing Decision-maker Composition**

SUA will designate a single Decision-maker or a three-member panel at the discretion of the Title IX Coordinator. A single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

#### **20. Evidentiary Considerations in the Hearing**

Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process, and is not shared until then.

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

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and SUA will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A statement that questions that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>26</sup>

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<sup>26</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

- A copy of all the materials provided to the Decision-maker(s) about the complaint, unless they have already been provided.<sup>27</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- A statement whether parties can or cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by SUA and remain within the 60-90 business day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in resolution proceedings that occur during months between contracts.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) business days prior to the hearing.

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

## **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be

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<sup>27</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

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

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

#### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting or meetings with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

This advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

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

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

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment, and Nondiscrimination Policy.

Participants at the hearing will include the Chair, any additional panelists, any hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations, interpretation and/or assistive services. The Title IX Coordinator may also attend at his or her sole discretion.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

The Chair and/or hearing facilitator then conducts the hearing according to the hearing process. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present(s) their report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.<sup>28</sup>

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

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<sup>28</sup> If a dismissal occurs under Title IX, and the hearing process continues, CA law does not permit direct questioning by Advisors. All questions must be submitted by the parties/Advisors to the Decision-maker or Chair, who will pose them if the questions are relevant.

### **30. Refusal to Submit to Questioning and Inferences**

Any party or witness may choose not to submit to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility.

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

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by SUA for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of SUA will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator, if any, may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

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

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

The Chair will then prepare a written deliberation statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) or recommendation(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

The deliberation statement is typically three (3) to five (5) pages in length and should be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title

IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within five (5) business days of receiving the deliberation statement. The Notice of Outcome letter may attach or incorporate some or all of the deliberation statement to constitute or support the final determination, rationale, or sanctions, in which case the included portions of the deliberation statement will be considered to be part of the Notice of Outcome.

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

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by SUA from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent SUA is permitted to share such information under state or federal law; any sanction(s) issued which SUA is permitted to share according to state or federal law; and any remedies that will be provided to the Complainant designed to ensure access to SUA's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by SUA, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for any appeal.

### **34. Sanctions**

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

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community

- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

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

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

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

### **A. Student Sanctions**

The following are common sanctions<sup>29</sup> that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any SUA policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either SUA-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at SUA.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend SUA-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma*: SUA may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- *Revocation of Degree*: SUA reserves the right to revoke a degree previously awarded from SUA for fraud, misrepresentation, and/or other violation of SUA policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, SUA may assign any other sanctions as deemed appropriate.

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<sup>29</sup> SUA policies on transcript notation will apply to these proceedings.

## **B. Employee Sanctions/Responsive Actions**

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of (or referral for delay of) tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension/Administrative Leave with pay*
- *Suspension/Administrative Leave without pay*
- *Termination*
- *Other Actions: In addition to or in place of the above sanctions/responsive actions,*
- *SUA may assign any other responsive actions as deemed appropriate*

## **35. Withdrawal or Resignation While Charges Pending**

### **A. Students**

If a student Respondent decides not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.

If a student Respondent permanently withdraws from SUA, the resolution process typically ends with a dismissal, as SUA loses primary disciplinary jurisdiction over the withdrawn student. However, SUA may continue the resolution process when, at the direction of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the resolution process, SUA will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

A student who withdraws or leaves while the process is pending may generally not return to SUA in any capacity, except upon the sole discretion and with the express written permission of the Title IX Coordinator. Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all SUA locations and/or events.

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

## **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the resolution process typically ends, as SUA loses primary disciplinary jurisdiction over the resigned employee. However, SUA may continue the resolution process when, at the discretion of the Title IX Coordinator, doing may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the resolution process, SUA will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

An employee who resigns with unresolved allegations pending is generally not eligible for academic admission or rehire with SUA or any SUA location, and the records retained by the Title IX Coordinator will reflect that status.

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

## **36. Appeals**

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. SUA may use the services of one or more external dispute resolution services, such as JAMS, to resolve any appeal.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- A. A procedural irregularity that affected the outcome of the matter
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter

- C. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

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

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within ten (10) business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

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

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which SUA is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent SUA is permitted to share under state or federal law.

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

## **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

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

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

## **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original determination, making changes to the finding(s) only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Decision-maker may order a new investigation and/or a new hearing with new Investigator(s) and/or new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to SUA or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **37. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies SUA owes to the Respondent to ensure no effective denial of educational access.

SUA will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair SUA's ability to provide these services.

### **38. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair Decision-maker(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from SUA and may be noted on a student's official transcript. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **39. Recordkeeping**

SUA will maintain for a period of at least seven (7) years records of:

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

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

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

#### **40. Disabilities Accommodations in the Resolution Process**

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

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

#### **41. Revision of this Policy and Procedures**

This Policy and these procedures supersede any previous policies and procedures addressing harassment, sexual misconduct, discrimination, and/or retaliation, including under Title IX, and will be reviewed and updated annually by the Title IX Coordinator. SUA reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and these procedures are effective January 1, 2022.

## **APPENDIX B: PROCESS “B”**

- Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, e.g., such as when Title IX sexual harassment or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.

### **PROCESS “B”**

SUA will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination that is received by the Title IX Coordinator<sup>30</sup> or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment, discrimination, or retaliation, including on the basis of an actual or perceived protected characteristic, involving students, staff, faculty members, or third parties. Process B can apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator. If SUA decides for any reason that a formal hearing is necessary in a particular case, it will follow the Formal Grievance Process set forth in Process A.

These procedures may also be used to address retaliation or collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

#### **1. Initial Assessment**

Upon receipt of a complaint or notice of an alleged policy violation, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps SUA needs to take. The initial assessment, typically takes one to five (1-5) business days. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine how the Complainant wishes to proceed. This contact with Complainant will include the following information:

- SUA has received a report that the Complainant may have been subjected to sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited.
- Counseling resources within the institution or the community.
- Notice that the Complainant has the right, but not the obligation, to report the matter to law enforcement.
- SUA’s investigation procedures.
- A list of potential supportive measures, such as no-contact directives, housing changes, and academic schedule changes.
- The importance of preserving evidence.

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<sup>30</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

- A request for Complainant to meet with the Title IX Coordinator to discuss options for responding to the report.
- Information on how SUA responds to reports of sexual harassment and a description of potential disciplinary consequences.

The steps in an initial assessment can also include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
  - If a supportive or remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
    - An Incident, and/or
    - A potential pattern of misconduct, and/or
    - A culture/climate issue
- In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a trained individual as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:
  - 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety
  - 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
  - 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
  - 4) To help identify potential predatory conduct
  - 5) To help assess/identify grooming behaviors
  - 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
  - 7) Whether to permit a voluntary withdrawal by the Respondent
  - 8) Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
  - 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
  - 10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Based on the initial assessment, SUA will generally initiate one of two responses:

- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.
- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator or other Decision-maker and the opportunity to appeal to the Dean, Appeals Board, and/or President, as discussed below.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, SUA will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

## **2. Resolution Process**

The resolution processes rely on trained administrators to carry out the process. Administrators are identified in an annual distribution of this Policy to all students and their parents/guardians, employees, prospective students, and prospective employees.

Administrators are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve on an Appeals Board

Administrators receive annual training organized by the Title IX Coordinator, including a review of SUA policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

Administrators receive annual training jointly and/or specific to their role. This training includes, but is not limited to:

- The scope of SUA's Equal Opportunity, Harassment and Nondiscrimination Policy
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability

- Implicit bias and racial inequities, both broadly and in school disciplinary processes
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by SUA with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or Complainants, and on the basis of sex, race, religious , and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping
- Statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

Specific training is also provided for Appeal Decision-makers, intake personnel, and Advisors.

### **3. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. SUA is obligated to ensure that any process is not abused for retaliatory purposes.

SUA permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

#### **4. Advisors**

##### **A. Expectations of an Advisor**

SUA generally expects an Advisor to adjust their schedule to allow them to attend SUA meetings when planned, but SUA may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

SUA may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by SUA policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting SUA meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

##### **B. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor<sup>32</sup> who is eligible and available<sup>33</sup> to accompany them throughout the process. 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, who may serve as an Advisor. The Advisor should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

Upon written request of a party, SUA will copy the Advisor on all communications between SUA and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

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<sup>32</sup> This could include an advocate or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>33</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Witnesses are/are not permitted to have Advisors in grievance process interviews or meetings.

### **C. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

## **5. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with SUA Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

### **C. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution mediation, restorative practices, etc., or when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

#### **i. Alternate Resolution**

Alternate Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

#### **ii. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of SUA Policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

#### **iii. Negotiated Resolution**

The Title IX Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and SUA.

#### **D. Administrative Resolution**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, trauma-informed and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is

given at least 48 hours in advance of an interview. Advance notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official SUA records, or emailed to the parties' SUA-issued or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

SUA aims to complete all investigations within a sixty to ninety (60-90) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision to commence a formal investigation is made, the Title IX Coordinator and/or his or her designee appoints the investigator(s), usually within two (2) business days of determining that an investigation should proceed. Investigators may include the Title IX Coordinator, Deputy Title IX Coordinator, Assistant Director of Student Code of Conduct and Resolution, Vice President of Human Resources, an external investigator, and/or one or more other individuals designated by the Title IX Coordinator.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with SUA's President.

Investigations are completed expeditiously, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

SUA will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

SUA will provide notice to the parties in writing of any extension of a time period granted in the investigation and fact-finding process that would change the prospective timeframes for the major stages of the complaint process, and the reason for that extension.

SUA will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

SUA may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke SUA's resolution process are being investigated by law enforcement. SUA will promptly resume its investigation and

resolution process once notified by law enforcement that the initial evidence collection process is complete.

SUA action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

## **6. Investigation**

Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator, if needed, with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, trauma-informed, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegations (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties. The NOIA will generally follow the format of the NOIA under the Formal Grievance Process.
- Notice should inform the parties of their right to have the assistance of an Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses

- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and any recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 business days and incorporate that response into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Provide the final report to the Title IX Coordinator with one of two options:
  - Include in the report a recommendation to the Title IX Coordinator/Decision-maker on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred; OR
  - Gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation

The investigation and any hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses, but rather a process SUA uses to comply with its obligations under existing law.

The Complainant does not have the burden to prove, nor does the Respondent have a burden to disprove, the underlying allegations(s) of misconduct.

Any evidence available but not disclosed during the investigation might not be considered at a subsequent hearing if intentionally withheld.

## **7. Determination**

Within two to three (2-3) business days of receiving the Investigator's report, the Title IX Coordinator or a trained, designated Decision-maker reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence. The preponderance of the evidence standard is met if SUA determines it is more likely than not that the alleged misconduct occurred, based on the facts available at the time of the decision.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The recommendation of the investigator should be strongly considered but is not binding on the Title IX Coordinator/Decision-maker. The Title IX Coordinator or Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

The Title IX Coordinator then timely provides the parties with a written Notice of Outcome of the complaint, including whether a policy violation was found to have occurred, the basis for that determination, including factual findings, and any sanction(s), delivered simultaneously (without undue delay) to the parties.

## **8. Additional Details of the Investigation Process**

### **A. Witness responsibilities**

Witnesses (as distinguished from the parties) who are faculty or staff of SUA are expected to cooperate with and participate in SUA's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

### **B. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, SUA makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

### **C. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If the Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

### **D. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **E. Sexual History/Patterns**

Neither the investigation nor any hearing will consider: 1) incidents not relevant or not directly related to the possible violation, unless they evidence a pattern, or 2) questions and evidence about the Complainant's sexual predisposition, or (3) questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent. Before allowing the consideration of any evidence in this section, the investigator or hearing office should provide a written explanation to the parties as to why

consideration of the evidence is consistent with the above.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

#### **F. Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

#### **G. Character witnesses**

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **H. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator in consultation with other administrators as appropriate determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three (2-3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official SUA records; or emailed to the parties' SUA-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which SUA is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent SUA is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

## 9. Sanctions

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

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

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

### A. Student Sanctions

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any SUA policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either SUA-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at SUA.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend SUA-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma*: SUA may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- *Revocation of Degree*: SUA reserves the right to revoke a degree previously awarded from

SUA for fraud, misrepresentation, and/or other violation of SUA policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

- *Other Actions:* In addition to or in place of the above sanctions, SUA may assign any other sanctions as deemed appropriate.

## **B. Employee Sanctions/Responsive Actions**

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of (or referral for delay of) tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension/Administrative Leave with pay*
- *Suspension/Administrative Leave without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, SUA may assign any other responsive actions as deemed appropriate

## **10. Withdrawal or Resignation While Charges are Pending**

**Students:** SUA does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination. SUA may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any SUA responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

## **11. Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the written finding of the Title IX Coordinator or Decision-maker. Any party may appeal the findings only under the grounds described below.

Appeal Process for Students: Students may appeal to the Dean of Students or to the Student Conduct & Resolution Appeals Board as outlined in the Student Code of Conduct Policy and Procedures.

Appeals by Faculty, Staff and Others: Faculty, staff, and others may appeal to the President (or the President's designee).

Appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, failure to correctly apply the evidentiary standard).
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions SUA has designated for this offense and the cumulative record of the Respondent.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies) or other appropriate persons who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 10 business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within 10 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the appeal Chair/Panel dismisses the appeal.

When the appeal Chair/panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Chair/Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Dean/Appeals Board/President to substitute their judgment for that of the original Investigator(s) or Title IX Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Dean/Appeals Board/President.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

- For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within 5 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural or substantive error cannot be cured by the original Investigator(s) and/or Title IX Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to SUA or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

## **12. Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by SUA to the Respondent.

### **13. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from SUA and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **14. Recordkeeping**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

### **15. Disabilities Accommodation in the Resolution Process**

SUA is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at SUA. Anyone needing such accommodations or support should contact the Director of Student Services for students and the Vice President for Human Resources for employees, who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **16. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. SUA reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on SUA's website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and procedure was implemented on January 1, 2022.

## APPENDIX C: POLICY EXAMPLES

Some examples of possible sexual harassment include:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually-oriented jokes and pictures to hundreds of other students via social media. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to nonbinary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being nonbinary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their gender identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

### Examples of Stalking

- Students A and B were "friends with benefits." Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go, and relentlessly pursued Student B. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and

things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during sex, but he came to again. When Kevin

runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's allegations.
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

**APPENDIX D: STATISTICS ON THE PREVALENCE OF SEXUAL HARASSMENT  
AND SEXUAL ASSAULT IN THE EDUCATION SETTING**

SUA provides training under its Policy that includes the following information and statistics:

- a) Sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.
- b) Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62 percent of women and 61 percent of men experience sexual harassment. The Association of American Universities (AAU) survey of students shows that more than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.
- c) Historically marginalized and underrepresented groups are more likely to experience sexual harassment than their peers. Research from GLSEN and the Centers for Disease Control and Prevention show that more than one-half of LGBTQ students 13 to 21 years of age, inclusive, are sexually harassed at school. An AAU survey indicates that nearly one in four transgender and gender-nonconforming students are sexually assaulted during college. According to a National Women's Law Center (NWLC) report, students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.
- d) Sexual harassment occurs both on campus and in off-campus spaces associated with school. Nationwide, nearly 9 in 10 college students live off campus and 41 percent of college sexual assaults involve off-campus parties. Research by the Rape, Abuse & Incest National Network indicates that only 8 percent of all sexual assaults occur on school property.
- e) Survivors generally underreport instances of sexual harassment and assault. The NWLC reports that only 12 percent of college survivors report sexual assault to their schools or the police.
- f) Research published in the Journal of College Student Retention: Research, Theory & Practice demonstrates that 34 percent of sexual harassment and violence survivors drop out of college.