

## Academy of Art University's Policy on the Prohibition of Sexual Misconduct

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Title IX prohibits the Academy of Art University (“University”) from discriminating on the basis of sex in the administration of the University’s programs and activities, including admissions and employment. The Academy of Art University does not discriminate on the basis of sex in its educational programs or activities. Sexual harassment and sexual violence are types of prohibited sex discrimination. Sex discrimination can also include sexual assault, dating violence, domestic violence, and stalking. The Academy of Art University’s prohibition on sex discrimination also includes discrimination based on one’s gender identity or expression, one’s transgender status, pregnancy or parental status.

The Academy of Art University reaffirms its commitment to compliance with the stipulations contained in the Violence Against Women Act (VAWA) and Campus SaVE Act to maintain a campus environment emphasizing the dignity and worth of all members of the University community. The following people have been designated to handle Title IX inquiries and complaints:

Lynda España, Title IX Coordinator  
(415)618-3813  
Lespana@academyart.edu

Brian Brashears, Deputy Title IX Coordinator  
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The University's primary concern is the safety of members of the campus community. The use of alcohol or drugs never makes the complainant at fault for sexual violence. Students or employees should not be deterred from reporting incidents of sexual violence as they will not be disciplined for related violations of drug, alcohol, or other University policies except in extreme circumstances.

The process outlined below is designed to carry out the University's responsibilities under Title IX of the Education Amendments of 1972, the Violence Against Women Act, the Campus SaVE Act and 34 CFR part 106. This process is designed to respond to reports of sex discrimination including sexual harassment, sexual assault, domestic violence, dating violence, and stalking. The procedures outlined below are also designed to address all instances in which an Academy of Art University student or employee, while enrolled or employed at the University, is alleged to have engaged in such prohibited conduct.

## **B. Definitions**

There are numerous terms used by the Academy of Art University in our policy and procedures outlined below. These include the following:

**Complainant:** Individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** Individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education programs or activities without unreasonably burdening the other party. This includes measures designed to protect the safety of all parties, the University's educational environment and to deter sexual harassment.

Supportive measures may include extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus safety escort services, mutual restrictions on contact between the parties, changes to housing locations or arrangements, leaves of absence, increased monitoring of certain areas of campus and other similar measures. Any supportive measures provided to the complainant or respondent will remain confidential to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

**Education Program or Activity:** Includes locations, events or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurred. This includes any building owned or controlled by a student organization that is officially recognized by the University.

**Consent:** An informed, affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity.

- Consent must be voluntary, clear and knowing, and given without coercion, force, threats, or intimidation. Consent requires positive cooperation, through words and actions, in a particular sexual act, or expression of intent to engage in that sexual act through the exercise of free will. Lack of protest or resistance does not mean consent, nor does silence mean consent.
- Consent must be ongoing throughout a sexual activity and can be revoked at any time. Consent can be withdrawn or revoked at any time. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity. There must always be mutual and affirmative consent to engage in sexual activity. Consent to a sexual act may be withdrawn or revoked at any time, including after penetration. The complainant's request for the respondent to use a condom or birth control does not, in and of itself, constitute consent. Once consent is withdrawn or revoked, the sexual activity must stop immediately.
- It shall not be a valid excuse that the respondent believed that the complainant affirmatively consented to the sexual activity if the respondent knew or reasonably should have known that the complainant was unable to consent to the sexual activity due to incapacitation. Consent cannot be given by a person who is incapacitated. For example, a person cannot give consent if s/he is asleep, unconscious or coming in and out of consciousness. A person is incapacitated if s/he lacks the physical and/or mental ability to make informed, rational judgments. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an intoxicated person (as a result of using alcohol, medication or other drugs) is incapacitated depends on the extent to which the alcohol or other drugs impact the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments. A person with a medical, physical or mental disability may also lack the capacity to give consent.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered include whether the person knew, or whether a reasonable person in the accused's position should have known, that the other party did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- It shall not be a valid excuse to alleged lack of consent that the respondent believed that the complainant consented to the sexual activity under either of the following circumstances:
  - (A) The respondent's belief in affirmative consent arose from the intoxication or recklessness of the accused; or

- (B) The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant affirmatively consented.

**Remedies:** Remedies may include making supportive measures more permanent, maintenance of no contact orders, restrictions on either party requiring them to avoid certain locations or certain activities. Remedies will be designed to restore or preserve equal access to the University's education programs or activities.

**Days:** Any reference to the amount of days in this policy refers to calendar days, excluding holidays on which the University is closed.

**Risk Reduction:** Procedures or programs designed to decrease perpetration and bystander inaction; increase empowerment for victims in order to promote safety; and help individuals and communities address conditions that facilitate violence.

**Bystander intervention:** Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene in situations of potential harm when there is a risk of sexual misconduct against another person. Effective bystander intervention training prepares participants to recognize situations of potential harm, overcome barriers to intervening, identify safe and effective intervention options and take action.

**Primary prevention programs:** Programming, initiatives and strategies intended to stop sex discrimination, sexual assault, domestic violence, dating violence and stalking before it occurs and to prevent initial perpetration or victimization through the promotion of positive and healthy behaviors and beliefs. Efforts to change behavior and social norms, promote healthy relationships, healthy sexuality and egalitarian gender roles, and to understand risk factors and protective factors for bystander inaction are all examples of primary prevention.

**Ongoing Awareness and Prevention Campaigns:** Campaigns that are sustained over time focusing on increasing awareness or understanding of topics relevant to sex discrimination, sexual assault, domestic violence, dating violence and stalking prevention. These programs will occur at different levels throughout the institution (i.e. faculty, athletics, incoming students) and will utilize a range of strategies. Ongoing awareness and prevention campaigns may include information about what constitutes sex discrimination, sexual assault, domestic violence, dating violence and stalking, changing social norms, enhancing understanding of consent, and advancing pro-social behaviors of individuals and communities. Effective ongoing awareness and prevention campaigns will include developmentally appropriate content for the specific audience and their knowledge and awareness level and provide positive and concrete ways for individuals to get involved. These efforts can include campus community-wide mobilizations as well as targeted audience specific programming (including both students and employees). Other examples include awareness month campaigns, rallies or marches, informational poster campaigns, resource websites, and educational programming that focuses on sharing resources and information about these issues.

### **C. Prohibited Conduct:**

Students or employees engaging in the following types of conduct may be subject to discipline, up to and including termination or dismissal from the University, after a Formal Complaint has

been filed and upon completion of the grievance process outlined in sections H and I of this policy.

**Sexual Harassment:** Conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education programs or activities; or
- (3) Sexual assault, dating violence, domestic violence or stalking as defined within this policy.

**Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sex offenses are any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling:** A form of sexual assault. Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental capacity.

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

**Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in California is age 18.

**Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under California law; or by any other person against an adult or youth victim who is protected from that person's acts under California law.

Factors that may determine whether persons are cohabiting include, but are not limited to: (1) sexual relations between the parties while sharing the same living quarters; (2) sharing of income or expenses; (3) joint use or ownership of property; (4) whether the parties hold themselves out as spouses or domestic partners; (5) the continuity of the relationship; and (6) the length of the relationship.

**Dating Violence:** Violence committed by a person who is 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 and respondent's statements 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. Dating violence does not include acts covered under the definition of domestic violence.

**Stalking:** Engaging in a course of conduct direct at a specific person (when based on gender or sex) that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) Suffer substantial emotional distress.

A 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. A course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.

**Retaliation:** No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing under this part. If the University has evidence to prove that a party made a materially false statement in bad faith and takes disciplinary action against that student, that will not constitute retaliation for purposes of this section.

Retaliation includes, but is not limited to, threats, reprisals, intimidation and/or adverse educational actions against a person based on their report of sexual misconduct or participation in an investigation, report or disciplinary process.

#### **D. Making a Title IX Report**

If a report of sexual misconduct is made to the University, the procedures outlined below will be followed. The University generally will not notify parents or legal guardians of a sexual violence report unless the complainant is under 18 years old or the complainant provides the University with written permission and requests the University do so. If there is a health and safety issue (e.g., immediate threat to self or others), the University may notify parents or legal guardians, regardless of the complainant's age, as allowed under the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g). Employees who are informed of a potential Title IX issue, should notify the Title IX Coordinator as outlined in the University's employee handbook.

The procedures set forth below are intended to afford all complainants and respondents a prompt, fair and impartial process for resolving a report of sexual harassment, to maintain confidentiality and fairness consistent with applicable legal requirements, and to impose appropriate sanctions and remedies as required.

#### **Reporting Options**

##### **Report to the Title IX Coordinator**

A Title IX report can be made with the Title IX Coordinator or Deputy Title IX Coordinator. Once the Title IX Coordinator receives a report alleging sexual harassment, the Title IX Coordinator

will promptly contact the complainant to discuss the availability of supportive measures. The Title IX Coordinator will consider the complainant's wishes with respect to implementing the supportive measures and will inform the complainant of the availability of supportive measures with or without the filing of a Formal Complaint. The Title IX Coordinator will also inform the complainant of their option to file a Formal Complaint and will explain the Formal Complaint process.

### Formal Complaint

A formal complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate an allegation of sexual harassment. Formal Complaints can only be made by complainants who are participating (or attempting to participate) in an Academy of Art University education program or activity or by the Title IX Coordinator. Formal Complaints can only be filed with the Title IX Coordinator by mail, by email that contains the complainant's digital or physical signature (or otherwise indicates the complainant is the person filing the formal complaint), or by meeting in person (via Zoom). Formal Complaints may be consolidated when there are allegations of sexual harassment against more than one respondent or by more than one complainant against one or more respondents. Formal Complaints can also be consolidated where the allegations of sexual harassment arise out of the same facts or circumstances.

The Title IX Coordinator may move forward with a Formal Complaint, despite the Complainant's wishes, if the Title IX Coordinator finds that the investigation is necessary under the particular circumstances or is necessary to protect the University's educational community.

Below is the contact information for the Title IX Coordinator. In the event the Title IX Coordinator is absent or unavailable, students may contact the Deputy Title IX Coordinator:

Lynda España, Title IX Coordinator

[Lespana@academyart.edu](mailto:Lespana@academyart.edu)

(415)618-3813

Brian Brashears, Deputy Title IX Coordinator

180 New Montgomery B-83

San Francisco, CA 94105

(415)618-8577

[BBrashears@academyart.edu](mailto:BBrashears@academyart.edu)

Employees may contact:

Tori Toler

Vice President, Human Resources

[TToler@academyart.edu](mailto:TToler@academyart.edu)

(415)618-8260

The University will also:

- Inform complainants of their right to simultaneously report a crime to Campus Safety and/or local police and provide complainants with assistance if desired.
- Provide supportive measures as reasonably available, regardless of whether the complainant chooses to report sexual violence to Campus Safety or local police.
- Assist complainants and respondents in accessing available advocacy, University support, counseling, medical/health or mental health services, and off-campus legal assistance;
- Work with the San Francisco Police Department to enforce any restraining orders issued as a result of a report of sexual violence, domestic violence, sexual assault or stalking.

#### Report to Campus Safety or Local Law Enforcement

Any student who has experienced domestic violence, dating violence, sexual assault or stalking may make a report to Campus Safety or local law enforcement. Campus Safety will also notify the Title IX Coordinator of the complaint. The University will not have *actual knowledge* of a complaint until the matter is reported to the Title IX Coordinator or Deputy Title IX Coordinator as these two positions are the only officials who have the authority to institute corrective measures on behalf of the University.

After an incident of sexual assault, dating violence and/or domestic violence, the complainant should consider seeking medical attention as soon as possible at a medical facility. Although the University strongly encourages all members of its community to report these types of matters to law enforcement, it is the student's choice whether to make such a report. Students have the right to decline involvement with the police. Reporting to local law enforcement directly will not provide the University with actual knowledge unless a complaint is also filed with the University's Title IX Coordinator.

Campus Safety will assist any complainant with notifying local police if they so desire. The San Francisco Police Department may also be reached directly by calling 415-553-0123. Additional information about the San Francisco Police Department may be found online at <http://sf-police.org>. Students have a right to file a complaint with governmental authorities, including the police and a Title IX complaint with the University simultaneously.

The Campus Safety Department will assist any complainant with obtaining and enforcing a no contact order or restraining order and will inform complainants of that right. Complainants may contact the San Francisco Police Department or Campus Safety for information about available options. Campus Safety can assist with no contact orders through the University and will assist with the enforcement of those orders at the University or at affiliated University activities, but cannot issue orders of protection such as a restraining order. Violations of no contact orders issued by the University will constitute related violations that may lead to disciplinary action.

Students can also contact the Department of Education, Office of Civil Rights to file a report. Reporting to the Department of Education directly however will not provide the University with actual knowledge unless a complaint is also filed with the University's Title IX Coordinator.



### **Timeline for Reports**

Reports of domestic violence, dating violence, sexual assault, sex discrimination or stalking should be made as soon as possible. As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution by local authorities, disciplinary proceedings, or obtaining protective orders related to the incident more difficult.

### **E. Confidentiality**

Unless a Formal Complaint is filed, the Title IX Coordinator does not need to notify the respondent of the name of the complainant for the purposes of providing supportive measures, unless the particular supportive measures affect the respondent in a way that requires the respondent to know the identity of a complainant (i.e. mutual no contact order). Any supportive measures provided to the complainant or respondent will be kept confidential to the extent it will not impair the ability of the University to provide such measures. In some cases, the Title IX Coordinator may need to disclose some information about a complainant to another University employee or Department in order to provide the necessary supportive measures. The Title IX Coordinator will make this determination and will explain what information will be shared, who the information will be shared with and the reason(s) for sharing that information.

If a Formal Complaint alleging sexual harassment is filed, each party's identity will need to be disclosed to the other so both parties may meaningfully participate in the grievance process. This information will be shared between the parties in the written notice of allegations. No further personally identifiable information, such as addresses or student identification numbers will be included in the written notice.

Personal identifiable information about the complainant and respondent will only be shared with persons with a specified need to know or who are investigating/adjudicating the complaint or delivering resources or support services to the complainant and respondent. The University does not publish the name of either party nor does it maintain identifiable information regarding either party in the campus police department's Daily Crime Log or online.

The University is required by the federal Clery Act to report certain types of crimes (including certain sex offenses) in statistical reports. While the University will report the type of incident in the annual crime statistics report known as the Annual Security Report, the parties' names or other personally identifying information will NOT be revealed.

## **F. Emergency Removal**

A respondent (whether they are an employee or student) may be removed from the University on an emergency basis. Prior to removing a respondent, the University will undertake an individualized safety and risk analysis. If the University determines that an immediate threat to the physical health or safety of any student or other individual (arising from the allegations of sexual harassment) justifies removal, the University will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal through a virtual meeting with the Chief Academic Officer. Non-student employee respondents may also be placed on administrative leave pending the outcome of the grievance process outlined below.

## **G. Informal Resolution Process**

After a Formal Complaint is filed, the parties may be offered the opportunity to engage in an informal resolution process which includes the opportunity for mediation. The informal resolution process can be used at any time after a formal complaint is filed and prior to reaching a determination regarding responsibility. The informal resolution process is never an option to resolve allegations that an employee sexually harassed a student.

Parties will not be required to participate in the informal resolution process. The parties will be provided a written notice that includes information regarding the allegations as well as the requirements of the process. The University will also obtain the parties' voluntary, written consent to the informal process. An alternative resolution process is *only* an option if *both* the complainant and respondent agree to participate, after receiving a full disclosure of the allegations and their options to follow the grievance process, as described below. Once both parties agree to the informal resolution process in writing, a mediation meeting with the Title IX Coordinator will be scheduled within 10 days. The complainant and respondent each have the right to withdraw from the informal resolution process and to proceed with a formal grievance process at any time prior to resolution.

The alternative resolution process will result in a letter confirming the outcome of the resolution process, whether an agreement is reached or not. This letter will be sent within 3 calendar days of the mediation meeting. If no agreement is reached, the matter will proceed through the formal grievance process. If applicable, any remedies, supportive measures and/or disciplinary sanctions agreed to during the resolution will have the same force and effect as though they were imposed following a formal investigation and hearing. If both parties jointly agree on an outcome after the informal resolution process neither party is permitted to resume a formal complaint arising from the same incident nor can the matter be appealed. Records will be maintained by the Title IX Coordinator only and will only be shared with other University personnel as needed to carry out the terms of the agreement.

## **H. Formal Grievance Process to Address Formal Complaints**

The formal grievance process consists of a prompt, fair and impartial process to address formal complaints filed with the Title IX Coordinator. The grievance process will treat respondents and complainants equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. This grievance process will be followed after a Formal Complaint has been filed and before any disciplinary sanctions are taken against the respondent.

The grievance process requires an objective evaluation of all relevant evidence including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent or witness. The Title IX Coordinator, investigator and any decision-makers will not have a conflict of interest or bias for or against complainants or respondents, in general or on an individual basis. The respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The grievance proceedings shall include a prompt, fair, and impartial investigation and resolution to formal complaints. Such proceedings shall be conducted by officials who receive annual training on issues related to these offenses as well as how to conduct an investigation and hearing process that protects the safety of students while promoting a fair and equitable process.

The University's goal is to complete all investigations and decisions regarding appropriate remedies and sanctions, as well as determinations of appeals, within 90 days of the University's receipt of a Title IX Complaint. In the event of a temporary delay of the grievance process or an extension of time frames for good cause, the University will provide the complainant and respondent with written notice of the delay or extension and the reasons for the action. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other possible considerations.

For students, sexual harassment is a violation of the Student Code of Conduct and this policy and may result in disciplinary action. Employees who violate this policy may also be subject to discipline, up to and including termination of employment. Acts constituting sexual assault, domestic violence, dating violence, and stalking may also subject the respondent to criminal and civil penalties under federal and state law.

### **Formal Investigation**

If a formal complaint is filed with the Title IX Coordinator, an investigation will be initiated and an investigator will be assigned. The investigator will receive annual training on how to conduct an investigation, issues of relevance and how to create an investigative report that fairly summarizes relevant evidence. Investigators will also be trained on the definition of sexual harassment, the scope of the University's education programs or activities and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest and bias.

The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility is on the University, rather than the parties. This excludes information regarding a party's records maintained by a physician, psychiatrist or psychologist related to the party's treatment, unless the University obtains the party's voluntary, written consent. (see 34 CFR section 106.45(b)(5)(i)). The parties will have an equal opportunity to present witnesses (including experts) and evidence (both exculpatory and inculpatory). Parties will not be restricted from discussing the allegations under investigation or from gathering and presenting relevant evidence.

Both parties will be permitted to have an advisor present during the investigation who may be, but is not required to be, an attorney. **Advisors attending investigations may not speak on behalf of their advisee but may only consult and advise the party they are attending with.**

### **Notice of Allegations**

Both parties will be notified of their rights and responsibilities throughout the formal investigation process. Upon the receipt of a Formal Complaint, an explanation of rights and responsibilities will be provided to both the complainant and the respondent and will include information or statements regarding the following:

- A copy of the University's policy outlining both the formal grievance process and the informal resolution process.
- Information regarding the conduct allegedly constituting sexual harassment including sufficient details known at the time, such as the identities of the parties involved in the incident, if known, and the date and location of the alleged incident, if known. Both parties will be provided with sufficient time to prepare a response before an initial interview.
- Written notice of the date, time, location, participants and purpose of the investigative interview with sufficient time for the party to prepare to participate.
- A statement that the respondent is presumed "not responsible" for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process.
- The responsibility of both the complainant and respondent to be truthful in the investigation. Parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
- The right to participate in the investigation by providing additional relevant information or potential witnesses.
- The right to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely on in reaching a determination of responsibility.
- Information regarding possible sanctions or protective measures the University may impose following the final determination.
- The right of either the complainant or respondent to decline to give a statement about the allegations.
- The responsibility not to retaliate against or intimidate any individual who has filed a Title IX complaint or who has participated in the investigation process.
- The right of participants to be reasonably protected from intimidation or harassment.
- Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and may be present during each step in the grievance process.
- The party's right not to be disciplined for drug or alcohol offenses related to an incident of alleged sexual misconduct, except in extreme circumstances (i.e. an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.)

If, during the course of the investigation, the University decides to investigate allegations about the complainant or respondent, that are not included in the initial notice, the University will provide notice of the additional allegations to the parties whose identities are known.

### **Dismissal of a Formal Complaint**

The University will investigate the allegations in a Formal Complaint. However, if the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in this policy, even if proved, did not occur within the University's education program or activity or did not occur against a person in the United States, then the University **must** dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. The complaint may however, be pursued through the Student Code of Conduct, pursuant to the process outlined in Addendum A of this policy. The Title IX Coordinator will decide, based on the circumstances, whether the matter will proceed under the process outlined in Addendum A.

A formal complaint may also be dismissed if a complainant notifies the Title IX Coordinator, at any time during the investigation or hearing, that they would like to withdraw the formal complaint or any allegations contained therein; if the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or the allegations contained in the complaint.

Any dismissal of a formal complaint will be communicated simultaneously to both the complainant and respondent in writing and will outline the reasons for dismissal.

### **Standard of Review**

All determinations in the investigation and hearing process, for both student and employee respondents, shall be based on a "preponderance of the evidence" standard (i.e. whether it is more likely than not the alleged misconduct occurred).

### **Privileged Communications**

The University will not allow, rely upon or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### **Completion of Investigation**

Once the investigator has had the opportunity to speak with both the complainant and respondent, any witnesses offered by either party and review all evidence associated with the case, the preliminary Investigative Report will be compiled. The Investigative Report will fairly summarize the facts and evidence gathered throughout the investigation and will include summaries of each interview conducted and copies of documents or materials gathered in the investigation.

The Investigative Report will be made available to the complainant and respondent for inspection and review. The investigation will include any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely on in reaching a determination regarding responsibility. This evidence will include inculpatory and exculpatory evidence, whether provided by the parties or a witness, so that each party can meaningfully respond to the evidence prior to conclusion of the

investigation. The University will send each party and the party's advisor, if any, the evidence and Investigative Report for inspection and review in an electronic format. The parties will have 10 calendar days to submit a written response. If a written response is provided, the investigator will review each party's response and will consider this information when completing the investigation.

Once the investigator receives any written responses and concludes the investigation, the investigator will finalize the Investigative Report. The Investigative Report will fairly summarize relevant evidence and, at least 10 days prior to a hearing, will be sent to each party and the party's advisor, if any, in an electronic format for their review and written response.

## **I. Live Hearing Procedures**

### **Hearing Panel**

The decision-maker in the Title IX process will be a hearing panel of three (3) University employees, from various departments. Each member of the Hearing Panel will be trained on the definition of sexual harassment, the scope of the University's education program or activity, how to conduct a hearing and how to serve impartially. Decision-makers will be trained on avoiding pre-judgment of the facts at issue, conflicts of interest, bias and issues of relevance related to questions and evidence submitted during the hearing. Decision-makers will also receive training on any technology to be used at a live hearing. The Title IX Coordinator will select officers to serve on the Hearing Panel, based on availability, and will inform the parties of the names and position of each panel member. Each party has the opportunity to object, in writing, to the selection of hearing officers on the panel. Any such objection shall be submitted in writing to the Title IX Coordinator within 3 business days of the date the parties were made aware of the Hearing Panel members. The proposed hearing panel members shall review any such objection. Once the Hearing Panel is selected, the Panel will be provided a copy of the Investigative Report and any evidence included as part of the investigation.

The Title IX Coordinator shall serve as the hearing coordinator and will *only* assist with logistical issues and maintain documentation of the hearing. The Title IX Coordinator will not participate in the hearing or the decision of the panel.

### **Hearing Logistics**

The complainant and the respondent shall each have the opportunity to attend the hearing. The hearing will be closed to the general student population and public. Both parties will be provided meaningful access to the Investigative Report at least 10 calendar days prior to the hearing and will be provided timely notice of the date of the hearing. At the request of either party the University will provide for a live hearing to occur with the parties located in separate rooms or locations with technology enabling the Hearing Panel and the parties to simultaneously see and hear the party or the witness answering questions. The University will make any and all necessary arrangements to ensure the parties' safety and to avoid any undue emotional distress.

Live hearings may be conducted with all parties physically present in the same location or any or all parties, witnesses, and other participants may appear at the live hearing virtually with technology enabling participants to simultaneously see and hear each other. An audio recording will be made of the hearing and will be available to the parties for inspection and review.

The Hearing Panel will decide the format for the hearing and will determine the relevancy of any proffered witnesses. The hearing may allow for brief opening and closing statements. Each party will be able to present relevant evidence and witnesses. Any individual appearing as a witness will be present only while providing a statement and responding to questions. The Hearing Panel may exclude any witnesses, such as character witnesses, who are deemed irrelevant to deciding the outcome of the matter. Formal rules of evidence will not apply.

Evidence, such as prior disciplinary sanctions that demonstrate of a pattern of misconduct by the Respondent that is similar in nature, may be deemed relevant when determining the appropriate sanction.

### **Advisors**

The complainant and the respondent each have the opportunity to be advised by a support person/personal advisor at any stage of the process and to be accompanied by that advisor at any meeting or hearing. A party can choose their own advisor, at their expense. If the party does not choose an advisor prior to the hearing, the University will provide an advisor at the hearing for them, without fee or charge, to conduct cross-examination on behalf of that party. The advisor will be a representative of the University who will be trained on how to carry out their role as advisor.

At the hearing the Hearing Panel will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The cross-examination will be conducted directly, orally, and in real time by the party's advisor. Neither the complainant or respondent will be able to personally conduct any cross-examination. Advisors are not permitted to speak on behalf of the party. The advisor may only conduct cross-examination.

### **Cross Examination**

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent or witness answers a cross-examination question or other question, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are, in general, not relevant. Questions and evidence about the complainant's prior sexual behavior may be permitted if: (1) They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or (2) If the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are being offered to prove consent.

If a party or witness does not submit to live cross-examination at the hearing, the panel must not rely on *any* statement of that party or witness in reaching a determination regarding responsibility. The Hearing Panel cannot assume that a party or witness' absence or refusal to answer cross-examination or other questions indicates a party's admission of responsibility or lack thereof.

### **Hearing Panel's Findings**

The Hearing Panel will review the information presented at the hearing and will make a determination regarding responsibility. The written determination will include the following:

1. Identification of the allegations constituting sexual harassment.
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination. This will include any notification to parties, interviews with the parties and witnesses, site visits or other methods used to gather evidence as well as any hearings held.
3. Findings of fact supporting the determination.
4. Conclusions regarding the application of the provisions of this policy to the facts.
5. A statement of, or rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University is imposing on the respondent and whether any remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the complainant.
6. The University's procedures and bases for the complainant and respondent to appeal.

The complainant and the respondent will be notified simultaneously in writing of the Hearing Panel's decision and any sanctions and remedies issued. If an appeal is filed, the sanctions or remedies will be final on the date the parties receive a written determination regarding the outcome of the appeal. If no appeal is filed, the sanctions and remedies will become final the date on which an appeal would no longer be considered timely. The Title IX Coordinator will be responsible for implementing any remedies issued by the hearing panel.

Compliance with these provisions does not constitute a violation of section 444 of the General Education Provision Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

### **J. Possible Sanctions/Remedies**

The goal of sanctions is to eliminate a hostile environment, prevent the reoccurrence of the misconduct and to address any effects of the misconduct while considering the impact of separating a student from his/her education. The Title IX Coordinator will work with University departments to implement any sanctions or remedies. Such sanctions and remedies could include, but are not limited to, the following: An order for no contact between the parties, formal warnings, conduct probation, alternate housing or class arrangements, limitations for the respondent to attend on-campus classes or enter certain buildings, suspension, expulsion or possible termination from the University. Department heads, the Department of Housing and Residential Life and the Title IX Coordinator will work together to make any necessary changes. The school will take steps to



prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

### **K. Appeal Process**

Both parties may file an appeal from a determination regarding responsibility or from the University's dismissal of a Formal Complaint, or any allegations contained therein, on the following bases:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (3) The Title IX Coordinator, investigator(s) or hearing panel member(s) had a conflict of interest or bias for or against complainants or respondents generally, or the individual complainant or respondent, that affected the outcome of the matter.

The request for an appeal should be filed in writing and should be received by the Title IX Coordinator within 10 calendar days after the date both parties received notice of the outcome of the hearing. The request should also state and explain the basis for challenging the decision. The Title IX Coordinator will forward the request to the decision-maker for the appeal, the Executive Vice President of Educational Support Services. Once the decision-maker receives the appeal request, they will notify both parties that an appeal has been received and give both parties 10 calendar days to submit a written statement in support of, or challenging, the outcome. The decision-maker will consider the information submitted and provide a written decision, which includes the result of the appeal and the rationale for the result, simultaneously to both parties.

### **L. Education and Prevention Programs**

The University has purchased online training modules for students and employees and will disseminate the modules each semester. The online version has a tracking device to show that the student or employee has taken the course. Below is a description of the modules provided to students:

All new students will be provided with Everfi's course titled "Sexual Assault Prevention: Undergraduate" or "Sexual Assault Prevention: Graduate Students" based on the program they are enrolled in. These courses provide students with information about abusive relationships, dating violence, options for bystander intervention, sexual assault, sexual violence, sexual harassment, reactions of survivors of sexual assault, consent, supportive measures and Title IX conduct proceedings among other important topics. The course engages undergraduate students in fostering healthy relationships and preparing them to recognize and respond to sexual assault and harassment when it occurs. The graduate course includes Title IX and Clery Act training to support graduate students' interactions with advisors, faculty members, peers and undergraduate students (including responding to disclosures).

Employees will also be provided training through Everfi. The course for employees, titled "Preventing Harassment and Discrimination: Non-Supervisors with Title IX/Clery Module" and "Preventing Harassment and Discrimination: Supervisors with Title IX/Clery Module" will include training on the topics of sexual misconduct, potential conduct violations, employees' role in reporting instances of sexual misconduct, bystander intervention training and risk reduction.

The module for non-supervisors prepares faculty and staff to cultivate and maintain a workplace culture resistant to discrimination, harassment and retaliation. Faculty and Staff will be equipped with the information and skills that promote intervention and empathy. This course includes information specific to requirements under Title IX and the Clery Act. The module for supervisors prepares leaders to cultivate and maintain a workplace culture resistant to discrimination, harassment and retaliation. Supervisors will be equipped with the information and skills that promote intervention and empathy.

The University will participate in ongoing prevention and awareness campaigns including programming, initiatives and strategies throughout each school year to promote awareness of sexual misconduct. This includes social media posts, email blasts, presentations to students, faculty and staff, posters, and booths at campus events among other programs that may be developed throughout the academic year.

### **M. Role of the Title IX Coordinator**

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the University's Title IX Coordinator has primary responsibility for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in all University operations as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX. The Title IX Coordinator oversees the University's response to reports and complaints that involve possible sex discrimination, monitors outcomes, identifies and addresses any patterns and assesses effects on the campus climate, and assists the University in addressing issues that affect the wider campus community.

A student should contact the Title IX Coordinator or Deputy Title IX Coordinator in order to:

- Make a report regarding sex discrimination
- Obtain Supportive Measures
- File a Formal Complaint with the Title IX Coordinator.
- Seek information about students' rights and courses of action available to resolve reports or complaints that involve potential sexual misconduct.
- Report any type of retaliation against a complainant or participant in an investigation or hearing that relates to this Policy.
- Notify the University of an incident, policy or procedure that may raise potential concerns related to this Policy.
- Get information about available resources (including confidential resources) and support services relating to sex discrimination, including sexual misconduct.
- Ask questions about the University's policies and procedures related to sexual harassment.

The Title IX Coordinator is also responsible for facilitating ongoing training and consultation for all students, faculty and staff; overseeing adequate, reliable, and impartial investigations of reports and complaints of sexual misconduct; coordinating and implementing supportive measures to avoid depriving students of access to the University's programs and activities during the course of the investigation and to protect the complainant and other students, as necessary; monitoring the

University's compliance with Title IX; assessing and analyzing the campus climate; and advising the University to develop and implement effective Title IX policies.

### **N. Tips for Bystander Intervention**

Everyday there are multiple situations where we can be active bystanders. When we witness comments or jokes about sexual assault, abusive behaviors or someone stuck in an uncomfortable situation, we have the opportunity to intervene by reinforcing positive behaviors BEFORE a behavior moves further towards sexual violence.

1. Consider whether the situation demands action.
2. Decide whether you have the responsibility to act.
3. Choose the form of assistance to use. Consider the following options:
  - Direct Intervention: Only if you are comfortable, you can consider approaching the person directly.
  - Delegate: Find friends of the person engaging in the negative conduct to intervene. Consider calling a resident advisor, faculty member or campus safety.
  - Distract: Divert the person's attention away from the situation.

4. Understand ways to implement the choice.

There are a number of ways you can implement your chosen response. It could mean helping the person leave the situation, confronting a specific behavior, diffusing a situation, or calling for support. Other supportive bystanders could include security, police or other bystanders.

### **O. Sex Offender Registration**

Sex offenders are required to report to the San Francisco Police Department. Information on the location of sex offenders in California can be found on the Megan's Law website:

<http://meganslaw.ca.gov/>.

### **P. Timely Warning Reports Policy**

The University has a Campus Safety Mass Notification System. This complex and sophisticated system relays messages by means of computer, text message and TV monitors for making Timely Warning Reports to the Campus Community when a crime occurs on or off campus that is considered an ongoing or continuing threat to students/employees. The contact person for the Timely Warning Reports is the Vice President of Campus Safety and Lab Resources, Michael Petricca. Warning messages will be communicated to students and staff through the use of the 32" flat screens which are located in high visibility/high traffic areas throughout the University.

The University will also disseminate the timely warning reports through the use of text messages to students and employees of the University. A special broadcast email may also be sent.

## **Q. Victim/Informational Resources**

### **What should I do if I am the victim of sexual assault, domestic violence, dating violence or stalking?**

Call 9-1-1 if you are in the midst of any kind of emergency, immediate harm or threat of harm. If you have experienced sexual violence (e.g., rape, dating violence, domestic violence, or stalking), you are encouraged to seek immediate assistance from police and healthcare providers for your physical safety, emotional support and medical care. San Francisco Police can escort you to a safe place and transport you to a hospital or a sexual assault response center for a medical examination, if needed. San Francisco Police can also provide access to a confidential sexual assault advocate.

If you would prefer not to notify the police, you are strongly encouraged to seek assistance from the campus Title IX Coordinator who can provide you with information on your options, rights and remedies, and/or a sexual assault counselor or advocate. The campus Title IX Coordinator is available to assist you in notifying the police, if you wish. The resources and advocates listed below can also assist you in notifying the police and/or the campus Title IX Coordinator.

You have the right to decide WHO and WHEN to tell about sexual violence. However, it is *very* important that you get confidential medical attention after being assaulted. Following the incident, you may be physically injured, there may be a chance you contracted a sexually transmitted disease, or that you may become pregnant.

### **Who Should I Contact?**

Complainants may contact any of the following people or the campus safety department's main line (415)618-3911 or (415)618-3896.

Brian Brashears, Director of Campus Safety & Deputy Title IX Coordinator  
180 New Montgomery, Room B-83  
San Francisco, CA 94105  
(415)618-8577  
[Bbrashears@academyart.edu](mailto:Bbrashears@academyart.edu)

Lynda España, Title IX Coordinator  
(415)618-3813  
[Lespana@academyart.edu](mailto:Lespana@academyart.edu).

Paul Yep, Vice President of Campus Safety  
180 New Montgomery B-83  
San Francisco, CA 94105  
(415)618-3911  
[pyep@academyart.edu](mailto:pyep@academyart.edu)

Employees may contact:  
Tori Toler  
Vice President, Human Resources  
TToler@academyart.edu  
(415)618-8260

**Informational Resources on Prevention and Awareness of Sexual Violence and Abuse**

The University will provide written information to students and employees about existing counseling, health, mental health and other similar services within the community. The University does not currently offer any on-campus counseling, health or mental health services.

**California State Coalition Against Sexual Assault**

<http://www.calcasa.org/>

**California Partnership to End Domestic Violence**

<http://www.cpedv.org/>

**Male Survivors Of Abuse**

<http://www.malesurvivor.org/>

**Rape, Abuse and Incest National Network**

<http://www.rainn.org>

**US Department of Justice**

<http://www.ovw.usdoj.gov/sexassault.htm>

**Department of Education, Office of Civil Rights**

<http://www2.ed.gov/about/offices/list/ocr/index.html>

**Not Alone Campaign – Together Against Sexual Assault**

[NotAlone.gov](http://NotAlone.gov)

**San Francisco 24-hour Hotline for Mental Health Services**

415-255-3737 or 888-246-3333

<http://mentalhealthsf.org/help-now/hotline-crisis-supports/>

*The confidential resources listed below can provide students with support as well as basic information about your options.*

**San Francisco Women Against Rape (SFWAR)**

24-hour Rape Crisis Line, collect calls accepted. Offers confidential counseling to survivors of sexual assault and provides advocacy services.

415-647-RAPE/7273

[www.sfwar.org](http://www.sfwar.org)

[info@sfwar.org](mailto:info@sfwar.org)

**Zuckerberg San Francisco General**

1001 Potrero Ave

San Francisco, CA 94110

The hospital's Emergency Department offers 24/7 medical care, including medical forensic examinations, to survivors of sexual assault.

**San Francisco General Hospital Trauma & Recovery Center/Rape Treatment Center**

Provides medical services for sexual assaults reported through the Zuckerberg San Francisco General Hospital Emergency Department. The Center also provides counseling, optional police reporting services and evidence collection for adult survivors of trauma, violence and loss through its comprehensive care, advocacy and outreach services. Spanish and Asian languages spoken.

2727 Mariposa Street, Suite 100 (at Bryant Street)

San Francisco, CA 94110

(415)437-3000 (Crisis Line)

415-821-3222 (Business Line)

<http://traumarecoverycenter.org/>

**Community United Against Violence (CUAV)**

Serving gay, lesbian, bisexual, transgender communities. 24-hour hotline and counseling for victims of intimate partner violence and hate crimes. Spanish and Asian languages spoken.

415-333-4357 (24-hour crisis line)

<http://www.cuav.org/>

**Child and Adolescent Support Advocacy and Resource Center (CASARC)**

Medical treatment, counseling and police report services available. Serves those 17 and under. Confidential calls accepted. Spanish and Asian languages spoken.

415-206-8386 (24-hour crisis line)

<http://www.casarc.org/>

**Woman Organized to Make Abuse Non-Existent (W.O.M.A.N., Inc.)**

24-hour domestic violence hotline, in-person counseling, support groups, assistance with restraining orders and acquiring shelter. Spanish and Asian languages spoken.

415-864-4722 (24-hour crisis line)

<http://www.womaninc.org/>

**Asian Pacific Islander Legal Outreach**

1121 Mission St, San Francisco, CA 94103

Phone: (415) 567-6255

Community served: Legal advocacy, cultural and linguistic support for Asian Pacific Islander families undergoing domestic violence.

**La Casa De Las Madres**

1663 Mission Street, Suite 225, San Francisco, CA 94103

Adult Crisis Line: 1-877-503-1850

Teen Crisis Line: 1-877-923-0700

Community served: Domestic violence support for women and children.

**Shimtu**

1700 Broadway, Suite 400, Oakland, CA 94612

Domestic Violence Program (510) 547-3258 / Monday-Friday: 9:30am - 5:30pm

Community served: Referrals for shelter, legal services, counseling, translation services, citizenship/legal residency for Korean- community survivors of domestic violence and their families.

**Narika**

P.O. Box 14014, Berkeley, CA 94712

Helpline: 800- 215-7308

Community served: Advocacy, support, information, and referrals for survivors of domestic violence in the South Asian community- Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka and diasporic communities.

**ADDENDUM A**

The following grievance proceedings are part of a prompt, fair and impartial process under the student code of conduct and are designed to address any formal complaints of sexual assault, dating violence, domestic violence or stalking that must be dismissed from the Title IX Formal Grievance Process according to section H. of this policy and 34 CFR section 106.45.

**Formal Investigation**

If a formal investigation under this process is initiated, an investigator will be assigned and both parties will be notified of their rights and responsibilities throughout the formal investigation process. An explanation of rights and responsibilities, provided to both the complainant and the respondent, will include information or statements regarding the following:

- Information regarding the allegations constituting a potential violation of the student code of conduct, the specific code of conduct section allegedly violated, the identities of the parties and the date and location of the alleged incident(s) prior to any interview, with sufficient time to prepare for meaningful participation.
- Information regarding possible sanctions or protective measures the University may impose following the final determination.
- Information regarding the confidentiality of reports.
- The responsibility of both the complainant and respondent to be truthful in the investigation.
- The right to participate in the investigation by providing additional relevant information or potential witnesses.
- The right of either the complainant or respondent to decline to give a statement about the allegations.
- The responsibility not to retaliate against or intimidate any individual who has filed a Title IX complaint or who has participated in the investigation process.
- The right of participants to be reasonably protected from intimidation or harassment.
- The right to have a support person/personal advisor present during the investigation and hearing. The support person/personal advisor is a silent observer. The support person/personal advisor may be present at the investigation and hearing but may not

speak for or on behalf of the complainant/respondent, as described in further detail below.

- The party's right not to be disciplined for drug or alcohol offenses related to an incident of alleged sexual misconduct, except in extreme circumstances.
- The right of an individual who participates as a complainant or witness in an investigation of alleged sexual misconduct to 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 institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

After the formal investigation has been initiated, the investigator will contact both the complainant and the respondent and will complete interviews.

### **Standard of Review**

All determinations in the investigation and hearing process shall be based on a "preponderance of the evidence" standard, i.e. whether it is more likely than not the alleged misconduct occurred.

### **Completion of Investigation**

Once the investigator has had the opportunity to speak with both the complainant and respondent, any witnesses offered by either party, and review all evidence associated with the case, the preliminary Investigative Report will be compiled. The Investigative Report will fairly summarize the facts and evidence gathered throughout the investigation and will include summaries of each interview conducted and copies of documents or materials gathered in the investigation.

The Investigative Report will be made available to the complainant and respondent for inspection and review. The investigation will include any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint. The University will send each party and the party's advisor, if any, the evidence and Investigative Report for inspection and review in an electronic format. The parties will have 10 calendar days to submit a written response. If a written response is provided, the investigator will review each party's response and will consider this information when completing the investigation.

Once the investigator receives any written responses and concludes the investigation, the investigator will finalize the Investigative Report. If the respondent is a faculty or staff member, the Title IX Coordinator will forward the Investigative Report to the Human Resources Department for review. Human Resources will determine sanctions for respondents who are employees, including employment-related sanctions for those employees who are also students of the University, but who are named as a respondent based on their role as an employee. Any sanctions related to their role as a student shall be determined by the process pertaining to students set forth below.

If the respondent is a student, the Investigative Report will be sent to the Title IX Coordinator, who will review the matter and determine whether the case could lead to Serious Discipline or Non-Serious Discipline, as defined below.



### **Serious Discipline**

Serious Discipline is defined in this policy as suspension for any length of time, expulsion from the University or removal to online classes only. In matters where the Title IX Coordinator determines there is a potential for Serious Discipline, the Investigative Report will be forwarded to a Hearing Panel, as set forth below, for final determination through a formal hearing.

### **Non-Serious Discipline**

Non-Serious Discipline is defined in this policy as any form of discipline that is less than suspension, expulsion or removal to online-only status. Forms of Non-Serious Discipline could include formal warnings, continued enforcement of a No Contact Order (or other supportive measures), required additional training, removal from housing, or limiting the ability of the student to participate in extracurricular activities in general or in a leadership role.

If the Title IX Coordinator believes the alleged prohibited conduct, if found to have occurred, could lead to Non-Serious Discipline for the respondent, the respondent will not be entitled to a live hearing. The Title IX Coordinator will issue the findings and appropriate sanctions, if any, within 15 days after the completion of the investigation. The Title IX Coordinator will determine sanctions for respondents who are both students and employees, but who are named as a respondent based on their role as a student. Any sanctions related to a student's role as an employee shall be determined by the Human Resources Department.

### **Possible Sanctions/Remedies**

The goal of sanctions is to eliminate a hostile environment, prevent the reoccurrence of the misconduct and to address any effects of the misconduct while considering the impact of separating a student from his/her education. The Title IX Coordinator will work with University departments to impose any sanctions or remedies. Such sanctions and remedies could include, but are not limited to, the following: An order for no contact between the parties, conduct probation, alternate housing or class arrangements, limitations for the respondent to attend on-campus classes or enter certain buildings, suspension for one or more semesters, expulsion or possible termination from the University. Department heads, the Department of Housing and Residential Life and the Title IX Coordinator will work together to make any necessary changes. The school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

### **Hearing Process – Serious Discipline Only**

In matters that involve the potential for Serious Discipline against a student, the Title IX Coordinator shall simultaneously inform both parties of their rights to a hearing and will outline the hearing process once the Investigative Report is completed.

The Hearing Panel will consist of three (3) University employees from various departments. Each member of the Panel will be trained in matters related to the hearing process including issues related to domestic violence, dating violence, sexual assault, and stalking. This training, conducted online, will include information on how relevant evidence should be used during a proceeding, the proper techniques for questioning witnesses, basic procedural rules and avoiding actual or perceived conflicts of interest. The Title IX Coordinator will select officers to serve on the Hearing

Panel, based on availability, and will inform the parties of the names and position of each panel member. Each party has the opportunity to object, in writing, to the selection of hearing officers on the panel. Any such objection shall be submitted in writing to the Title IX Coordinator within 3 business days of the date the parties were made aware of the Hearing Panel members. The proposed hearing panel members shall review and decide on any such objection. Once the Hearing Panel is selected, the Panel will be provided a copy of the complete Investigative Report and any evidence considered in the investigation.

The Title IX Coordinator shall serve as the hearing coordinator and will handle any logistical issues and maintain documentation of the hearing.

1. The complainant and the respondent shall each have the opportunity to attend the hearing. The hearing will be closed to the general student population and public.
2. Both parties will be provided meaningful access to the Investigative Report 10 calendar days prior to the hearing and will be provided timely notice of the date of the hearing.
3. The University will make any and all necessary arrangements to ensure the parties' safety and to avoid any undue emotional distress. Either the complainant or respondent may choose not to participate in the hearing process. However, the lack of direct testimony by a party whose credibility is central to the determination of the complaint will limit the Hearing Panel's ability to consider evidence from that party.
4. The complainant and the respondent each have the opportunity to be advised by a support person/personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. An advisor may only consult with and advise his or her advisee. An advisor is **not** permitted to speak for or participate on behalf of the advisee at any meeting or hearing.
5. The Hearing Panel has absolute discretion to decide the format for the hearing and to determine the relevancy of any proffered witnesses. The hearing may allow for brief opening and closing statements. Questions may be posed by the Hearing Panel to one or both of the parties. The Hearing Panel may exclude any witnesses who are deemed irrelevant to deciding the outcome of the matter. For any witness whose credibility is central to the determination of the complaint (including the complainant and respondent), the Hearing Panel will only consider live testimony provided at the hearing which is subject to indirect cross examination through the submission of questions, as set forth below.
6. Formal rules of evidence will not apply. Any party may choose to submit questions to any party or witness, and any such questions will be asked by the Hearing Panel *only*. Initial questions shall be submitted to the Title IX Coordinator at least two days prior to the hearing. Either party may submit follow-up questions to the Hearing Panel during the hearing, and the Hearing Panel will ask such questions, subject to a relevancy determination by the Hearing Panel.

7. Each party will be able to present relevant evidence and witnesses. Any individual appearing as a witness will be present only while providing a statement and responding to questions.
8. In general, a complainant's prior sexual history is not relevant. Where there is a current or ongoing relationship between the complainant and respondent and the respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. The mere presence of a previous sexual or dating relationship is not, in itself, sufficient to constitute consent. Any prior sexual history of the complainant with other individuals is generally not relevant and will not be permitted.
9. Where there is evidence of a pattern of misconduct by the Respondent that is similar in nature, this information may be deemed relevant when making a finding and determining the appropriate sanction.
10. The Hearing Panel will review the information presented at the hearing as well as the information provided in the investigation. At the conclusion, the Hearing Panel will issue findings, including and any sanctions or remedies, using a preponderance of evidence standard.
11. The complainant and the respondent will be notified simultaneously in writing of the Hearing Panel's decision and any sanctions/remedies issued. The decision of the Hearing Panel is final and no further appeal is available.
12. Compliance with these provisions does not constitute a violation of section 444 of the General Education Provision Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

### **Resolution Process – Non-Serious Discipline Only**

For matters involving Non-Serious discipline ONLY, the Title IX Coordinator shall simultaneously inform both parties of the results of the investigation after receiving the completed Investigative Report, as well as the determination regarding any sanctions. The letter shall also inform both parties of their right to forward the matter to the Resolution Process for review and will outline the process for doing so. The letter shall specify the date that any disciplinary determination will be deemed final if no request for review is received from either the complainant or the respondent.

The Resolution Process is not meant to be a repeat of the investigation. Additional review under the Resolution Process will *only* be granted if there were any of the following issues with the case: (1) A procedural error in the investigation that substantially affected the outcome; (2) Previously unavailable evidence has come to light that could significantly impact the outcome of the case; (3) The findings were not one that a reasonable investigator could have made; and/or (4) The sanctions imposed were not ones that could have been issued by reasonable persons given the findings of

the case. The Resolution Committee will review the investigative file as well as the request for review and determine whether the request meets one of these 4 categories.

Both the complainant and the respondent have the right to file a request for review under the Resolution Process. The request should be filed **in writing and should be received by the Title IX Coordinator/Deputy Title IX Coordinator within 10 calendar days after the date both parties received notice of the outcome of the investigation**. The request should also state and explain the basis for challenging the decision and include any information or evidence underlying that basis. For example, if a Respondent believes they are entitled to additional review of the matter due to new evidence being discovered which was previously unavailable, the Respondent must provide copies or a summary of the new evidence at the time the request for review is made. The request for review by a student will be considered by three (3) impartial members of the Resolution Committee (see below paragraph for more details regarding committee members). If the Respondent is an employee of the University, the request for review will be considered by the Department of Human Resources. **Review under the Resolution Process will only be granted if the request meets one of the four requirements listed above.**

If the request for review meets one of the four requirements outlined above, a hearing before the Resolution Committee will be granted and a Resolution Committee, consisting of three representatives from the any of the following Departments: Human Resources, Campus Life, Admissions, Student Services, Academic Support and Accessibility Resources, will be convened. One of the Committee members will serve as Chair and will lead the proceedings. The Committee will hear the matter within 30 days of the request for review. The Title IX Coordinator will also be present during the hearing but will not participate in the committee's decision. The members of the committee will receive initial and subsequent annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking as well as training on the investigation and hearing process. This training, conducted in person and online, will include information on how relevant evidence should be used during a proceeding, the proper techniques for questioning witnesses, basic procedural rules and avoiding actual or perceived conflicts of interest.

The Title IX Coordinator shall serve as the hearing coordinator and will handle any logistical issues and maintain documentation of the hearing.

1. The complainant and the respondent shall each have the opportunity to attend the hearing. The hearing will be closed to the general student population and public.
2. If either party makes a request and is granted review by the Resolution Committee, both parties will be provided meaningful access to the Investigative Report and will be provided timely notice of the date of the hearing.
3. The complainant and the respondent each have the opportunity to be advised by a support person/personal advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. An advisor may only consult with and advise his or her advisee. An advisor is **not** permitted to speak for or participate on behalf of the advisee at any meeting or hearing.

4. Each party will be able to present evidence and witnesses relevant to the Resolution Process. If a hearing is granted, it will not be a re-hearing of the entire case but will instead focus *only* on the basis for which the additional review was granted. The Resolution Committee can choose to exclude any witnesses or evidence it deems irrelevant. Formal rules of evidence will not apply. Any questions posed to witnesses must be submitted to the Title IX Coordinator in writing two days prior to the hearing. The questions submitted for each witness will be asked by the Resolution Committee members only. The University will make any and all necessary arrangements to ensure the parties' safety and to avoid any undue emotional distress. Either the complainant or respondent may choose not to participate in the hearing process.
5. The Resolution Committee will review the information presented at the hearing as well as the information provided in the investigation. At the conclusion, the Committee will decide whether to overturn or uphold the findings in the investigation using a preponderance of evidence standard.
6. The complainant and the respondent will be notified simultaneously in writing of the outcome of the Resolution Committee's decision, as well as any changes to those results or disciplinary actions prior to the time that such results become final. The Resolution Committee's decision is final and no further appeal is available.
7. Compliance with these provisions does not constitute a violation of section 444 of the General Education Provision Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).