



# **DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT POLICY**

Response and Resolution Procedures

INTERIM POLICY

*Updated February 2024*

# PART A: INTERIM POLICY ON DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT<sup>1</sup>

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## Statement Of Nondiscrimination

Santa Clara University's fundamental principles of academic excellence through diversity and inclusion are central to our Jesuit, Catholic values. These principles and values require us to provide a workplace and educational environment free from discrimination, harassment, and sexual misconduct. In its admission, educational and employment practices, programs, and activities, the University does not discriminate and prohibits discrimination against any individual based on race, color, ethnicity, nationality, national origin, religion, age, gender, gender expression, gender identity, sexual orientation, marital status, registered domestic partner status, veteran or military status, physical or mental disability (including perceived disability), medical condition (including cancer related or genetic characteristics), pregnancy (including childbirth, breastfeeding, and related medical conditions), or any other basis prohibited under applicable federal, state, or local laws.

## Title IX of the Education Amendments of 1972

The University does not discriminate in its admissions practices except as permitted by law, in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a recipient of federal financial assistance for education activities, the University required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes sex, sex stereotypes, gender identity, gender expression, sexual orientation, and pregnancy or parenting status. The University also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by University policy.

Any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the University community on the basis of sex is in violation of the **Policy on Nondiscrimination, Harassment and Sexual Misconduct**. For a complete copy of the Policy or more information, please contact the Director of Equal Opportunity and Title IX Coordinator or the Assistant Secretary of Education within the Office for Civil Rights (OCR). The Director for the Office of Equal Opportunity and Title IX serves as the University's Title IX Coordinator.

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<sup>1</sup> This Policy and procedures are implemented on an interim basis for renewable six-month intervals. Should a court strike down, either temporarily or permanently, any terms or provisions of these policies and procedures, the University reserves the right to make immediate modifications to the policies and procedures that take effect upon publication on our website. Further, should any court strike any portion of the 2020 Title IX Regulations (34 C.F.R. Part 106), or should an administration order them suspended or withdrawn, the University reserves the right to withdraw these interim policies and procedures and change the policies and/or procedures or revise them accordingly informed by appropriate consultation and consistent with the University's principles of shared governance.

## Section 504/Americans with Disabilities Act

In both practice and policy, Santa Clara University adheres to the requirements of the Americans with Disabilities Act of 1990, as amended 2008 (ADAAA); Sections 504 and 508 of the Rehabilitation Act of 1973, as amended; and all other federal and state laws and regulations prohibiting discrimination on the basis of disability. The University is committed to providing individuals with disabilities equal access and opportunity, and strives in its policies and practices to provide for the full participation of individuals with disabilities in all aspects of University life.

The University has adopted an internal appeal procedure to provide a prompt and equitable resolution of any action prohibited under Section 504 and 508 of the Rehabilitation Act and the Americans with Disabilities Act, as amended. Students, faculty, and staff who have questions or concerns about: (1) disagreements or denials regarding requested services, accommodations or modifications to University practices or requirements; (2) alleged inaccessibility of a University program or activity; (3) alleged harassment or discrimination on the basis of a disability, and (4) any other alleged disability discrimination should contact the Director of Equal Opportunity and Title IX, who has been designated as the University's ADA/504 Coordinator.

### Purpose of this Policy

Santa Clara University strives to provide a safe environment in which students, faculty, and staff can pursue their education and employment. Recognizing that laws and regulations create a baseline, Santa Clara University affirms its Jesuit commitment to *cura personalis*. It will continue to build above that baseline, creating and sustaining a safe, inclusive, and respectful environment free from discrimination, harassment, and sexual misconduct. The ***Policy on Discrimination, Harassment, and Sexual Misconduct*** (hereafter, "Policy") has been developed to reaffirm these principles, educate members of our campus community about these issues, and to provide a means of recourse for those students and employees who believe they have experienced such behavior.

The University will act on all notices of allegations of discrimination, harassment, or sexual harassment, and sexual violence. It will take necessary measures to end conduct that is in violation of this Policy, prevent its recurrence, and remedy its effect on individuals and the community. Within any process related to this Policy, the University provides reasonable accommodations to persons with disabilities and reasonable religious accommodations, when that accommodation is consistent with state and federal law.

Situations involving other conduct that may be in violation of other University student or employee conduct policies should be reported to Office of Student Life for matters involving students, or Human Resources or the Provost for matters involving faculty or staff.

### Education and Prevention

The University provides education and training to students, faculty, and staff on its policies regarding discrimination, sexual harassment, domestic and dating violence, stalking, and other forms of sexual misconduct. Programs are offered to raise awareness, strengthen accountability, and promote personal and community safety and bystander intervention. Programs are included as part of incoming students and new employee orientation. Returning students and current employees are afforded ongoing training and related education. The University also provides annual training to members of the Title IX Team, investigators, decision-makers (hearing and appeal officers), university process Advisors, and other University employees responsible for carrying out the procedures of this Policy. Descriptions of these prevention and education programs can be found here:

<https://www.scu.edu/title-ix/training-prevention/>

## Relationship To Freedom of Expression and Academic Freedom

The University is dedicated to an uncompromising standard of academic excellence and an unwavering commitment to academic freedom, freedom of inquiry, and freedom of expression in the search for truth. This Policy and procedures are not intended to inhibit or restrict free expression or exchange of ideas, abridge academic freedom, or prohibit educational content or discussions inside or outside of the classroom that includes germane but controversial or sensitive subject matters protected by academic freedom.

## The Office Of Equal Opportunity and Title IX

Santa Clara University is committed to promoting a diverse, equitable, and inclusive working and learning environment free from discrimination and harassment. This commitment extends beyond mere compliance with the law. The University provides a robust program of equal opportunity and affirmative action in virtually all aspects of University life. To this end, the Office of Equal Opportunity and Title IX monitors and oversees the University's compliance with Title IX, equal opportunity, affirmative action, and applicable state and federal civil rights laws, and oversees the coordination of education and training activities, and the response, investigation, and resolution (informal and formal) of incidents of protected class discrimination, harassment, sexual harassment, other forms of sexual misconduct, and retaliation that may violate this Policy.

Faculty, staff, students, and third parties may contact the Director for the Office of Equal Opportunity and Title IX (hereafter, "Director") to inquire about their rights under University policies and to request assistance and support. The Director is assisted by the Title IX Team, which includes any deputy coordinators and investigators (internal and external) who also serve in a neutral role, and are available to speak with parties in-depth about the resources and options available on- and off-campus for response and resolution.

The contact information for the Director is listed below:

**Brandi Williams**, *Interim Director of Equal Opportunity and Title IX Coordinator* Santa Clara University | Office of Equal Opportunity and Title IX

**Mailing Address:** 500 El Camino Real, Santa Clara, CA 95053

**Office Location:** Loyola Hall, Suite 140, 425 El Camino Real, Santa Clara, CA 95053

**Main Office Line:** 408-551-3043

**Direct Email:** [bwilliams2@scu.edu](mailto:bwilliams2@scu.edu)

**For general inquiries by email:** [titleixadmin@scu.edu](mailto:titleixadmin@scu.edu)

**Website:** [www.scu.edu/title-ix](http://www.scu.edu/title-ix)

## Santa Clara University Officials with Authority<sup>2</sup>

In addition to Notice or reports made to the Director of Equal Opportunity and Title IX Coordinator, individuals may provide notice or make a report to the President of the Santa Clara University, to any member of the Cabinet, and any of the Deans of Colleges or Directors of Centers of Distinction.

- **Julie Sullivan**, President
- **Renee Baumgartner**, Athletics Director
- **Alison Benders**, Vice President for Mission and Ministry
- **Kelly Douglas**, General Counsel
- **Shá Duncan Smith**, Vice President for Inclusive Excellence
- **Wilson Garone**, Vice President for Finance and Administration
- **Zenobia Lane**, Vice President for Human Resources
- **James Lyons**, Vice President for University Relations
- **Eva Blanco Masías**, Vice President for Enrollment Management
- **Molly A. McDonald**, Chief of Staff
- **Jeanne Rosenberger**, Vice Provost for Student Life
- **Rafael Espinosa III**, Chief Information Officer
- **Kate Morris** and **Ed Ryan**, Acting Provosts
- Deans of Colleges and Directors of Centers of Distinction  
(<https://www.scu.edu/aboutscu/leadership/school-deans-and-center-directors>)

## Additional Enforcement Information

These grievance procedures are administrative in nature and are separate and distinct from the criminal and civil legal systems. Pursuing resolution through these procedures does not preclude someone from pursuing legal action now or in the future or seeking recourse through state and federal agencies. The US Department of Education Office for Civil Rights (OCR) investigates complaints of sexual harassment, including sexual violence involving students and employees in educational programs or activities. The USEqual Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) investigate reports of unlawful harassment, including sexual harassment. These agencies may serve as fact-finders and attempt to facilitate voluntary resolution resolutions. For more information, contact the nearest office of the EEOC, DFEH, or OCR.

### US Department of Education<sup>3</sup>

#### **Office for Civil Rights, San Francisco Office**

50 United Nations Plaza, San Francisco, CA 94102

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<sup>2</sup> *Official with Authority (OWA)* means a University employee explicitly vested with the responsibility to implement corrective measures on behalf of the institution for sex or gender-based discrimination, harassment, violence, and/or retaliatory conduct involving students, faculty, staff, or third parties. *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of sex or gender-based discrimination, harassment, violence, and/or retaliatory conduct involving students, faculty, staff, or third parties.

<sup>3</sup> Sex discrimination claims or other inquiries concerning the application of Title IX of the Education Amendments of 1972 and its implementing regulations should be directed to the Assistant Secretary, Office for Civil Rights.

Tel: (415) 486-5555  
Fax: (415) 486-5570  
Email: [OCR.SanFrancisco@ed.gov](mailto:OCR.SanFrancisco@ed.gov)

**U.S. Equal Employment Opportunity Commission (EEOC)**  
<https://www.eeoc.gov/contact-eeoc>

**California Department of Fair Employment and Housing (DFEH)**  
2218 Kausen Drive, Suite 100, Elk Grove, CA 95758  
Tel: 800-884-1684  
TTY: (800) 700-2320  
California's Relay Service at 711  
Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)  
Complaint Process Overview: [www.dfeh.ca.gov/complaintprocess](http://www.dfeh.ca.gov/complaintprocess)

## Independence and Conflict of Interest

The Director and members of the Equal Opportunity and Title IX team serve in a neutral role and act with independence and authority free from bias and conflicts of interest. The Director works to ensure that all faculty and staff involved in the University's response and resolution process act with objectivity and impartiality, are assessed concerning conflicts of interest and personal bias, and receive training on how to serve impartially and without bias.

Concerns involving perceived bias or a conflict of interest, and reports of alleged misconduct by the Director or member of the Title IX team, should be reported to the General Counsel, (408) 554-5355, Nobili Hall, Room 120. Concerns involving perceived bias or a conflict of interest, and reports of alleged misconduct committed by any other involved party should be reported to the Director.<sup>4</sup>

The General Counsel or Director, as appropriate, will determine whether an actual, potential, or perceived Conflict of Interest exists, and will make a recommendation as to what conditions or restrictions, if any, should be imposed by the University to manage, reduce, or eliminate the conflict. The written decision will be shared with the involved parties, be based on the record of facts, and include a statement of the factual basis of the decision.

## Obtaining Assistance and Support

The University is committed to cultivating and enhancing a culture of respect and belonging, which is central to our shared Jesuit, Catholic educational mission to support those in our community who are vulnerable and marginalized. The University offers many resources that are available to provide both immediate and ongoing support and guidance. Individuals are encouraged to use resources best suited to their needs, whether on or off-campus, and regardless of whether the incident occurred recently or in the past. The University has established collaborative partnerships with on-campus and community-based organizations to assist and/or provide services to Complainants and Respondents. This includes referrals and services related to counseling, health, mental health, advocacy, and legal resources.

Deciding whether to make a report and choosing how to proceed are personal decisions. At the time a report is made, a reporting party does not have to decide whether or not to request any particular course of action, nor does a reporting party need to know how to label what happened.

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<sup>4</sup> A perceived conflict of interest or bias is not alone or in itself grounds for disqualification, without further evidence of bias, prejudice, or interest.

## Resources for Students

This resource page (<https://www.scu.edu/title-ix/resources/student>) provides information regarding resources available to students, including confidential and non-confidential on-campus resources, counseling services, community-based resources, and web resources. The University has created "safe havens" for those students who want to approach a knowledgeable person for guidance and support who is also confidential, such as CAPS and the Wellness Center.

## Resources for Faculty and Staff

This resource page (<https://www.scu.edu/title-ix/resources/staff-and-faculty>) provides information for support services available to faculty and staff, including the confidential employee assistance program, off-campus resources, and community-based resources, and web resources.

## Sexual Violence Resources

This resource page (<https://www.scu.edu/title-ix/resources/sexual-misconduct>) provides important definitions and immediate steps to consider upon experiencing any form of abuse, trauma, or sexual violence, including accessing emergency medical assistance, evidence preservation, reporting to the University, reporting to law enforcement, and accessing confidential and non-confidential resources including advocacy support services.

## Confidentiality and Privacy

The University profoundly respects the need for privacy and discretion in the handling of all reports. Some resources can provide confidential support and information, whereas others can offer privacy and discretion when they receive a report. Individuals should make sure they have informed expectations concerning privacy and confidentiality.

- **Privacy** means that information related to a complaint will be shared with a limited number of individuals at the University responsible for stopping, addressing, and preventing the recurrence of discrimination, sexual harassment, and/ retaliation. Those individuals will treat information they have received with appropriate sensitivity and discretion.<sup>5</sup>
- **Confidential** resources are available and should be accessed when an individual would like to talk to someone in confidence without having that person share the information with anyone else. The University has also designated specific resources on campus as Confidential. This means that they<sup>6</sup> do not need to notify the Director (or others); however, these resources may be required to reveal information disclosed to them in a criminal or other external proceeding.
- **Confidential (Privileged)** resources that are legally privileged include lawyers providing legal advice to clients, clergy members, and medical and mental health providers. Information disclosed to these resources is exempt and, absent extraordinary circumstances, may not be disclosed without the party's consent, even in a criminal or other external proceeding.

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<sup>5</sup> The Director will inform, in writing, all individuals involved in the investigation and/or hearing process of the critical importance and expectation of privacy. The University will not share the identity of: a reporting party, Complainant, Respondent, or any witnesses, except as permitted by the Family Educational Rights and Privacy Act (FERPA); or as required by law including to carry out the purposes of Title IX 34 CFR Part 106, and/or this Policy.

- a. The University reserves the right to determine which University 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).
- b. The privacy of employee records will be protected in accordance with Human Resources policies.
- c. The University may contact a student's 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. The Vice Provost for Student Life is responsible for determining if and by what means parents/legal guardians will be notified in accordance with the Student Handbook.

<sup>6</sup> Throughout this policy, the pronouns "they," "them" and "their" are used intentionally to be inclusive of all genders and gender identities.

## Requests for Confidentiality

If at any point, a reporting party/Complainant requests confidentiality and decides not to pursue action through the Office of Equal Opportunity and Title IX, the Director will make all reasonable attempts to comply with this request. In these situations, the University's ability to investigate and respond to the conduct may be limited. If the University cannot maintain a reporting party's confidentiality, the Director will notify the individual. Reporting party/Complainant and the Respondent have a right to discuss and share information relating to their case.

## Reporting

Deciding how to proceed after making the report can be a process that unfolds over time, and it is ordinarily up to the party to decide whether to file a formal complaint. In very rare circumstances, where a community safety concern has arisen, the Director may need to take steps to initiate a formal complaint. The University recognizes that choosing to make a report for the sole purpose of seeking guidance and information and to ask for supportive measures is different from notifying the University with the intent to initiate a University investigation and resolution process. Additionally, no formal complaint or investigation, either campus or criminal, needs to occur for supportive measures to be offered and provided.

### Report to Office of Equal Opportunity and Title IX

Individuals may contact the Office of Equal Opportunity and Title IX to discuss issues relating to discrimination, harassment, sexual harassment, sexual misconduct, and retaliation without filing a formal complaint or grievance. A report may be accompanied by a request for resources, no further action, a request for supportive measures, and a request to initiate a formal complaint process.

A report may be made at any time, including during non-business hours, by using any of the reporting options listed below:

**Online Form:** <https://www.scu.edu/title-ix/reporting/>

**Email:** [titleixadmin@scu.edu](mailto:titleixadmin@scu.edu)

**Telephone:** (408) 551-3043

**In-Person:** Loyola Hall, Suite 140, 425 El Camino Real, Santa Clara, CA 95050

**Mail:** Office of Equal Opportunity and Title IX, 500 El Camino Real, Santa Clara, CA 95050

A reporting party may request:

- Information about or assistance with arranging resources for support on- and off-campus.
- Assistance with supportive measures to help parties continue with their academic studies and work; supportive measures are individually tailored to meet each individual's unique needs.
- Facilitation of an informal resolution to reach a mutually agreeable resolution.
- Information about the formal complaint and resolution process.
- To file a formal complaint (and assist the party with filing a formal complaint).
- University investigation and formal resolution and grievance process.
- Information or assistance about options for reporting off-campus.

It is also not necessary for an individual to first discuss the incident with a supervisor, manager, dean or department chair, or anyone else prior to contacting the Office of Equal Opportunity and Title IX. If an employee chooses to direct their report or allegations of prohibited conduct to their supervisor, manager, or Human Resources, then the supervisor, manager, or HR personnel will report the alleged conduct to the Director.

## Report Anonymously

Reporting "anonymously" means that the reporting party reports to the University without identifying themselves and want someone in the University to be aware of the experience, but do not want to be involved in an administrative investigation. The University selected EthicsPoint to provide a direct and straightforward way to anonymously and confidentially report activities that may involve criminal, unethical or otherwise inappropriate behavior in violation of the University's policies posted at:

<https://secure.ethicspoint.com/domain/media/en/gui/15780/index.html>

EthicsPoint reports are initially shared with the Assistant General Counsel. An anonymous report of alleged discrimination, harassment, sexual misconduct, and retaliation is forwarded to the Director, ordinarily within 24 hours. The University may be limited in its ability to investigate or respond to anonymous reports if it does not have sufficient information from which to follow up on such a report.

## File a Formal Complaint with the University

A Formal Complaint may be filed by the "Complainant", the person who experienced the discrimination, harassment, sexual harassment, or retaliation, or by a parent/guardian if the person is under the age of 18. The person against whom the allegations are made is called the "Respondent." Support measures are available without initiating a Formal Complaint. Individuals are encouraged to seek assistance from a confidential resource before deciding how to proceed.

A **Formal Complaint** means a document submitted or signed by a Complainant or signed by the Director of Equal Opportunity and Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations.

The Complainant requests a University investigation into the allegation(s) following the Resolution Process described in Part C. The Complaint must be filed with the Director or with an Official with Authority in person, by mail, or by electronic mail, by using the contact information in the section immediately above. If a Formal Complaint is submitted in a form that does not meet this standard, the Director will contact the Complainant to ensure that it is filed correctly.

## Report to Law Enforcement

In an emergency or if someone is in immediate danger, call 911. The University encourages an individual who has been the victim of a sexual assault, relationship violence, stalking, hate crime, or other potential criminal conduct to report the incident to the police. The report should be made to the police department in the jurisdiction where the crime occurred. Campus Safety Services and/or the Office of Equal Opportunity and Title IX will assist reporting parties, at the person's request, in contacting local law enforcement and will cooperate with law enforcement if a party decides to pursue the criminal process. For more information see [www.scu.edu/title-ix/reporting/law-enforcement/](http://www.scu.edu/title-ix/reporting/law-enforcement/).

## Reports About Third Parties Not Affiliated with the University

When someone makes a report to the University - for example, about a student enrolled at another institution or someone employed at another institution or in the local community-the University is restricted in its ability to undertake an investigation and its response. Regardless of whether the University investigates, support and assistance can be provided to the person making the report, including:

- Assisting them with identifying appropriate campus and local resources.
- Connecting them to an appropriate official at the other institution/organization.
- Offering and arranging appropriate supportive and safety measures, as needed.

- Assisting them with contacting law enforcement if they would like to file a police report.

Similarly, the Director may be able to assist and support a student or employee reporting party who experiences discrimination or harassment in an externship, study abroad program, or other environment external to the University's policies and procedures.

## Promptness of Reporting

There is no time limitation on reporting allegations to the University. However, if significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Allegations are acted upon promptly by the University once it has received Notice of a formal complaint. Complaints typically take 60-90 days to resolve. There are exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

## What to Expect after Reporting

Upon receipt of a report or notice to the Director or member of the Equal Opportunity and Title IX Team, a prompt initial assessment is initiated to determine the next steps. The University recognizes that each case is unique. The goal of the assessment is to provide a consistent, equitable, integrated, and coordinated response to all reports and to ensure that individuals have access to information they need about resources for support, University policies, and resolution options for resolving their concerns.

## Initial Assessment

The Director<sup>7</sup> or designee from the Title IX Team engages in an initial assessment of the available information as soon as practical after receiving a report. The Director will attempt to arrange a meeting typically within one (1) to two (2) business days of receiving a report. The Initial Assessment in no way represents a finding of fact or responsibility.

The initial meeting will be conducted to:

- Gain a better understanding of the nature and circumstances of the allegations.
- Assess the safety of the individual and the campus community.
- Provide information about resources, procedural options for resolution, and supportive measures.
- Identify what form of resolution is desired, reasonably available, and appropriate.
- Refer the party to another office for assistance if this Policy applies to the incident(s) reported.

In a situation when there is a serious threat to the University community, but the reporting party cannot or does not wish to proceed with the formal process, the Director or their designee may initiate a Formal Complaint.

## Resolution Process Brief Overview (See Part C for additional information)

The resolution process summarized below has been developed to ensure fairness and consistency in the University's response and resolution of alleged discrimination, harassment, and sexual misconduct involving all students, faculty, and staff. No person's academic or employment status shall be adversely affected in any way as a result of participating in these procedures, nor shall any retaliatory action taken against a person using these resolution procedures be tolerated.

Following the Initial Assessment, the Director will then initiate one or more of the following responses:

- Offer Supportive Measures in all cases (see below).

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<sup>7</sup> If circumstances require, the President will designate another person to oversee the process should an allegation be made about the Director or the Director be otherwise unavailable to fulfill their duties.

- **Offer Supportive Measures Only** because the reporting party does not want to proceed with a formal complaint.
- Initiate an **Informal Resolution Process** (e.g., facilitate dialogue, restorative practices, education, mediation, negotiated resolution), as appropriate.
- Initiate a **Formal Investigation and Formal Resolution Process** (upon submission of Formal Complaint). The University uses the formal resolution process to determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies and sanctions designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

Based on the facts of the report, the Director may refer the party to another department for assistance if the concern does not fall under the scope of the Policy.

## Supportive Measures

Supportive measures are offered and provided promptly and equitably to either or both the reporting party/Complainant or the Respondent upon receipt of any report or Formal Complaint. Supportive measures are intended to address any immediate concerns for health and safety and facilitate an individual's continued access to their educational program and employment, as appropriate. Reporting parties who come forward will not be forced to participate in an investigation or participate in an informal or formal process that they do not wish to pursue. Supportive measures are non-disciplinary, non-punitive and individualized, as appropriate, as reasonably available, and without fee or charge to the reporting party/Complainant or Respondent. Supportive measures may be requested, modified, or discontinued at any time.

The Director is responsible for ensuring the implementation of Supportive Measures and coordinating the University's response with the appropriate offices on campus. The University will seek to maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic/occupational impact on the parties as possible. The University 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 confidential counseling, mediation, and other health services and assistance in setting up the initial appointment (on- and off-campus).
- Referral to advocacy and support services (on- and off-campus).
- Referral to the Employee Assistance Program.
- Visa and immigration assistance.
- Student financial aid counseling.
- Education to the University community or community subgroup(s).
- Making changes to campus housing.
- Altering work arrangements for employees or student-employees.
- Safety planning, such as increased security and monitoring of certain areas of the campus.
- Providing campus escorts.

- Implementing contact limitations (No Contact Directives)<sup>8</sup> or "Be-On-the-Lookout"(BOLO) orders for non-affiliates/banned individuals of the University.
- Providing transportation accommodations.
- Implementing contact limitations (no contact orders) between the parties.
- Academic support (e.g., requesting extensions of time, make-up work, or other course- related adjustments; allowing a student to withdraw or take grades of incomplete without financial penalty, in consultation with the instructor and/department chair and dean's office).
- Timely Warnings (Clery) to address concerns about broader campus safety.

For more information on supportive and protective measures see [www.scu.edu/title-ix/resources/supportive-measures/](http://www.scu.edu/title-ix/resources/supportive-measures/).

## Medical Amnesty/Good Samaritan Statement

The health and safety of every member of the campus community are of utmost importance. Sometimes, individuals are hesitant to come forward or participate in an investigation or University resolution process because they fear that they themselves may be charged with policy violations or receive disciplinary sanctions. A student who participates as a Complainant or a witness in an investigation may not be subject to disciplinary sanctions for a violation of the University's Student Conduct Policy at or near the time of the incident, unless the University determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or that involves plagiarism, cheating, or academic dishonesty. The University may, at its discretion, offer employees amnesty from policy violations (typically minor policy violations) related to the incident.

## Investigation Overview

Upon receiving a formal complaint, the Office of Equal Opportunity and Title IX will be responsible for investigating the complaint in a manner that is prompt, equitable, thorough, reliable, and impartial. All allegations of discrimination, harassment, and sexual misconduct will be investigated and addressed by a trained Title IX Investigator, and may include, depending on the circumstances, an investigation conducted by an external investigator not employed by the University.

The Investigator(s), not the parties, is responsible for gathering relevant evidence, such as physical evidence, documentary evidence, police reports, hospital records, emails, social media posts, text messages, phone records, video recordings, etc. If a party declines to provide material information voluntarily, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted. During the investigation and resolution process, both the Complainant and Respondent will have the opportunity to receive a written notice of investigation; participate in the investigation; review and present information and evidence, such as documents, communications, and other evidence, if available; suggest questions they would like asked of the other party and witnesses; be accompanied by an Advisor of their choice to any meeting; be afforded equal access to information that will be used in resolution proceedings; receive timely notice of meetings at which their presence will be requested or required; receive simultaneous written notice of the outcome, sanction, and rationale; and appeal the finding.

The investigator has the authority and responsibility to determine which witnesses to interview and which documents to consider.<sup>9</sup> The investigation shall be concluded within a reasonable time, usually thirty (30) to sixty

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<sup>8</sup> Violations of no contact directives will be referred to appropriate student or employee conduct processes for enforcement.

<sup>9</sup> Evidence will not be considered if it is neither relevant nor directly related to the complaint. Evidence about the Complainant's sexual predisposition or prior sexual behavior, will not be considered 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

(60) days barring exigent circumstances. The University respects the privacy of the Complainant and Respondent. Information gathered in an investigation will not be disclosed to others who do not have a legitimate need to know.

Following the completion of the investigation, the Investigator(s) will prepare an initial written report that contains the pertinent information obtained from the investigation and analysis of evidence. A copy of this report will then be provided to the Complainant and the Respondent for review. Within ten (10) business days of receipt of the report, any additional information, questions, or information needed to correct or clarify information in the report may be submitted verbally or in writing by the Complainant and Respondent to the Investigator(s).

Once there has been an opportunity to review the report and any additional/correcting/clarifying information has been submitted within the time allotted, a final report will be prepared by the Investigator(s) and shared with the parties, the Director, and appropriate decision-maker (hereafter, "Equity Hearing Panel").

## Right to an Advisor

Individuals bringing forward allegations ("Complainants"), and individuals responding to allegations ("Respondents") may select any person to be an Advisor of their choice. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, before the hearing. See Appendix B for more information about the Role and responsibilities of Advisors.

- An Advisor may be present with their advisee for all meetings at which the party is entitled to be present, including intake meetings, investigation interviews, and all meetings related to the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is available and eligible. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.
- The parties may also seek guidance from other individuals (support person/advocate) who are not designated as their Advisor for emotional support. A support person or advocate, however, who is not identified as the party's "Advisor" may not attend or participate in the University's investigation and resolution process.
- For parties who are entitled to union representation, the unionized employee may have their union representative accompany them to serve as their Advisor of choice. Witnesses are not otherwise permitted to have union representation or Advisors in interviews or at a hearing.
- The University cannot guarantee equal Advisory rights; that is, if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney.
- The Director of Equal Opportunity and Title IX Coordinator will offer to assign a **University Process Advisor** for any party if the party does not have an Advisor. The University Process Advisor will be trained by the University and be familiar with the University's resolution process.
- A University Process Advisor will also be appointed if the party's Advisor will not conduct questioning. The assigned University Process Advisor will conduct cross-examination and 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 Equity Hearing Panel during the hearing.

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and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## Emergency Removal/Safety Measures

The University may become aware of a situation where an individual may pose an immediate threat or when there is a need to protect the health, safety, or welfare of other members of the campus community. The University 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. Where the Respondent is an employee, existing provisions for interim action are applicable.

This violence risk analysis is performed by the Behavioral Concerns Team (BCT) for matters involving a student and by Human Resources for matters involving a staff member, and by Human Resources in matters involving a faculty member in consultation with the Provost. In situations where emergency removal and safety measures are used, the University will implement the least restrictive emergency actions possible in light of the known circumstances and safety concerns and conduct an individualized assessment. These actions could include, but are not limited to:

- Removing a student or employee from campus pending the outcome of a University investigation and resolution process.
- Removing a student from a residence hall.
- Removing a student or employee from campus property.
- Placing an employee on paid or unpaid administrative leave.
- Assigning a material change in work responsibilities.
- Restricting a student's or employee's access to or use of facilities or equipment.
- Authorizing an administrative leave for faculty and staff (paid or unpaid).
- Reassigning a course or section to another instructor.
- Suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion or termination. The decision-making process for the administrative leave of a staff or faculty Respondent or emergency removal of a student Respondent is detailed below. There is no appeal process for emergency removal decisions.

### Information for Faculty and Staff

The Associate Vice President for Human Resources (staff), and the Provost (faculty), as appropriate, have sole discretion under this Policy to implement or stay an emergency removal from campus, building, program or activity, and work assignment on an interim basis. The employee will receive a written explanation for the basis of emergency removal.

### Information for Students

The Vice Provost for Student Life (student) has sole discretion under this Policy to implement or stay an emergency removal from campus on an interim basis. The University can act to remove a student 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 Behavioral Concerns Team (BCT) using its standard objective violence risk assessment procedures. See Appendix D for more information about the Health and Safety risk analysis process. If removed entirely or partially, the student will receive a written explanation for the basis for the emergency removal before implementation barring exigent circumstances.

Students will be given the option to meet with the Vice Provost for Student Life before an emergency removal is imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented or should be modified. When a meeting is not requested promptly (ordinarily within one (1) business day from the decision), objections to the emergency removal will be deemed waived.

The student may be accompanied by an Advisor of their choice for the show cause meeting. 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 or imposed safety measure is necessary and appropriate.

## **Retaliation**

The University and any member of the University 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. Such retaliation will be considered a serious violation of this Policy, regardless of whether an allegation is determined to be a Policy violation. Acts of retaliation should be reported immediately to the Director of Equal Opportunity and Title IX Coordinator and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The exercise of rights protected as free speech does not constitute retaliation. Charging an individual with a code of conduct violation 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 a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **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 investigator can be subject to discipline under University policy (e.g., Student Conduct Code, Faculty Handbook, or Staff Handbook).

## **Jurisdiction and Scope of Policy**

This Policy applies to all Santa Clara University education programs and activities, to conduct that takes place on the campus or property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University's recognized student organizations. The Respondent must be a member of the University community for its informal and formal resolution procedures to apply. This Policy can also be applied to the effects of off-campus misconduct that effectively deprives or limits the educational or employment access, benefits, and/or opportunities.<sup>10</sup>

This Policy applies to students, student organizations, faculty, staff, guests, visitors, other individuals regularly or temporarily employed, studying, living, visiting, or having any official capacity at Santa Clara University (such as volunteers and contractors). All vendors serving the University through third-party contracts are subject to these policies and procedures to which their employer has agreed to be bound by their employment contracts.

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<sup>10</sup> This Policy also pertains to acts of Prohibited Conduct that may fall outside of the jurisdiction set forth in the May 2020 Title IX regulations, including additional forms of sexual and gender-based harassment, as well as conduct that occurs outside the United States, but still in a University education program or activity and off-campus.

The University may extend its authority to off-campus and to online conduct when the Director, in consultation with the Associate Dean for Student Life, the Provost, or the Associate Vice President for Human Resources, as appropriate, determines that the conduct affects a substantial University interest.

A substantial University interest includes:

- 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.
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual.
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder.
- Any situation that is detrimental to the educational interests or mission of the University.

The Policy is supplemental to and is not intended to displace other University conduct policies outlined in the Student Code of Conduct, Faculty Handbook, and/or Staff Handbook, or any applicable collective bargaining agreement. This Policy may be applied to incidents, to patterns, and/or the climate, all of which may be addressed and investigated in accordance with this Policy.

Actions taken by the University are separate and apart from any law enforcement or other court process proceedings, such as a civil lawsuit or criminal prosecution that may relate to the same underlying factual incident. The University's investigation and response are independent of whether criminal charges are filed. Formal adjudications or other case resolutions conducted by the University are not postponed while criminal or civil proceedings are pending, unless there are extenuating circumstances, as determined by the Director. Dismissal of criminal charges or acquittal in a criminal case also does not prevent the University from acting on a report or Formal Complaint.

## **Duty To Act**

University leaders, management, and supervisory personnel are expected to take reasonable and necessary action to prevent discrimination, discriminatory harassment, and sexual harassment, to take appropriate action when they learn directly or indirectly of conduct that might violate University policies, and to respond promptly and thoroughly to any such claims.

A University leader, manager, or supervisor who fails to take appropriate action may be found to have violated University policies even in situations where the underlying incident does not constitute discrimination or harassment. For purposes of this Policy, management and supervisors include:

- Any employee with formal supervisory responsibility for employees (volunteers, contractors, or agent working on behalf of the University).
- Any employee with management responsibility related to a University sponsored program, event, or activity.
- Faculty in such roles as department chair, program/center director, dean, academic vice presidents, similar position supervising other faculty and/or staff, or supervisor of student employees.
- Principal investigators on a grant or contract or act in a supervisory capacity over the individuals in the lab or research they lead.

## Duty To Report<sup>11</sup>

The University encourages all campus community members to report incidents of harassment or discrimination to the Director or any Mandated Reporter identified below. Mandated Reporters are required to share all details of any report of alleged discrimination, harassment, sexual harassment, sexual misconduct that they observe or have knowledge of, even if not reported directly to them.

Individuals may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Director.

**Effective January 1, 2022: Faculty and associate faculty, teachers, instructors, or lecturers (including graduate student instructors) while performing the duties of employment by the institution and Laboratory directors, coordinators, or principal investigators are considered Mandatory Reporters under Senate Bill No 493.**

The following University employees are mandated to report possible discrimination, harassment, sexual harassment, sexual misconduct incidents to the violations to the Director.

- Office of Equal Opportunity and Title IX staff
- Campus Safety Services staff
- Human Resources staff
- Most student life staff including:
  - Campus Recreation staff, including paid and volunteer coaching staff who are not students
  - Career Center staff
  - Cowell Center Medical staff
  - University Centers staff (Benson Memorial Center and Locatelli Student Activity Center)
  - Center for Student Involvement staff
  - Office for Multicultural Learning staff
  - Office of Accessible Education staff
  - Office of Residence Life
  - Resident Directors
  - Area Coordinators
  - Faculty Directors
  - Spirituality Facilitators
  - Assistant Resident Director
  - Assistant Area Coordinator
  - Community Facilitators

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<sup>11</sup> This Policy does not affect other mandated reporting obligations under CANRA (Child Abuse and Neglect Reporting Act) Policy, the Clery Act as a Campus Security Authority (CSA), and other policies or laws that require reporting to campus or local law enforcement, or Child Protective Services.

- Neighborhood Representatives
- Office of Student Life
- Associate Dean for Student Life
- Assistant Deans for Student Life
- Associate Director for Student Welfare
- Athletics administrators, staff, coaches and trainers
- Drahmman Advising Center staff
- Faculty and associate faculty, teachers, instructors, or lecturers. including Graduate student instructors, while performing the duties of employment by the institution and Laboratory directors, coordinators, or principal investigators.

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 University policy and can be subject to disciplinary action for failure to comply.

### Disclosures at Public Awareness Events

Disclosures of harassment or discrimination frequently are made in climate surveys, classroom writing assignments or discussions, human subjects research, or at public awareness events such as "Take Back the Night" marches, speak-outs, and other forums in which community members disclose experiences with sexual harassment, sexual assault, sexual exploitation, and dating and domestic violence. Such disclosures are *not* considered to be reportable events, nor as Notice to the University. Such disclosures will not trigger mandated reporting or for the University to act concerning the information. However, such events will inform education and prevention efforts, and the University will continue to provide information about support, resources, and options for resolution.

### Mandated Reporters Under the Clery Act

The Jeanne Clery Act defines a Campus Security Authority (CSA) as an individual with "significant responsibility for student and campus activities." This effectively includes employees of a Campus Safety Services department, other individuals with campus security responsibility, and other officials who work closely with students in areas such as athletics, health care, and student life.

Certain campus officials - those deemed Campus Security Authorities - must report the following for federal statistical reporting purposes (Clery Act):

- "Primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
- 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.
- VAWA -based crimes, which include sexual assault, domestic violence, dating violence, and stalking.
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to Campus Safety Services regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are included) for publication in the University's Annual Security and Fire Safety Report and daily campus crime log.

## Notice to Law Enforcement<sup>12</sup>

There may be circumstances where the University is obliged to report incidents of violent crimes, hate crimes, or sexual assaults immediately, or as soon as practicably possible, to local law enforcement. The University has a Memorandum of Understanding (MOU) with local law enforcement and the Santa Clara County District Attorney's Office. The Purpose of this MOU is to enhance communication, coordination, and collaboration, institute on- and off-campus specialized, trauma-informed responses to incidents of sexual assault, violence, and hate crimes, and respect the reporting party's privacy and requests for confidentiality.

### *Requests for Confidentiality*

Reporting parties have the right to decide if they want to make a report to the police and/or speak with the police. The University will honor requests for confidentiality. Campus and local law enforcement agencies are prohibited from disclosing information about violent crimes, hate crimes, or sexual assaults if the reporting party requests anonymity. When information is shared with law enforcement, such reports will include (when the reporting party has consented to being identified):

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

## Mandated Reporting Requirements for Health Practitioners in California<sup>13</sup>

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 contain identifying information such as name and contact information of the person who presented for care. This person will be contacted by the law enforcement agency but the person does not have to comply with any information being sought. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained. This includes any health care practitioners in Cowell Center Health Services.

### *Preservation of Evidence in an Assault*

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. The University will inform the Complainant of the importance of:

- Seeking medical care and forensic medical assistance at the hospital, ideally within 24 - 72 hours of the incident (sooner is better).
- Preserving evidence in a paper bag.

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<sup>12</sup> The University has a Memorandum of Understanding (MOU) with Santa Clara County law enforcement agencies and Office of the District Attorney for Santa Clara County which was established to meet the statutory requirements established by AB 1433 (Gatto, 2014), specified in the California Education Code (Ed. Code, § 67383, subd. (a) and California Ed. Code, § 67381). The purpose of this MOU is also designed to promote compliance with the numerous state and federal laws that provide specific requirements related to these issues, as outlined in California Education Code sections 67380, 67381 (the Kristin Smart Campus Safety Act of 1998) and 67383; SB 967 (de Leon, 2014), specified in California Education Code section 67386; the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"); Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; Title IX of the Higher Education Amendments of 1972 ("Title IX"); Violence Against Women Reauthorization Act of 2013 [VAWA] (Public Law 113-14); Department of Education Final Rule (2014); as well as the California Penal Code and applicable state laws related to health and confidentiality/privacy.

<sup>13</sup> Please see Cal. Penal code §§ 11160-11163.2 for more information.

- Individuals considering a forensic exam should go directly to a medical facility in their county.
- Avoiding showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- Trying not to urinate.
- If oral sexual contact took place, refraining from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, placing soiled clothes in a paper bag (plastic destroys evidence).

## Timely Warnings - Clery Act

Federal regulations associated with the Jeanne Clery Act require every college and University to provide "timely warnings" to their campus community after designated employees (CSAs) or Campus Safety Services receive notice of specified crimes that appear to pose a serious or continuous threat to students and employees. The purpose of issuing a timely warning is to alert the campus community to the occurrence of a crime and heighten safety awareness of students and employees to enable people to protect themselves. When Campus Safety Services issues a timely warning, they will ensure that the reporting party/Complainant's name and other identifying information is not disclosed, while still providing enough information for the campus community to make important safety decisions in light of the potential danger.

## Mandatory Reporting of Child Abuse

The University strives to safeguard the well-being of all children, and encourages all members of the University community who observe, have actual knowledge of, or reasonably suspect child abuse or neglect at a University facility or perpetrated by University personnel to promptly report the concern to appropriate law enforcement, external officials, and university officials. The Child Abuse Neglect and Reporting Act (CANRA) requires that employers of mandated reporters promote identification and reporting of child abuse or neglect. Mandated Reporters under CANRA are responsible for reporting the incident themselves. They are not required to investigate any known or suspected cases of abuse.

Also, it is the Policy of Santa Clara University that **ALL UNIVERSITY EMPLOYEES**, as well as volunteers and independent contractors who, in the course of their business or volunteer activity, have reasonable suspicion of child abuse or neglect are required to make a report as outlined in this Policy. This Policy applies to all Santa Clara University locations and all University sponsored or hosted programs, events, and activities, including study abroad programs. Please note that information learned through any confidential communications made to a member of the clergy subject to the clergy-penitent privilege is not required to be reported.

## Recordkeeping

The Office of Equal Opportunity and Title IX is responsible for maintaining records relating to all reports and complaints of discrimination, sexual harassment, and sexual misconduct and the University's response. Files will be kept in accordance with Santa Clara University's record retention policy for a period of at least seven years from date of report or notice. Records may be maintained longer at the discretion of the Director of Equal Opportunity and Title IX in cases where parties have a continuing affiliation with the University. All records pertaining to pending litigation or a request for records will be maintained in accordance with instructions from the Office of General Counsel.

The Equal Opportunity and Title IX office has implemented the following Policy to guide record management related to all reports and University responses related to reports of discrimination, harassment, and sexual misconduct, any situations specified in this Policy, and any and all records in accordance with state and federal laws.

Records maintained include, but are not limited to:

- Actions taken in response to a report or formal complaint including the provision of any supportive measures. In each instance, the University will document the measures taken designed to restore or

preserve equal access to the University's education program or activity, and the basis for its conclusion that its response was not deliberately indifferent.

- If the University does not provide supportive measures, the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.
- Records of each investigation including any outcome and determination following a University resolution process (including transcripts of any live hearing as required under federal regulation, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity, any appeal and the result there from, and the basis for all conclusions that the response was not deliberately indifferent).
- All materials used to train the Equal Opportunity and Title IX team, investigators, decision-makers (hearing and appeal officers), and any person who facilitates an informal resolution process.

## PART B: PROHIBITED CONDUCT - DEFINITIONS

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Santa Clara University is committed to establishing and maintaining a safe learning, living, and working environment. It is the responsibility of every member of the campus community to create an environment free from discrimination, harassment, and sexual misconduct. Sometimes, discrimination involves exclusion from or different treatment in activities such as admission, athletics, or employment.

Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence.

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

### Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by University policy, and 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 University policy or law. The University does not tolerate discriminatory harassment of any employee, student, visitor, or guest.

The University 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.<sup>14</sup> <sup>15</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.<sup>16</sup>

When discriminatory harassment rises to the level of creating a hostile environment, the University may also impose sanctions on the Respondent through application of the appropriate grievance process described in Part C below.

In determining whether a hostile environment exists, the University will evaluate totality of known circumstances, including, but not limited to:

- Frequency, nature and severity of the conduct.
- Effect of the conduct on the Complainant.
- Whether the conduct was directed at more than one person.

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<sup>14</sup> Examples include, but are not limited to, verbal innuendos, epithets, derogatory slurs, off-color jokes, threats, suggestive or insulting sounds; visual/non-verbal such as derogatory posters, cartoons, or drawings; offensive emails, objects, or pictures; graphic commentaries; obscene gestures; physical conduct such as unwanted physical contact including touching; interference with an individual's normal work or movement; assault.

<sup>15</sup> California defines harassment as conduct that creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination when the harassing conduct sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, affect the victim's ability to perform the job as usual, or otherwise interfere with and undermine the victim's personal sense of well-being. A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment.

<sup>16</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47/Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Recipient's Investigative Guidance. described in Part C of this Policy document.

- Whether the conduct arose in the context of other discriminatory conduct.
- Whether the conduct unreasonably interfered with the Complainant's educational or workperformance and/or programs or activities.
- Whether the conduct implicates academic freedom or protected speech.
- Other relevant factors that may arise from consideration of the reported facts and circumstances.

The University 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 result in the imposition of discipline under University be addressed through respectful conversation, remedial actions, education, and effective alternate and informal resolution mechanisms.

## Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard Sexual Harassment as an unlawful discriminatory practice. 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. The University has adopted the following definition of Sexual Harassment in order to address the special environment of an academic community.<sup>17</sup>

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex/gender that is sexual and satisfies one or more of the following:

### Quid Pro Quo

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

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<sup>17</sup> Some examples of possible sexual harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- An employee repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one University employee to avoid the sender on campus and in the building in which they both work.
- Explicit sexual pictures are displayed in a co-worker's office or on a computer screen.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- A student grabbed another student by the hair, then grabbed her breast. While this is sexual harassment, it is also a form of sexual violence.

## Hostile Environment (Sexual Harassment)

- unwelcome conduct<sup>18</sup>
- determined by a reasonable person
- to be so severe, and
- pervasive, and
- objectively offensive
- that it effectively denies a person equal access to the University's education program or activity.

## Sexual Assault

Defined as:

### Sex Offenses, Forcible<sup>19</sup>

- Any sexual act<sup>20</sup> directed against another person<sup>21</sup>
- without the consent of the Complainant
- including instances in which the Complainant is incapable of giving consent.

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<sup>18</sup> Whether conduct is deemed unwelcome depends on the context in which it occurred and must be determined based on the totality of the circumstances. Acquiescence in the conduct or the absence of an objection does not always mean that the conduct was welcome.

<sup>19</sup> The following sexual offenses may later be charged if a report of sexual assault is made to law enforcement: sexual battery, assault with intent to commit rape, rape (forcible, while prevented from resisting by intoxicating/controlled substance, unconscious or asleep, by threat to retaliate), unlawful sexual intercourse with person under 18, rape of a spouse, rape committed in concert with others, forcible sodomy, forcible oral copulation, foreign object penetration in California.

<sup>20</sup> "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30). A 'sexual act' is specifically defined to include one or more of the following:

- a. Forcible Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
- b. Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c. Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d. Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>21</sup> This would include having another person touch a person sexually, forcibly, or without their consent.

## Sex Offenses, Non-forcible

### *Incest*

- Non-forcible sexual intercourse
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by California law.

### *Statutory Rape*

- Non-forcible sexual intercourse,
- with a person who is under the statutory age of consent in California.

## Dating Violence<sup>22</sup>

Defined as:

- violence,
- on the basis of sex,
- committed by a person,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition: Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

## Domestic Violence

Defined as:

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

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<sup>22</sup> Under California Penal Code Section 13700, "domestic violence" means 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.

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.

## Stalking<sup>23</sup>

Defined as:

- engaging in a course of conduct,
- on the basis of sex,
- directed at a specific person, that
- would cause a reasonable person to fear for the person's safety, or
- the safety of others; or
- suffer substantial emotional distress.

For the purposes of this definition:

- **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.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling.

## Other Sexual Misconduct Definitions

The University seeks to provide a consistent, caring, and timely response when sexual misconduct occurs within the University community. Members of the University community, guests, and visitors have the right to be free from sexual and gender-based misconduct, and the University prohibits such behavior. Sexual Misconduct is an umbrella term that includes sex/gender-based discrimination, sexual harassment, sexual assault, hazing, bullying, interpersonal violence (domestic/dating violence), and stalking when such behaviors are perpetrated because of one's sex/gender. Sex/gender-based discrimination and sexual misconduct can occur between people of different sex or gender or of the same sex or gender.

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<sup>23</sup> Criminal stalking is defined by California Penal Code §646.9 as "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."

## Force

- Force is defined as 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," "Okay, don't hit me, I'll do what you want.").<sup>24</sup>
- 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.

## Coercion

- Coercion is defined as 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. In evaluating whether coercion was used, the University will consider, based on the totality of the circumstances, frequency, intensity, isolation, and/or duration of the pressure or coercive action.

## Consent

Consent<sup>25 26</sup> is:

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

Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. Individuals may 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. For example, if

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<sup>24</sup> The use of physical force constitutes a stand-alone sexual misconduct offense as well, as it is the University's expectation that those who use physical force would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive conduct.

<sup>25</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>26</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.

someone kisses Person A, Person B can kiss them back (if they 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 reasonable 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.
- Consent in relationships must also be considered in context. When parties consent to BDSM<sup>27</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so Recipient'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.
- Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its Policy has been violated. The existence of consent is based on the totality of the facts and circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

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

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

**"Should have known"** is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

## 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 by alcohol or other drugs.<sup>28</sup> As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.
- 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, or 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.

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<sup>27</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

<sup>28</sup> When alcohol or other drugs, including date rape drugs (such as Rohypnol, Ketamine, GHB, etc.), are involved, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (the who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation.

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

As stated above, the question of whether the Respondent "knew or should have known" is determined using an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

## Other Civil Rights Based Offenses

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

In addition to the forms of misconduct described above, the University additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant's actual or perceived membership in a protected class and a violation of University conduct policies.

### Sexual Exploitation

Defined as taking non-consensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person observed).
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as disseminating sexual pictures without the photographed person's consent), including the making of and posting revenge pornography,
- Exposing one's genitals in non-consensual circumstances including unwelcome sexting (not including streaking, which may be considered disruptive conduct under other University codes of conduct),
- Prostitution, solicitation of a prostitute, or facilitating or compelling prostitution of another.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) or sexually transmitted infection (STI) without informing the other person of the infection. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity.
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections,
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Creation, possession, or dissemination of child pornography.

### Discrimination

Defined as: actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

## Threatening or causing physical harm

Defined as: extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person(s).

## Intimidation

Defined as: implied threats or acts that cause an unreasonable fear of harm in another.

## Hazing

Defined as: any action, activity or complicity in an activity, which recklessly, intentionally, or knowingly causes or endangers the mental, emotional, and/or physical health or safety, or personal degradation to any person, or could reasonably be foreseen to result in such harm, that was committed in connection with initiation into, an affiliation with, or continued membership in a group affiliated activity, whether or not the organization or body is officially recognized by the University, and whether individually or in concert with other persons, against another person(s). An action is still considered hazing regardless of the apparent or actual consent of the involved individual or individuals. Failing to prevent, discourage, and/or report hazing may violate this Policy. Student organizations, clubs, or teams whose members participate in or encourage hazing activities will also be subject to appropriate University disciplinary action.

## Bullying / Cyber-Bullying

Defined as:

- Repeated and/or severe;
- Aggressive behavior;
- Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally; and
- That is not protected speech or conduct otherwise protected.

## Stalking

Defined as:

- Repetitive and menacing course of conduct (pursuit, following, harassing and/or interfering with the peace and/or safety of another;
- Directed at a specific person on the basis of actual or perceived protected status; and
- That is unwelcome; and
- Would cause a reasonable person to fear.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

## Remedies

The University 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.

## Online Harassment

The policies of the University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited under this Policy, the Student Conduct Code, Faculty Handbook and/or Staff Handbook when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology, or equipment. Although the University may not control websites, social media, and other

venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Any online postings or other electronic communication by students, including cyber-bullying, cyber- stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption. Off-campus harassing speech by employees, whether online or in person, may be regulated by the University when such speech is made in an employee's official or work-related capacity.

# PART C: RESOLUTION PROCEDURES

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## Overview

Santa Clara University will act on any report or Notice of an alleged violation of the Policy on Discrimination, Harassment, and Sexual Misconduct received by the Director of Equal Opportunity and Title IX Coordinator (hereafter referred to as the "Director") or by an Official with Authority by applying these response and resolution procedures described below.<sup>29</sup> The procedures described below apply to all allegations of harassment or discrimination based on protected class status involving students, staff, faculty members, or third parties except for qualifying allegations of sexual harassment as required by Title IX Regulations, 34 CFR §106.45, which are explained below (Mandatory Dismissal).

These procedures may also be used to address 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 and manuals.

Unionized or other categorized employees will be subject to the terms of their respective collective bargaining agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

## Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Director engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

1. If the person impacted wishes to make a report to the University or a formal complaint, the Director (or member of the Title IX Team) will assist them in doing so, if desired.
2. If they do not wish to do so, the Director determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
3. If a formal complaint is received, the Director assesses its sufficiency and works with the Complainant to make sure the complaint is correctly completed and signed. The Director ensures the Complainant is aware of the right to have an Advisor.
4. The Director then works with the reporting party to determine whether they prefer a **supportive and remedial** response, an **informal resolution**, or a **formal investigation and resolution process**.
5. If a supportive and remedial response is preferred, the Director works with the reporting party to identify their wishes, assess the request, and implement accordingly. No formal resolution process is initiated, though the reporting party can elect to initiate one later if desired.
6. If an informal resolution option is preferred (upon submission of a formal complaint), the Director assesses whether the complaint is suitable for informal resolution, which mechanism may be appropriate and available, and will determine if the Respondent is also willing to engage in informal resolution.

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<sup>29</sup> All references herein to the Director of Equal Opportunity and Title IX Coordinator also include a designee of the Director of Equal Opportunity and Title IX Coordinator.

7. If a formal investigation and grievance process is preferred (upon submission of a formal complaint), the Director determines if the misconduct alleged falls within the scope of this Policy, sexual harassment as defined by Title IX 34 CFR §106.45<sup>30</sup>, and/or other University conduct codes and procedures.
  - a. The Director will initiate the formal investigation and grievance process, directing the investigation to address:
    - i. an incident, and/or
    - ii. a pattern of alleged misconduct, and/or
    - iii. a culture/climate issue, based on the nature of the complaint.
  - b. The Director will then assess which University policies may apply, if any, which resolution process is applicable, and will refer the matter for investigation and resolution accordingly.

## 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 Director, 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 Director has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Director may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Director's decision will be based on the results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes. The Director must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a formal grievance process fairly and effectively. Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University 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 the University's obligation to protect its community.

When the Director executes the written formal complaint, the Director does 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 the University 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.

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<sup>30</sup> If the Director determines that Title IX does not apply in whole or in part, the Director will "dismiss" that aspect of the complaint, if anywhere Title IX does not apply. These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45. Dismissing a complaint under Title IX is procedural, and does not limit the University's authority to vigorously address misconduct (sexual or otherwise) that occurs outside the scope of Title IX, or from offering supportive measures. If Title IX does not apply, the Director assesses which University policies apply, and will refer the matter for resolution accordingly.

- In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options, 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. Delays may cause limitations on access to evidence, or present issues concerning the status of the parties.

## **Violence Risk Assessment**

In some cases, the Director may determine that a threat assessment or violence risk assessment should be overseen by the Behavioral Concerns Team (BCT) involving a student or by Human Resources comprising a faculty and staff member as part of the initial assessment. 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 violence risk assessment is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The violence risk assessment will determine whether the reported information and any other available information provides a rational basis for concluding that there is a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. More about the University's process for Violence Risk Assessment can be found in Appendix C.

## **Dismissal (Mandatory and Discretionary) for Sexual Harassment Complaints**

The University must dismiss a formal complaint or any allegation of Sexual Harassment under Title IX 34CFR §106.45, 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 Sexual Harassment as defined in the Policy herein above, even if proved.
2. The conduct of alleged Sexual Harassment did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent.
3. The conduct of alleged Sexual Harassment 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 the University.

The University may dismiss a formal complaint or any allegations as defined by this Policy therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Director 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 the University.
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit the University's authority to address a complaint with an appropriate resolution process and remedies. Upon any dismissal, the Director promptly sends 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, as described below.

## **Cross-Claims**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of cross-claims but uses an initial assessment, described above, to assess whether the allegations in the cross-claim are made in good faith. Cross-claims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after the resolution of the underlying initial allegation, in which case a delay may occur. Cross-claims may be made in good faith, but are, on occasion, also made for purposes of retaliation. Cross-claims made with retaliatory intent will not be permitted.

Cross-claims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Director. When cross-claims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

## Advisors In Hearings/University Process Advisor

This University process affords a form of indirect questioning that is required during a live hearing conducted by the parties' Advisors. Parties are not permitted to question each other or any witnesses directly. If a party does not have an Advisor for a hearing, the University 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 Advisor, but they may not proceed without an Advisor. If the party's Advisor does not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself.

The Equity Hearing Panel will also conduct extensive questioning of the parties and witnesses during the hearing. More information about the role and responsibilities of Advisors in meetings, interviews and at a hearing, and expectations for Advisors and parties can be found in Appendix B.

## University Resolution and Grievance Process Overview

The University resolution process offers two forms of resolution of formal complaints: (a) informal resolution and (b) formal resolution process, which involves a formal investigation and hearing before an independent panel. All University resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings following University policy.

### Informal Resolution Process

If an informal resolution option is preferred, the Director of Equal Opportunity and 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. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. If both parties agree, the parties involved may participate in an informal resolution.

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 Director of Equal Opportunity and Title IX Coordinator.

Informal resolution can include four different approaches as described below:

1. When the Director can resolve the matter informally by providing supportive measures (only) to remedy the situation.
2. When the parties agree to resolve the matter through an alternate resolution mechanism as described below, (e.g., including mediation, restorative practices, etc.), usually before a formal investigation takes place.
3. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

#### 4. Negotiated resolution.

In all cases, the Director will have the discretion to determine whether or not a referral for Informal Resolution or mediation is appropriate to the circumstances, and the particular form of Informal Resolution. The University generally will not pursue Informal Resolution in cases of sexual assault, domestic violence or dating violence, and stalking.

Before implementing the Informal Resolution, the University will provide the parties with:

- Written notice of the reported misconduct.
- The proposed form of informal resolution.
- Any remedial measures and sanctions that may result.
- Information regarding any records that will be maintained or shared by the University.

The Director will obtain voluntary, written confirmation that all parties wish to resolve the matter through an informal resolution before proceeding and will not pressure the parties to participate. Either party may withdraw from the informal resolution process once initiated. If informal conflict resolution measures prove unsuccessful, the complainant may choose to pursue formal resolution, as described below.

#### Alternate Resolution

Where appropriate an Alternate Resolution process can be used to resolve allegations of discrimination, harassment, sexual harassment, and other forms of sexual misconduct. The Director will consult with the Complainant and Respondent to determine appropriate methods of resolution. This may include counseling, training, mediation, restorative practices, or any other method appropriate to aid in resolving the complaint. All parties must agree and consent to the use of an Alternate Resolution mechanism.

The Director may look to the following factors to assess whether an Alternate Resolution is appropriate, and which form might be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties; · The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis, if any;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- 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 Director. The Director maintains records of any resolution that is reached, and failure to abide by the resolution

agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

## Respondent Accepts Responsibility For Alleged Violations

The Respondent may accept responsibility for all 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 resolution process will be paused; the Director will convene an Equity Hearing Panel to determine whether all parties and the University can agree on responsibility, sanctions, and/or remedies.

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. This result is not subject to appeal once all parties indicate their written consent to all agreed-upon terms of resolution. When the parties cannot agree on all terms of resolution, the resolution and grievance will resume at the same point where it was paused.

## Negotiated Resolution

The Director, with the consent of the parties and in consultation with the Office of Student Life, Provost, or Human Resources, as appropriate, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable once agreed upon.

## Formal Resolution Process

### Notice Of Investigation And Allegations

The Director will provide written *Notice of the Investigation and Allegations* (hereafter, "Notice") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview with the investigator, and to identify and choose an Advisor to accompany them. The Notice is also copied to the Complainant who is to be given advance notice of when the Notice will be delivered to the Respondent.

The Notice will include a meaningful summary of all 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 (known at the time), description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.<sup>31</sup> The Notice will also include a statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination and a statement that the University presumes the Complainant has brought the complaint in good faith unless and until the evidence supports a different determination.

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<sup>31</sup> The Notice of Investigation and Allegations will also include:

- Statement of Rights and Responsibilities of the Parties.
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor.
- Instruction to preserve any evidence that is directly related to the allegations.
- Statement about the University's policy on retaliation, expectations on privacy, and informing the parties that the University prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.
- Name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Director any conflict of interest that the Investigator(s) may have.

See <https://www.scu.edu/title-ix/resources> to download a copy of the Office of Equal Opportunity and Title IX Resource Brochure and for more information about resources available on- and off-campus for assistance and support.

Determinations of responsibility are made after the formal resolution process, and that the parties will be allowed to inspect and review all directly related and/or relevant evidence obtained during the review and comment period before a scheduled hearing before the Equity Hearing Panel.

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

## Appointment of Investigators

Once the decision to commence a formal investigation is made, the Director appoints an investigator (or investigation team / co-investigator) to conduct the inquiry usually within two (2) to three (3) business days of determining that an investigation should proceed. The investigator may be the University Title IX Investigator or an external investigator engaged by the University. All investigations will be thorough, reliable, impartial, prompt, and fair.

## Ensuring Impartiality

Any individual materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Director will vet the assigned Investigator(s) to 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 Director 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 source of the conflict of interest or bias is the Director, concerns should be raised with General Counsel.

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.

## Investigation Timeline

Investigations are completed expeditiously, generally within thirty (30) to sixty (60) business days. However, some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The University will make a good faith effort to complete investigations as promptly as circumstances permit, and the Director and/or Investigator(s) will communicate regularly with the parties to update them on the progress and timing of the investigation.

## Delays in the Investigation Process and Interactions with Law Enforcement

Individuals who believe that they have been subject to sexual violence have the right to proceed with both criminal and University complaints simultaneously. In such cases, the University may defer its investigation for a short time to avoid compromising the criminal process. Still, once it is clear that any such concerns have passed or can be mitigated, the University will promptly resume its investigation.

The Director will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. In all cases, the Director will ensure appropriate supportive measures are provided so that the individuals affected can continue to participate in and benefit from the University's programs and activities. University action(s) and 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.

## Steps In The Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information as necessary. Complainants and Respondents will have a full and fair opportunity, through the investigation and resolution process, to respond fully to the allegations, identify witnesses and questions they want to be asked of the other party/witnesses, provide evidence, and to thoroughly review and respond to all evidence on the record. The Investigator(s) will communicate regularly with the parties to update them on the progress and timing of the investigation.

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

1. 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 all witnesses and the parties.
2. Interview the Complainant and Respondent, and all available, relevant witnesses and conduct follow-up interviews as necessary; make a good faith effort to notify the parties of any meeting or interview involving the other party, in advance when possible.
3. When participation of a party or witness 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.
4. Ask and allow each party the opportunity to suggest witnesses and provide documentary evidence.
5. Ask and allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the investigation report which questions were asked, with a rationale for any changes or omissions.
6. 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.
7. During the investigation, identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated; the Notice may be amended with any additional or dismissed allegations.
8. Provide regular status updates to the parties throughout the investigation.
9. 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 before the conclusion of the investigation.
10. Complete the investigation promptly and without unreasonable deviation from the intended timeline.
11. Write a comprehensive draft investigation report fully summarizing the investigation, all interviews, and addressing all relevant evidence. The Investigator(s) will synthesize and assess evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
12. Share the draft report with the Director for their review; the Director will review the report and may request further investigation or review from the Investigator(s).
13. Provide the parties and their respective Advisors (if so desired by the parties) a secured electronic copy or hard copy<sup>32</sup> of the draft investigation report as well as an opportunity to inspect and review all of the

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<sup>32</sup> Any party asserting new evidence should clearly identify that evidence, including: identifying any new witnesses who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation; and explaining any new evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., emails, text messages, social media postings, etc.) understanding that the investigator lacks the power to subpoena evidence.

evidence obtained as part of the investigation that is directly related to the reported misconduct, including the evidence upon which the University does not intend to rely in reaching a determination. The parties will be afforded the opportunity to pose any follow-up questions for any witness and the other party; submit new or additional evidence or names of witnesses, request a follow-up interview with the Investigator(s) to clarify or provide additional information that such party believes is relevant to the investigation, or to seek clarification from the Investigator(s) on aspects of the investigation report.

14. Parties will have ten (10) business days to review and comment so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
15. Respond in writing to the parties' submitted responses, share the responses to the investigation report between the parties, ask follow-up questions of the parties and witnesses, as necessary, and review any new evidence submitted by the parties or gathered by the Investigator(s).
16. Incorporate relevant elements of the parties' written responses, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) will document all rationales for any changes to the investigation report made after the review and comment period.
17. Provide the final investigation report to the parties (and their Advisors) through secure electronic transmission or a hard copy at least ten (10) business days before a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

## Role and Participation of Witnesses in the Investigation

Both the Complainant and Respondent are asked and permitted to provide names of potential witnesses to the investigator. Witnesses may include individuals within and outside the University, including expert witnesses. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

The University protects the privacy of the parties involved in a University investigation and resolution process and prohibits retaliation against those who participate in the investigation process, including witnesses. This means that information about witnesses and what information they share is shared only with those individuals involved in the investigation and resolution of a complaint who need to know, including the parties to a complaint. However, the University cannot and does not guarantee confidentiality or anonymity to anyone participating in the investigation process, including Complainants and Respondents.

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (pandemics, study abroad, summer break, etc.) may require individuals to be interviewed remotely.

Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictates a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Though not preferred, witnesses may also provide written statements instead of interviews or choose to respond to written questions if deemed appropriate by the Investigator(s). If a witness submits a written statement but does not intend to be and is not present for cross-examination at a hearing, their written statement may still be considered as evidence.

## Recording Of Investigator Interviews

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

## Evidentiary Considerations In The Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties, or 3) questions and evidence about the Complainant's sexual

predisposition or prior sexual behavior unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior concerning the Respondent and are offered to prove consent.

## Referral To Equity Hearing Panel

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Director will refer the matter for a hearing before an independent decision-maker (hereafter, "Equity Hearing Panel").

The hearing cannot be less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Equity Hearing Panel—unless all parties and the Chair of the Equity Hearing Panel agree to an expedited timeline.

The Director will select an appropriate three (3) person Equity Hearing Panel from the Pool depending on whether the Respondent is an employee or a student.

## Live Hearing Format: Process A

The default formal resolution process is to hold a live hearing with direct cross-examination by the Advisor on behalf of a party. The procedures below (PROCESS A) apply to all formal complaints of sexual harassment (including sexual assault, domestic violence, dating violence, and stalking) involving students, staff, or faculty, and can be applied to formal complaints of protected class discrimination and harassment as defined in PART B.

The University will hold a live hearing carried out by the appropriate Equity Hearing Panel.

- The University will hold live hearings for the resolution of *all* formal complaints to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, or faculty members.
- Before the live hearing, the Chair of the Equity Hearing Panel will hold pre-hearing meetings and takes other steps to educate the parties about the process; define the hearing's scope; and promote an orderly, productive, and respectful hearing.
- The hearing will cover issues that are disputed and relevant to whether a Policy violation occurred. The parties are expected not to spend time on undisputed facts or evidence that would be duplicative.
- Live hearing procedures are further described below.

## Administrative Resolution Format: Process B

The Complainant and the Respondent have the right to request that all formal complaints of alleged discrimination, harassment, and sexual misconduct that may be in violation of this Policy be resolved by administrative resolution and decided by an Equity Hearing Panel. A Complainant and Respondent may alternatively pursue another form administrative resolution concerning protected class harassment or discrimination (as defined in PART B of this Policy) when jurisdiction does not fall within PROCESS A as determined by the Director). If either party contests (or is presumed to contest), the University will hold a live hearing. If neither party contests, then the investigation report and all evidence that is both relevant and directly related to the complaint will be provided to the Panel for their consideration.

The Panel reviews the final investigation report, evidence, all responses to the investigation report, statements of the parties, witness statements, communications, documents, and other evidence to verify that the investigation was thorough, reliable, fair, and impartial. If the record is determined to be incomplete, the Panel 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 Panel then makes the final determination based on the preponderance of the evidence. The Panel may invite and consider impact statements from the parties if and when determining the appropriate sanction(s), if any. The

Chair of the Panel then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties.

## Equity Hearing Panel

The Director will establish the appropriate hearing body drawn from pool used to constitute the Equity

Hearing Panel (hereafter, "Panel"). The formal grievance process relies on a pool of faculty and staff to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

### *Pool Member Roles*

Members of the Pool are trained annually, and may be called to serve in one of the following roles:

- To act as a University Process Advisor to the parties.
- To serve as a hearing facilitator, decision-maker, and Chair.
- To serve as an Appeal decision-maker.

Members of the pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases. The University can also designate permanent roles for individuals in the Pool, using others as substitutes, or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited for specific roles.

### *Panel Appointment*

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the pool are encouraged to contact the UCC.

- The Director, Student Affairs Committee, and Staff Affairs Committee, appoint/elect members of the Pool to formal grievances involving student and staff Respondents. The members of the Pool act with independence and impartiality.
- The Faculty Judicial Board is appointed per the provisions of the Faculty Handbook and University governance process. The Faculty Judicial Board acts with independence and impartiality to hear formal grievances involving faculty Respondents.<sup>33</sup>

### *Panel Training*

The Pool members receive comprehensive, trauma-informed, annual training that includes, but is not limited to:

- The scope of the University's Policy on Discrimination, Harassment, and Sexual Misconduct, and applicable definitions, response, investigation, and resolution procedures.
- How to conduct hearings that protect the safety of Complainants and Respondents and promote accountability.
- Awareness of implicit bias, disparate treatment, and impact.
- Reporting, confidentiality, and privacy requirements.
- Applicable laws, regulations, and federal regulatory guidance.
- How to implement appropriate and situation-specific remedies.

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<sup>33</sup> See Section 3.10.2, Faculty Handbook for Faculty Judicial Board Composition

- How to uphold fairness, equity, and due process.
- How to weigh evidence.
- How to conduct the questioning.
- How to assess the credibility.
- Impartiality and sound judgment.
- How to render findings and generate clear, concise, evidence-based rationales.
- The definitions of all offenses and relevant University policies.
- How to apply definitions used by the University concerning affirmative consent (or the absence or negation of consent) consistently, impartially, and by the Policy.
- How to conduct a 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.
- Any technology to be used at a live hearing.
- Issues of the relevance of questions and evidence.
- How to determine appropriate sanctions about all forms of harassment, discrimination, and/or retaliation allegations.
- Recordkeeping.

Specific training is also provided for members of the Equal Opportunity and Title IX Team, investigators, intake personnel, University Process Advisors, Panel members, Appeal Panel members, and chairs of Panels. All Equity Hearing Panel Pool members are required to attend these training sessions annually. Training materials are publicly posted here: <https://www.scu.edu/title-ix/training-prevention/titleix>

### *Panel Composition*

The Director will assemble an Equity Hearing Panel (or a three-member panel) from an appointed and elected Pool. The composition of the Panel is dependent on whether the Respondent is a student, faculty member, or staff member. With a panel, one of the three members will be appointed as Chair.

- **Student or Staff Respondent:** The Equity Hearing Panel Three (3) faculty or staff members who have been elected or appointed to the Pool by the UCC.
- **Faculty Respondent:** Three (3) faculty appointed to the Faculty Judicial Board pool.

All members of the Panel must be impartial and free from actual bias and conflict of interest, and must not have had previous involvement with the allegation. An alternate panel member will sit in throughout the process if needed or at the discretion of the Chair.

Those who are serving as Advisors for any party may not serve on the Panel in that matter. Members of the Equal Opportunity and Title IX team may not serve as Advisors or serve on an Equity Hearing Panel. The Director may serve as an administrative facilitator of the hearing unless there is a conflict of interest. Otherwise, a designee may fulfill this role.

### **Notice of Hearing**

The hearing will convene at a time determined by the Chair. No less than ten (10) business days before the hearing, the Director 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 of Hearing will contain:

- A description of the alleged violation(s), a list of all University policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Notice that the live hearing will occur with the parties located in separate rooms using technology that enables the Panel and parties to see and hear a party or witness answering questions.
- A list of all those who will attend the hearing, along with an invitation to object to any Panel member based on demonstrated conflict of interest or bias. This must be raised with the Director within three (3) business days after notice of the hearing is delivered.
- Information on how the hearing will be recorded and on access to the transcript of recording for the parties 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, and the party's or witness's testimony and any statements given before the hearing will not be considered by the Panel. 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.
  - Each party must have an Advisor present. There are no exceptions.
  - The party must notify the Director if they do not have an Advisor, and the University will appoint one.
- A copy of all the materials (investigation report, evidence appendix, policies, and procedures)<sup>34</sup> provided to the Panel about the matter unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Panel will review during any sanction determination.
- An invitation to contact the Director to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days before 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 before the end of the academic 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 the University and remain within the 60-90-day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

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<sup>34</sup> The final investigation report and evidence appendix may be shared using secured electronic means.

## Pre-Hearing Preparation

The Chair (or hearing facilitator) after any necessary consultation with the parties, Investigator(s) and/or Director, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days before the hearing.

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

The parties will be given a list of the names of Panel members. All objections to any member of the Panel must be raised in writing, detailing the rationale for the objection, and must be submitted to the Director as soon as possible and no later than three days after notice of hearing is delivered. Panel members will only be removed if the Director concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Director will give the Panel a list of the names of all parties, witnesses, and Advisors at least seven (7) business days in advance of the hearing. Any Panelist 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 Panelist is unsure of whether bias or conflict of interest exists, they must raise the concern to the Director as soon as possible.

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

## Pre-Hearing Meetings

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

The Chair will document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

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

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will provide those rulings to the parties prior to the hearing to assist in preparation for the hearing.

The Chair may consult with legal counsel and/or the Director, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will/will not be recorded.

## Live Hearing Procedures

At the hearing, the Panel has the authority to hear and make determinations on all allegations of discrimination, harassment, sexual harassment, and/or retaliation and may also hear and make determinations on any additional alleged University policy violations that have occurred in concert with the discrimination, harassment, sexual

harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy on Discrimination, Harassment, and Sexual Misconduct.

Participants at the hearing will include the Chair, the Panel members, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is a Respondent), Advisor to the parties (one each), any called witnesses, and anyone providing authorized accommodations or assistive services. The Chair will answer all questions of procedure.

**Alternative Arrangements:** Both parties have the right to a range of options for providing testimony and participating in the hearing process. Alternative arrangements must enable both parties and the hearing officers to hear and see each other. These arrangements include videoconferencing.

Anyone appearing at the hearing to provide information will respond to questions on their behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to answer specific questions from the Panel and the parties' Advisors, and witnesses will then be excused.

## Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Director may permit the investigation and/or hearings pertinent to each Respondent 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 concerning each alleged policy violation.

## Evidentiary Considerations by the Equity Hearing Panel

Any evidence that the Panel determines is relevant and credible may be considered. Evidence that will not be considered includes: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. 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 before the hearing for the consideration of the Panel(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Panel renders a determination based on the preponderance of the evidence: whether it is more likely than not that the Respondent violated the Policy as alleged.

## 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 a member of the Panel based on evidence of 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 Director will review and decide the challenge.

The Chair and/or hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other

administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Director.<sup>35</sup>

## Investigator(s) Presents the Final Investigation Report

The Investigator(s) will then 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 Equity Hearing Panel(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations. An investigator may not testify as to statements made by others, including the Complainant or Respondent if the individual who made a statement does not subject themselves to cross-examination.

## Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Panel and then by the parties through their Advisors ("cross-examination"). Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's Advisor and never by a party personally.

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) and the proceeding will pause to allow the Chair to consider it (and state it if it has not been said aloud). The Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance from 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 first screens the questions and will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has the 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 the Panel at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Director, 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.

### *Refusal To Submit to Cross-Examination and Inferences*

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

A party or witness may choose to attend the hearing and answer all, some, or none of cross-examination questions. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro

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<sup>35</sup> 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.

quo offer), then those statements are not precluded from admission. Statements can be relied upon when questions are posed by the Panel, as distinguished from questions posed by Advisors through cross-examination.

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

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

## **Deliberation, Decision-Making, and Standard of Proof**

The Equity Hearing Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. Deliberations are not recorded.

The standard of proof is "preponderance of the evidence." The Equity Hearing Panel must determine whether it is "more likely than not" that a University Policy violation occurred.

The hearing facilitator 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 Equity Hearing Panel(s) may then consider the previously submitted party impact statements in determining the 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 Equity Hearing Panel(s) may - at their discretion - consider the statements, but the statements are not binding.

The Equity Hearing Panel will review the statements and any pertinent conduct history provided by the appropriate administrator.<sup>36</sup> It will recommend the appropriate sanction(s) in consultation with other appropriate University administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Director of Equity and Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions, and/or recommendations. This report is typically submitted to the Director within three (3) business days of the end of deliberations, unless the Director grants an extension for compelling reasons. If an extension is granted, the Director will notify the parties.

## **Recording Hearings**

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

## **Notice Of Hearing Outcome**

Using the deliberation statement, the Director will work with the Chair to prepare a Notice of Outcome. The Director will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the Equity Hearing Panel's deliberation statement. The Notice of Outcome will be shared with the parties simultaneously.

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<sup>36</sup> An appropriate administrator from the Office of Student Life, Human Resources, or Office of the Provost.

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 University records, or emailed to the parties' university-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific University policies reported to have been violated, if any, including the relevant policy section, and will contain a description of the procedural steps taken by the University 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 the University is permitted to share such information under state or federal law; any sanctions issued which the University is allowed to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur before finalization, and the relevant procedures and bases for any available appeal options.

## Sanctions

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

- Nature, the severity of, and circumstances surrounding the violation(s).
- Respondent's disciplinary history.
- Previous allegations involving similar conduct.
- Need for sanctions/responsive actions to bring an end to the discrimination, harassment, sexual harassment, sexual violence, and/or retaliation.
- Need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, sexual harassment, sexual violence, and/or retaliation.
- Need to remedy the effects of discrimination, harassment.
- Retaliation against Complainant and the community.
- Impact on the parties.
- Any other information deemed relevant by the Equity Hearing Panel(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 action taken or sanctions imposed by external authorities.

## Student Sanctions/Responsive Measures

Below is a non-exhaustive list of common student sanctions that may be used singly or in combination. When a Respondent is both a student and an employee of the University, the Respondent may be subject to both the sanctions applicable to students and employees.

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.

- **Required Training or Education:** A mandate to participate in a training or educational program identified by the University to address the cause of inappropriate behavior. Sanctions imposed will be situational and dependent on the nature of the offense and appropriateness of the severity of the violation.
- **Probation:** A written reprimand for violation of the Student Conduct Code. Terms of the probation will be specified and may include denial of specified privileges, exclusion from co-curricular activities, non-contact orders, and/or other measures deemed appropriate.
- **Restriction:** A condition(s) imposed on a student that would specifically dictate and limit access to or participation in University facilities, programs, or activities.
- **Suspension:** Termination of student status for a definite 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 at the University.
- **Expulsion:** Permanent termination of student status, including revocation of rights to be on campus for any reason or attend or participate in the university-sponsored event, program, or activity. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

## Employee Sanctions/Responsive Measures

Below is a non-exhaustive list of common sanctions that may be used in upon students singly or in combination, for employees who violate this Policy:

- Warning - Verbal or Written
- Performance Improvement Plan
- Enhanced supervision, observation, or review
- Required counseling or coaching
- Required training or education
- Probation
- Denial of pay increase
- Loss of oversight or supervisory responsibility
- Demotion
- Transfer or reassignment
- Assignment to new supervisor
- Suspension with pay/ Suspension without pay
- Termination
- **Other Actions:** In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

## Withdrawal Or Resignation While Charges Pending

### Students

If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. Should a student Respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student. However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses and programs of Santa Clara University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

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

### Employees

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

An employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by Human Resources and/or Office of the Provost will reflect that status.

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

## Appeals

Any party may file a request for appeal submitted in writing to the Director within three (3) days of the delivery of the Notice of Outcome. A three-member appeal panel chosen from the Pool will be designated by the Director. The composition of the Appeal Panel is dependent on whether the responding party is a student, faculty member, or staff member.

- **Appeal Panel for a Student or staff member:** If the responding party is a student or staff member, the Appeal Panel will consist of three (3) faculty or staff members who have been elected or appointed to the Equity Hearing Pool.
- **Appeal Panel for Faculty:** If the responding party is a faculty member, the Appeal Panel will consist of three (3) faculty members elected (or appointed) to the Faculty Judicial Board.

No appeal Panel members will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The panel will select a voting Chair.

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.

**Grounds for Appeal:** Appeals are limited to the following grounds:

1. The substantive, procedural irregularity that affected the outcome of the matter.
2. 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.
3. The Director, the Investigator(s), or the member(s) Equity Hearing Panel(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 Director, and, when appropriate, the investigators and/or the Chair of the original Equity Hearing Panel. Notification will be made in writing and may be delivered to the parties by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties' University-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

All responses will be forwarded by the Chair to all parties for review and comment. The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties. Neither party may submit any new requests for appeal after this time period.

## Appeal Considerations

The Appeal Chair will collect any additional information needed, and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel. The Appeal Panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence.

- Appeal decisions 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 a compelling justification to do so.
- 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.
- An appeal is not an opportunity for an Appeal Panel to substitute their judgment for that of the original Equity Hearing Panel merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair may consult with the Director on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultations will be maintained by the Office of Equal Opportunity and Title IX by the record retention schedule.
- Appeals granted based on new evidence should ordinarily be remanded to the original Investigator(s) and/or Equity Hearing Panel(s) for reconsideration. Other appeals may be remanded at the discretion of Chair, in limited circumstances, decided on appeal.
- 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 a substantive, procedural error cannot be cured by the original Equity Hearing Panel (as in cases of bias), the appeal may order a new hearing with a new panel.

- The results of a remand to a new Equity Hearing Panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University 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.

## Appeal Outcome

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

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

## Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

## Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Director may implement additional long-term remedies or actions with respect to the parties and/or the campus community that is 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 accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

When no policy violation is found, the Director will address any remedies owed by the University to the Respondent to ensure no effective denial of educational or employment access.

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

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

## **Failure To Comply**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the Equity Hearing Panel (including the Appeal Panel). 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 the University. A suspension will only be lifted when compliance is achieved to the satisfaction of the Office of Student Life, Provost's Office, and Human Resources, as appropriate.

## APPENDIX A: RIGHTS OF THE PARTIES

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1. The right to an equitable investigation and resolution of all credible allegations of prohibited discrimination or harassment (if known) made in good faith to the University officials.
2. The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated University policies and procedures, and possible sanctions.
3. The right to timely written notice of any material adjustments to the allegations (e.g. additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
4. The right to be fully informed of relevant University policies and procedures as well as the nature and extent of all alleged violations.
5. The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
6. The right to not have any personally identifiable information released to the public, without consent provided, except to the extent permitted by law.
7. The right to be treated with respect by University officials.
8. The right to have the University policies and procedures followed without material deviation.
9. The right to not be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
10. The right to not be discouraged by the University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
11. The right to be informed by the University officials of options to notify proper law enforcement authorities, and/or other University officials.
12. The right to have allegations of violations of this Policy responded to promptly by the University officials.
13. The right to be informed of available supportive measures, such as counseling, advocacy, healthcare, legal, student financial aid, visa, and immigration assistance, or other services, both on campus and in the community.
14. The right to request a University-implemented no-contact directive (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing or other improper conduct that presents a danger to the welfare of the party or others.<sup>37</sup>
15. The right to privacy.
16. The right to be informed of available supportive measures in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report or investigation, either campus or criminal, needs to occur before this option is available. The right to have the University maintain such actions for as long as necessary

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<sup>37</sup> No Contact Directives are not part of the University disciplinary process, and they do not constitute a finding of or charge of any violation of University policy. Nor are they intended to be punitive in any way. Rather, they are intended to forestall future interactions that could be interpersonal conflicts or situations that may interfere with an individual's educational or work environment.

and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the accommodations or protective measures.

17. The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
18. The right to ask the Investigator(s) and Decision-Makers to identify and question relevant witnesses, including expert witnesses.
19. The right to provide the Investigator(s) and Decision-Makers with a list of questions that, if deemed relevant and appropriate by the Investigator(s) or Chair, may be asked of any party or witness.
20. The right to not have irrelevant prior sexual history or character admitted as evidence.
21. The right to know the relevant and directly related evidence obtained, and to respond to that evidence.
22. A right to a fair opportunity for the parties to provide the Investigator(s) with their account of the alleged misconduct, and have that account be on the record.
23. The right to receive a copy of the investigation report, including all factual analysis performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) days to review the report prior to the hearing.
24. The right to respond to the investigation report, including comments, providing any additional relevant evidence, and identifying any new witnesses after having the opportunity to review the investigation report, and to have those responses on the record.
25. The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of the hearing and that finding, where relevant.
26. The right to regular updates on the status of the investigation and/or resolution.
27. The right to have reports of alleged Policy violations addressed by staff in the Office of Equal Opportunity and Title IX, investigators, and Panel members who have received relevant annual training.
28. The right to have an Equity Hearing Panel that is not single-sex in composition. The right to preservation of privacy, to the extent possible and permitted by law.
29. The right to meetings, interviews, and/or hearings that are closed to the public.
30. The right to petition that any University representative in the process be recused on the basis of a disqualifying bias or conflict of interest.
31. The right to have an Advisor of their choice, or to have an Advisor appointed by the institution to accompany and assist the party in all meetings and/or interviews associated with the investigation and resolution process.
32. The right to have an Advisor conduct cross-examination of the other party and witnesses at a grievance hearing, if any.
33. The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence.
34. The right to be present via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
35. The right to submit an impact statement in writing to be by the Panel following a determination of responsibility of any allegation, but prior to sanctioning.

36. The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefore (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
37. The right to be informed in writing of when a decision by the University is considered final and any changes to the sanctions that occur before the decision is finalized.
38. The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
39. The right to a fundamentally fair resolution as defined in these procedures.

# APPENDIX B: ROLE AND EXPECTATIONS OF ADVISOR

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## Right To An Advisor

- The parties may each have an Advisor<sup>38</sup> of their choice present with them for all meetings, interviews, and at a formal grievance hearing 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>39</sup> Parties also have the right to choose not to have an Advisor in the initial stages of the investigation resolution process, prior to a formal grievance hearing.
- The parties are expected to inform the Director of Equal Opportunity and Title IX (hereafter referred to as the "Director") of the identity of their Advisor at least one (1) business day before the date of the scheduled interview or meeting (or as soon as possible if a more expeditious meeting is necessary or desired). 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 provide timely notice to the Director if they change Advisors at any time.
- Similarly, parties are expected to inform the Director of who their hearing Advisors will be, at least three (3) business days before the hearing. Advisors are subject to the same University policies and administrative rules, whether they are attorneys or not.
- The University 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, the University is not obligated to provide an attorney.

## Support Person

- The parties are encouraged to seek guidance and support from other individuals of their choosing for guidance and support throughout the process.
- A support person or advocate who is not designated as the party's "Advisor" may not attend interviews or be present at a formal grievance hearing.

## 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 reporting, investigation and/or informal or formal resolution process.
- The parties may choose Advisors from inside or outside of the University community.
- 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 Equity Hearing Panel.
- If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

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<sup>38</sup> Title IX permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>39</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 member of the Equal Opportunity and Title IX Team who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

## University Process Advisor

- The Director will also offer to assign an Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available, the University Process Advisor will be trained by the University and be familiar with the University's resolution process.
- University Process Advisor can provide clarification about University policies and procedures, and may attend all meetings, investigation interviews, and resolution proceedings, at which their advisee is entitled to be present, and review documents and materials from the investigation, the draft and final investigation report, and any relevant documents related to the outcome resolution process. A University appointed Advisor cannot provide legal advice.

## 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.
- Where applicable under state law or University policy, Advisors who are attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings.
- Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

## Sharing Information with the Advisor and Privacy

- The University expects that the parties may wish to have the University 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.
- The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Director or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.
- If a party requests that all communication be made through their attorney Advisor, the University will not comply with that request.

## 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 University. The University 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 the University's privacy expectations.
- The University's communication protocol with the Complainant or Respondent does not permit going through a representative or other intermediary because of the importance of direct communication with the Complainant or Respondent during the investigation and resolution process as described in the Policy.
- Parties may share information directly with their Advisor or other individuals if they wish. The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. An Advisor may be copied on any correspondence or communication related to the investigation and resolution process at the direction of the Complainant or Respondent.

- FERPA Waivers: Students who participate in the investigation process with an Advisor must complete a Family Education Rights and Act (FERPA) waiver prior to participating in the University investigation and resolution process.

## Expectations Of Advisors

- Advisors should assist a party with preparing for any meeting or interview that is associated with the investigation, hearing, and/or appeal process, including accompanying the party to investigation interviews, pre-hearing conferences, and the equity hearing, and are expected to advise ethically, with integrity, and in good faith.
- The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay, in the University's sole discretion. The University 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.
- Advisors will be afforded an opportunity to meet in advance of any interview or meeting with the Director, Investigator(s), and Chair of the Equity Hearing Panel (or Appeal Panel) to ask questions, address concerns, and seek clarification on University process and procedures.
- All Advisors are subject to the same University policies and procedures, whether they are attorneys or not. The University 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 the University's privacy expectations.
- The parties are expected to 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 quietly by passing notes during any resolution process meeting or interview, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their Advisors should ask for breaks to step out of meetings to allow for private consultation.
- Advisors who act outside of their role or who impede or obstruct proceedings, who disseminate information to third party individuals or organizations, who represent themselves to others who are engaged in our process as having any other role than an Advisor in the process may be excluded from investigation and resolution proceedings.
- Any Advisor who oversteps their role as defined by this policy will be warned once and only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the Advisor will be asked to leave the meeting. When an Advisor is removed from a meeting, that meeting will typically continue without the Advisor present. Subsequently, the Director will determine whether the Advisor may be reinstated or replaced by a different Advisor.

## Expectations During a Hearing

- In accordance with this Policy and the U.S. Department of Education regulations applicable to Title IX, cross-examination is permitted during the hearing and must be conducted by the parties' Advisors. Extensive questioning of the parties and witnesses will also be conducted by the decision-maker(s) during the hearing.
- The parties are not permitted to directly question each other or any witnesses.
- The Advisor may not provide testimony, and may not speak on behalf of the advisee during cross-examination.

- If a party does not have an Advisor for a hearing, the Director will appoint a trained Advisor aligned with the party for the limited purpose of conducting any cross-examination. 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 cross-examination, the party may identify an alternative Advisor, or the University will appoint an Advisor to conduct cross-examination, regardless of the participation or non-participation of the advised party in the hearing, itself.

## Assistance in Securing an External Advisor

Parties can find legal assistance through a number of community resources listed below. A party can choose to hire independent legal counsel to serve as an Advisor. In that event, the individual is solely responsible for any fees related to the representation.

Santa Clara County Bar Association Lawyer Referral Service is the largest lawyer referral service in Silicon Valley. This is a public service provided by the Santa Clara County Bar Association.

- Website: <https://sccbba.community.lawyer>
- Phone: (408) 971-6822

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

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

For representation, 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 Times Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

## APPENDIX C: VIOLENCE RISK ASSESSMENT

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In some cases, the Director of Equal Opportunity and Title IX Coordinator (hereafter referred to as the "Director") may determine that a threat assessment or violence risk assessment should be overseen by the Behavioral Concerns Team (BCT) involving a student or by Human Resources involving a faculty and staff member as part of the initial assessment. 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 violence risk assessment is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The violence risk assessment will determine whether the reported information and any other available information provides a rational basis for concluding that there is a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

The outcome of the Violence Risk Assessment will be based upon a review of the totality of the known circumstances, and will be guided by a consideration of any of the following factors:

- Whether the Respondent has threatened to commit violence or any threat to physical health/safety.
- Whether aggravating circumstances or signs of violence, threats of violence, or other predatory behavior are present.
- Whether there is evidence of violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
- Whether the report reveals a pattern or potential predatory conduct or to assess/identify grooming behaviors.
- Whether the Director of Equal Opportunity and Title IX should pursue/sign a Formal Complaint absent a willing/able Complainant.
- Whether Alleged conduct involved physical violence.
- Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18).
- Whether to permit a voluntary withdrawal of the Respondent.
- Whether it is reasonable to try and resolve a complaint through informal resolution, and what modality might be most appropriate.
- Whether a Clery Act Timely Warning/Trespass Order/Persona-non-grata is needed.

A violence risk assessment 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 violence risk assessment 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.

A violence risk assessment requires specific training and is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, members of the University Behavioral Concerns Team (BCT) in matters involving students, or by trained external parties identified by Human Resources.

Where a Violence Risk Assessment is required by the Director, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

In all cases, the initial report, the assessment, and the determinations of the BCT or HR will be documented and retained by the University in accordance with applicable law.

Following the completion of the violence risk assessment, the BCT or Human Resources team will reconvene as necessary to continue to evaluate whether any new or additional information received triggers any further obligation(s) under the Clery Act or with respect to any child protective service agency, and will direct the Director to take such further actions, as necessary.