



UNIVERSITY OF  
SAN FRANCISCO

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**SEX- BASED HARASSMENT POLICY FOR ALL STUDENTS, EMPLOYEES, AND THIRD -PARTIES**

BASED ON THE ATIXA 2024 ONE POLICY, ONE PROCEDURE (1P1P) MODEL.  
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## **UNIVERSITY OF SAN FRANCISCO'S SEX-BASED HARASSMENT POLICY FOR ALL STUDENTS, EMPLOYEES, AND THIRD-PARTIES (Hereinafter, "the Policy")**

### **1. Purpose**

Members of the University of San Francisco (hereinafter USF) community, guests, and visitors have the right to be free from sex and gender-based harassment, and violence. The University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from such discrimination.

To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of our educational programs and activities, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex or gender, and for allegations of retaliation as it relates to this policy. Any person who believes they have been subjected to sex or gender-based discrimination, including sexual harassment (inclusive of sexual assault, dating and domestic violence, and stalking) is encouraged to report these incidents.

All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University's mission is to create a culture that promotes learning in an environment in which students, faculty, staff, and visitors are expected to engage with one another with dignity, mindfulness, and mutual respect. This policy upholds the equal dignity of all members of our community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for those involved.

### **POLICY: Sex-Based Harassment Policy for all Students, Employees, and Third-Parties**

### **2. Notice of Sex-Based Harassment**

USF seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private postsecondary education institutions.

This Policy's scope is specific to discrimination as it relates to the following<sup>1</sup>:

- Gender;
- Gender expression;
- Gender identity;
- Pregnancy or related conditions;
- Sex;
- Sexual orientation;
- Anyone participating in any grievance process on campus, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

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<sup>1</sup> For policies on non-discrimination for other civil rights and protected classes, please see the HR Policies and Fogcutter Student Handbook.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the USF community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of USF community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy. For standards of evidence see pg. 30.

USF will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Equal Opportunity, Harassment, and Nondiscrimination Procedures.

### **3. Title IX Team Contacts**

USF has appointed the Title IX Team, comprised of the following individual(s), to coordinate USF's compliance with federal, state, and local civil rights laws and ordinances:

#### ***Emily Gove***

Title IX Coordinator  
Office of the Dean of Students  
2820 Turk Blvd., Lone Mountain Room 145  
(415)422-4563  
[egove@usfca.edu](mailto:egove@usfca.edu)

#### ***Katrina Garry***

Deputy Title IX Coordinator  
2820 Turk Blvd., Lone Mountain Room 145  
(415)422-4525  
[kgarry@usfca.edu](mailto:kgarry@usfca.edu)

#### ***Dr. Shannon Gary***

Dean of Students  
2130 Fulton St., University Center 5th floor  
(415)422-5330  
[deanofstudents@usfca.edu](mailto:deanofstudents@usfca.edu)

#### ***Diane Nelson***

Associate Vice President Human Resources  
(415)422-2441  
[dnelson3@usfca.edu](mailto:dnelson3@usfca.edu)

The University has also classified all employees (with few exceptions) as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

### **4. External Contact Information**

Student's concerns about USF's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

San Francisco Office  
Office for Civil Rights  
U.S. Department of Education  
50 United Nations Plaza  
Mail Box 1200, Room 1545  
San Francisco, CA 94102  
Telephone: 415-486-5555  
FAX: 415-486-5570; TDD: 800-877-8339  
Email: [ocr.sanfrancisco@ed.gov](mailto:ocr.sanfrancisco@ed.gov)

Employees with concerns about USF's application of this Policy and compliance with civil rights laws may be addressed to:

US Equal Employment Opportunity Commission  
San Francisco Office  
450 Golden Gate Ave.  
San Francisco, CA 94102  
Telephone: 800-669-4000

California Department of Fair Employment & Housing  
2218 Kausen Drive, Suite 100  
Elk Grove, CA 95758  
(800) 884-1684  
(800) 700-2320 (TDD Only)  
[www.dfeh.ca.gov](http://www.dfeh.ca.gov)

##### **5. Mandated Reporting and Confidential Employees<sup>2</sup>**

All USF faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal USF action.

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

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

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<sup>2</sup> This Policy does not affect other mandated reporting obligations under policies or laws that require reporting to campus or local law enforcement, Child Protective Services, or Adult Protective Services.



The following sections describe USF's reporting options for a Complainant or third party (including parents/guardians when appropriate):

#### **A. Confidential Employees**

To enable Complainants to access support and resources without filing a Complaint, USF has designated specific employees as Confidential Resources. Those designated by USF as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or USF official unless a Complainant has requested the information be shared.

There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; 2) Those whom USF has specifically designated as confidential for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study approved by USF's Institutional Review Board (IRB). For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of an immediate threat of danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

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

#### Confidential Employees

- On-campus licensed professional counselors at [CAPS \(Counseling and Psychological Services\)](#)
- Clergy members acting within the scope of their ordination, may be found through [University Ministry](#)
- Off-campus:
  - Licensed professional counselors and other medical providers
  - Local rape and sexual assault crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains not affiliated with the university
  - Attorneys

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

University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

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

All employees of the University of San Francisco (including student employees such as Resident Advisors), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details, including names, of a report made to them in the course of their employment.

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

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

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

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

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

If a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the University is technically not on notice simply because the harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

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

All employees are required to complete training related to this Policy on an annual basis.

## **6. Disability-based Grievances and Complaints**

Grievances related to a student’s disability status and/or provision of accommodations are addressed using the procedures in the Student Disability Services (SDS) Handbook. Grievances related to an

employee's disability status and/or provision of accommodations are addressed by Human Resources (HR). However, allegations of discrimination on the basis of an actual or perceived disability, including instances in which the provision of reasonable accommodations has a discriminatory effect, will be resolved under the Student Code of Conduct for students and applicable HR policies and/or Collective Bargaining Agreements for employees.

For details relating to disability accommodations in USF's Sex-Based Harassment Resolution Process, please refer [here](#) or to our *Accommodations and Support During the Resolution Process* in the Procedures section of this document.

## **7. Scope**

This Policy is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and [here](#).

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in USF's program or activities, including education and employment.

USF's primary concern is student and employee safety, and the core purpose of this policy is the prohibition of all forms of discrimination based on sex or gender. 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 or gender-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual orientation, dating violence, or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using University of San Francisco's grievance processes as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of USF community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students<sup>3</sup>, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

The University recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the University community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

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<sup>3</sup> For the purpose of this policy, the University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University.

## 8. Jurisdiction<sup>4</sup>

This Policy applies to USF's education programs and activities<sup>5</sup> (defined as including locations, events, or circumstances in which USF exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where USF has disciplinary authority, and to misconduct occurring within any building owned or controlled by a USF-recognized student organization. A Complainant does not have to be a member of USF community to file a Complaint, at the discretion of Title IX Coordinator.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to USF's education program or activities. USF may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial USF interest.

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

- 1) 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.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with USF's educational interests or mission].

For disciplinary action to be issued under this Policy, the Respondent must be a USF faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of USF community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., removing a trespassing person from campus). USF can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

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

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<sup>4</sup> CA Educ. Code, § 66281.1 requires institutions take reasonable steps to respond to each incident of sexual harassment. The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

<sup>5</sup> Which includes the University's employees' work environment.

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

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

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

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

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to USF where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

## **9. Supportive Measures**<sup>67</sup>

USF will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to USF's education program or activity, including measures designed to protect the safety of all Parties and/or USF's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, USF will inform the Complainant, in writing, that they may file a Complaint with USF either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

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<sup>6</sup> CA Educ. Code Sect. 66281.8 (SB 493) requires institutions to consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

<sup>7</sup> CA Educ. Code, Sect. 66281.8 requires institutions to outline the possible interim measures that may be in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility.

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

These actions may include, but are not limited to:

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

Upon the issuance of a mutual no-contact directive, the institution will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Violations of no-contact directives will be referred to the appropriate student or employee conduct processes for enforcement (for students this is the Office for Student Conduct, Rights and Responsibilities; for employees this is Human Resources), or added as collateral misconduct allegations to an ongoing complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of USF's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. USF will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. USF typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

## **10. Online Harassment and Misconduct**

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

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

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

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside 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 or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

As it relates to this Policy, off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

#### **11. Inclusion Related to Gender Identity/Expression**<sup>8</sup>

USF strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including but not limited to, intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by USF. If a member of USF community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

In upholding the principles of equity and inclusion, USF supports the full integration and healthy development of those who are transgender, transitioning, nonbinary, or gender-diverse, and seeks to eliminate any stigma related to gender identity and expression.

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<sup>8</sup> By law, religiously affiliated institutions may choose to omit this section. Public institutions should carefully review this section with legal counsel and note that in some jurisdictions using this section as the basis for discipline could run afoul of First Amendment rights or state laws.

USF is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. The purpose of this Policy is to have USF administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender-diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do USF's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to USF's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm. We each have a right to determine our own gender identity and expression, but we choose or negate someone else's.

Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender-diverse, their cisgender identity may be something that is in their past -- dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities
- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of USF community

USF uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, USF will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is



not possible, USF will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

## **12. Prohibited Conduct under the Policy**

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

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

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other USF policies may constitute sex-based discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities based on a person's characteristics.

### **A. Discrimination**

Discriminatory sex-based harassment - defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristics protected by policy or law - is a form of prohibited discrimination under university policy.

The University of San Francisco does not tolerate discriminatory harassment of any employee, student, visitor, or third party. 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>9</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

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<sup>9</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 Recipients Investigative Guidance.](#)

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 grievance processes below.

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 this policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

These actions may include collaboration with Human Resources when it involves an employee, or the Office for Student Conduct, Rights and Responsibilities for students.

Discrimination can take two primary forms:

**1) Disparate Treatment Discrimination:**

- Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic (gender, gender expression, gender identity, pregnancy or related conditions, sex, sexual orientation) and that:
  - Excludes an individual from participation in;
  - Denies the individual benefits of; or
  - Otherwise adversely affects a term or condition of an individual's participation in a USF program or activity.

**2) Disparate Impact Discrimination:**

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
  - Excludes an individual from participation in;
  - Denies the individual benefits of; or
  - Otherwise adversely affects a term or condition of an individual's participation in a USF program or activity.

**B. Discriminatory Harassment**

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from USF's education program or activity

**C. Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)**

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

USF has adopted the following definition of sexual harassment in order to address the unique environment of an academic community. One definition is required by federal law, and the other by state law. Both apply, and while they overlap, they are not identical.

**California Sexual Harassment Definitions:**<sup>10</sup>

- a. unwelcome sexual advances, or
- b. requests for sexual favors, or
- c. other verbal, visual, or physical conduct of a sexual nature
- d. made by someone from in the work or educational setting<sup>11</sup>
- e. under any of the following conditions
  - i. submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
  - ii. submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
  - iii. the conduct has the purport or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
  - iv. submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Violence**, defined as:

- a. physical sexual acts,<sup>12</sup>
- b. perpetrated against a person without the person's affirmative consent.

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<sup>10</sup> This definition of sexual harassment will be used in addition to and when formal complaints of Title IX Sexual Harassment are mandatorily dismissed. See section on Dismissal outlined below.

<sup>11</sup> The Department of Housing and Urban Development (HUD) Fair Housing Act requires – when an institution provides student and/or faculty/staff housing and sexual harassment occurs in an institution-owned residence – that the FHA/Title VII definition of sexual harassment will also apply in addition to the Title IX definition (USF will use the definition of discriminatory harassment above, the CA definition, to comply).

<sup>12</sup> A “physical act” includes both of the following:

- a. **Rape:**
  - penetration,
  - no matter how slight,
  - of the vagina or anus,
  - with any part or object,
  - or oral copulation of a sex organ
  - by another person
  - without the consent of the victim.
- b. **Sexual Battery:**
  - the intentional touching of another person's intimate part without consent, or
  - intentionally causing a person to touch the intimate parts of another without consent, or
  - using a person's own intimate part to intentionally touch another person's body part without consent.

**Sex-based Harassment** is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,<sup>13</sup> including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) **Quid pro quo:**

- an employee agent, or other person authorized by USF,
- to provide an aid, benefit, or service under USF's education program or activity<sup>14</sup>,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from USF's education program or activity

USF 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 characteristic. Addressing such conduct will not result in the imposition of discipline under USF Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

3) **Sexual Assault:**

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person<sup>15</sup>, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.<sup>16</sup>

a. **Rape:**

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<sup>13</sup> Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

<sup>14</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>15</sup> This would include having another person touch you sexually, forcibly, or without their consent.

<sup>16</sup> This definition of sexual assault does not constitute a chargeable offense under the Policy. It is a description encompassing the six chargeable offenses listed below it.

- 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,
  - including instances where the Complainant is incapable of giving consent
    - because of their age or
    - because of their temporary or permanent mental or physical incapacity
- b. Sodomy**
- Oral or anal intercourse with a Complainant, by the Respondent
  - forcibly, and/or
  - without the consent of the Complainant,
  - including instances where the Complainant is incapable of giving consent
    - because of their age or
    - because of their temporary or permanent mental or physical incapacity
- c. Sexual Assault with an Object**
- Respondent's use of an object or instrument
  - to unlawfully penetrate, however slightly, the genital or anal opening
  - of the body of the Complainant,
  - without the consent of the Complainant,
  - including instances where the Complainant is incapable of giving consent
    - because of their age or
    - because of their temporary or permanent mental or physical incapacity
- d. Fondling:**
- The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent
  - or causing the Complainant to touch the Respondent's private body parts
  - intentionally for a sexual purpose
  - without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
    - because of their age or
    - because of their temporary or permanent mental incapacity or physical incapacity.
- e. Incest:**
- Non Forcible sexual intercourse between persons who are related to each other
  - within the degrees wherein marriage is prohibited by California law.

f. **Statutory Rape:**

- Non Forcible sexual intercourse with a person
- who is under the statutory age of consent in the state of California

4) **Dating Violence:**

- Violence<sup>17</sup> committed by a Respondent,
- 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; **and**
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - length of the relationship
  - type of relationship
    - frequency of the interaction between the Parties involved in the relationship.

5) **Domestic Violence<sup>1819</sup>:**

- Felony or misdemeanor crimes committed by a person who:
  - is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of California or a person similarly situated to a spouse of the Complainant;
  - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - shares a child in common with the Complainant; **or**
  - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of California.

6) **Stalking:**

- engaging in a course of conduct<sup>20</sup> on the basis of sex, that is,

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<sup>17</sup> For purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

<sup>18</sup> California defines 'domestic violence' as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. In CA, dating violence is included within the definition of domestic violence.

<sup>19</sup> 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.

<sup>20</sup> For purposes of this definition, "A 'course of conduct' requires that there be more than one incident and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. (Federal Register, Vol 89, No. 83, 04/29/2024, p. 33523). Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

- directed at a specific person that would cause a reasonable person<sup>21</sup> to:
  - fear for the person’s safety, or
  - the safety of others; or
  - suffer substantial emotional distress.<sup>22</sup>

**Sexual Misconduct**

**7) Sexual Exploitation:<sup>23</sup>**

- an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above.
- for their own benefit or for the benefit of anyone other than the person being exploited.

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 being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- 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 allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or 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, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)

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<sup>21</sup> Reasonable person is an objective standard meaning a person in the Complainant’s shoes (having similar characteristics/demographics to the Complainant).

<sup>22</sup> In the context of stalking, a Complainant is not required to obtain medical or other professional treatment and counseling is not required to show substantial emotional distress.

<sup>23</sup> This offense is not classified under Title IX as “Sex-based harassment,” but it is included here in this Policy as a tool to address a wider range of behaviors.

- 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
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

**D. Other Prohibited Conduct<sup>24</sup>**

In addition to the forms of sexual harassment described above, which are covered by Title IX, USF additionally 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 protected characteristics (within the scope of this Policy).

**1) Harm/Endangerment:**

- threatening or causing physical harm;
- extreme verbal, emotional, or psychological abuse; or
- other conduct which threatens or endangers the health or safety of any person or damages their property.

**2) Discrimination, defined as:**

- actions that deprive, limit, or deny
- other members of the community
- of educational or employment access, benefits, or opportunities,
- including disparate treatment

**3) Intimidation, defined as:**

- implied threats or
- acts that cause the Complainant reasonable fear of harm

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the Student Group or Student Organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily

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<sup>24</sup> The definitions in this section may apply when formal complaints of Title IX Sexual Harassment are mandatorily dismissed but may also apply in addition to the Title IX offenses listed above. See section on Dismissal outlined below.



assumed the risks or hardship of the activity, or that no injury was suffered or sustained.

- The actions of alumni, active, new, and/or prospective members of a Student Group or Student Organization may be considered hazing.
- Hazing is not confined to the Student Group or Student Organization with which the individual subjected to the hazing is associated.

**4) Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination
- against any person,
- by USF, a student, employee, or a person authorized by USF to provide aid, benefit, or service under USF's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Policy's procedures, including an Informal Resolution process, or in any other appropriate steps taken by USF to promptly and effectively end any sex discrimination in its education or activity, prevent its recurrence, and remedy its effects.

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

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

It is prohibited for the University or any member of the University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

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

Allegations against an individual for code of conduct, or employment policy, violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Pursuing a code of conduct or policy 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 the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

**5) Unauthorized Disclosure:**<sup>25</sup>

- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by USF; or
- publicly disclosing a party's personally identifiable information without authorization or consent.

**6) Failure to Comply/Process Interference**

- Intentional failure to comply with the reasonable directives of Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Title IX resolution process, including but not limited to:
  - Destruction of or concealing of evidence
  - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
  - Intimidating or bribing a witness or party

**Sanction Ranges**

- Sex Discrimination - warning through expulsion or termination.
- Quid Pro Quo harassment - warning through expulsion/termination.
- Hostile Environment harassment - warning through expulsion/termination.
- Rape - suspension through expulsion/termination.
- Sexual Assault with an Object - suspension through expulsion/termination.
- Sodomy - suspension through expulsion/termination.
- Fondling - warning through suspension (termination for employees).
- Incest - warning through probation.
- Statutory Rape - warning through suspension (termination for employees).
- Stalking - probation through expulsion/termination.
- Dating/Domestic Violence - probation through expulsion/termination.
- Sexual Exploitation - warning through expulsion/termination.
- Retaliation - warning through expulsion/termination.

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<sup>25</sup> Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

Sanctions can be assigned outside of the above ranges based on aggravating or mitigating circumstance, or the cumulative conduct record of the Respondent.

Any student Respondent found responsible for violating this policy will be subject to sanction(s) ranging from a warning to expulsion, depending on the severity of the incident, and taking into account any previous Student Conduct Code violations. Psychological and/or behavioral counseling may be required for students found responsible for a violation of this policy.

Any employee found responsible for violating this policy will be subject to sanction(s) ranging from warning to loss of employment, depending on the severity of the incident and taking into account any previous applicable action taken by Human Resources.

In considering an appropriate sanction(s), decision-makers shall consider all of the evidence presented during the investigation and hearing, and may also consider the following:

- Impact statements provided by the Complainant and Respondent - which will not be a part of the determination of whether this policy was violated.
- What is reasonable, appropriate, and fair given the facts of the case and the determination of responsibility, including, but not limited to:
  - What factors contributed to the absence of consent (e.g., coercion, force, incapacitation)?
  - What motivated the Respondent's behavior (e.g., negligence, intentional, reckless, biased)?
  - What is the impact on the Complainant?
  - What is the impact on others and USF community?
  - What is the Respondent's disciplinary history?
  - Are the sanctions consistent with those imposed for similar offenses at the University?
  - Are there any aggravating or mitigating circumstances?

Sanctions for the above-listed Civil Rights Offenses range from warning through expulsion/termination.

#### **E. Consent, Force, and Incapacitation<sup>26</sup>**

As used in this Policy, the following definitions and understandings apply:

##### **1) Affirmative Consent**

Consent is defined as:

- knowing (conscious), and

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<sup>26</sup> The California definition of consent is "Affirmative consent." Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that [they] have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. This definition is applicable to criminal prosecutions for sex offenses in California but may differ from the definition used by USF to address Policy violations. [Included for Clery/Violence Against Women Act (VAWA) Sec. 304 compliance purposes]

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

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

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

Silence or the absence of resistance alone should not be interpreted as 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.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

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

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical

roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.<sup>27</sup>

## **2) Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

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

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in 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. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

## **3) Incapacitation**

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reasons, including by alcohol or other drugs.

In the evaluation of complaints, it shall not be valid defense that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent know or reasonably should have know that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

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

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

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<sup>27</sup> Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) 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.

- 1) The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- 2) The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction).

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

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

### **13. Standard of Proof**

USF uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that USF will decide whether it is more likely than not/highly likely, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

### **14. Reports/Complaints of Discrimination, Harassment, and/or Retaliation**

A Report provides notice to USF of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to USF that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a Complaint with, or give verbal Notice directly to, the Title IX Coordinator or to any member of the Title IX Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or any other Title IX Team member listed in this Policy.
- 2) Submit online Notice at [https://cm.maxient.com/reportingform.php?UnivofSF&layout\\_id=40](https://cm.maxient.com/reportingform.php?UnivofSF&layout_id=40). Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits USF's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be initiated. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

Reporting carries no obligation to initiate a Complaint, and in most situations, USF is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where USF may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, USF will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows USF to discuss and/or provide supportive measures, in most circumstances.

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

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

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

When Notice/Complaint is affected by significant time delay, USF will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the Notice/Complaint.

### **16. 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 determination of a Policy violation.

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate USF policies.

### **17. Confidentiality/Privacy**

USF makes every effort to preserve the Parties' privacy<sup>28</sup>. USF will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant;

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<sup>28</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means information related to a complaint will be shared with a limited number of University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in USF's response to notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated

any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.<sup>29,30</sup>

Additional information regarding confidentiality and privacy can be found in Appendix C.

#### Unauthorized Disclosure of Information

Parties and Advisors are prohibited from unauthorized disclosure of information obtained by USF through the Resolution Process, to the extent that information is the work product of USF (meaning it has been produced, compiled, or written by USF for purposes of its investigation and resolution of a Complaint). It is also a violation of USF Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

#### **18. Emergency Removal/Interim Actions/Leaves**

USF can act to remove a student Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Director of Public Safety, Dean of Students, or Human Resources, as appropriate, using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

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

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

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individuals who have the ability to have privileged communications as Confidential Resources. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

<sup>29</sup> 20 U.S.C. 1232g

<sup>30</sup> 34 C.F.R. § 99



A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

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

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

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

Where the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions for interim action, as provided in University employment policies, may also be applicable.

#### **19. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, USF must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of USF community.

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

#### **20. Amnesty**

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

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

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

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent with respect to a Complainant.

#### **A. Students**

USF maintains an amnesty policy for students who offer help to others in need.

#### **B. Employees**

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. USF may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

### **21. Preservation of Evidence**

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

#### **Sexual Assault**

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

#### **Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.

- Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

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

## **22. Federal Statistical Reporting Obligations**

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

- 1) All “primary crimes,” which include criminal homicide, rape, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) 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
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking<sup>31</sup>
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

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

Campus Security Authorities include: Public Safety staff, student conduct staff, local police, coaches, Athletic Director, Student Housing and Residential Education staff, Human Resources staff, Title IX Coordinator and Deputy Coordinator(s), and any other official with significant responsibility for student and campus activities.

## **23. Independence and Conflicts of Interest**

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

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<sup>31</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the University President [Lone Mountain Campus, Rossi Wing, 4th Floor, 2130 Fulton St. San Francisco, CA 94117; (415)422-6762.]. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Title IX Team Member should be raised with the Title IX Coordinator.

#### **24. Revision of this Policy**

This Policy succeeds previous USF policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and procedures regularly. USF reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

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

This Policy is effective August 1, 2024.

## **RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF POLICY ON NONDISCRIMINATION BASED ON SEX AND GENDER, SEXUAL HARASSMENT, AND SEXUAL MISCONDUCT (Hereinafter the “Resolution Process”)**

### **1. Overview**

USF will act on any Notice, Complaint, or Knowledge of a potential violation of the Policy on Nondiscrimination Based on Sex and Gender, Sexual Harassment, and Sexual Misconduct (“the Policy”) that is received by the Title IX Coordinator<sup>32</sup> or any other Mandated Reporter by applying the Resolution Process below.

The procedures below apply to all allegations of harassment and discrimination on the basis of sex and gender involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all Policy offenses.

The procedures below may be used to address collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the Fogcutter Student Handbook, and faculty and staff handbooks.

Unionized/other categorized employees are subject to the terms of their collective bargaining agreements/other applicable employment agreements to the extent those agreements do not conflict with federal or state compliance obligations.

### **2. Notice/Complaint**

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

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

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<sup>32</sup> Anywhere this procedure indicates “Title IX Coordinator,” USF may substitute a trained designee.

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

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

1. Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
2. An informal resolution (upon submission of a formal complaint); and/or
3. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

USF uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

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

### **3. Initial Evaluation**

The Title IX Coordinator conducts an initial evaluation typically within one to five (1-5) business days of receiving Notice/Complaint/Knowledge of alleged misconduct.<sup>33</sup> The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
  - If the conduct does not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether USF has jurisdiction over the reported conduct, as defined in the Policy.
  - If the conduct is not within USF's Title IX office's jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate USF office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.

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<sup>33</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- Notifying the Complainant, or the person who reported the allegation(s), of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the resolution processes, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

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

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

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

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, and student conduct officers. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE Team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

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

More about the University's process for VRA can be found in Appendix D.

### ***Helping a Complainant to Understand Options***

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include:

- Working with the Complainant to determine whether the Complainant wishes to pursue one of three resolution options:
  - a supportive and remedial response, and/or
  - Informal Resolution, or
  - the Resolution Process described below.

The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the Title IX Coordinator has determined the Policy applies and that USF has jurisdiction, they will route the matter to the appropriate Resolution Process, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter, accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

### ***Title IX Coordinator Authority to Initiate a Complaint***

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if USF cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination would occur if a Complaint is not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is a USF employee;



- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether USF could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate USF employees, and/or conduct a violence risk assessment<sup>34</sup> to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

#### **4. Dismissal**

USF **may** dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- 1) USF is unable to identify the Respondent after taking reasonable steps to do so
- 2) Respondent is no longer enrolled or employed by USF
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Title IX Coordinator declines to initiate a Complaint
- 4) USF determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

A Decision-maker can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Upon any dismissal, USF will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, USF will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

#### **5. Appeal of Dismissal**

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator

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<sup>34</sup> See detailed information regarding a Violence Risk Assessment in Appendix D

must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, USF will:

- Implement dismissal appeal procedures equally for the Parties;
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal; and
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome;
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided;
- 3) The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.

Upon receipt of a dismissal appeal in writing from one or more Parties, the Title IX Coordinator will share the petition with the other party and provide three (3) business days for other Parties to respond to the request. The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. This appeal will be provided in writing to the other Parties, and the Title IX Coordinator, who will be invited to respond in writing. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Dismissal Appeal Officer, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the discretion of the Title IX Coordinator, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

## **6. Emergency Removal/Interim Suspension of a Student**

The University can act to remove a student Respondent from its education program or activities – partially or entirely - on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Director of Public Safety, Dean of Students, or Human Resources, using its standard objective violence risk assessment procedures.

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

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

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

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

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

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

## **7. Placing an Employee on Leave**

Where the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions for interim action, as provided in University employment policies, may also be applicable.

Procedures for unionized employees can be found [here](#).

## **8. Counter-Complaints**

USF is obligated to ensure that the resolution process is not abused for retaliatory purposes. Although USF permits the filing of Counter-Complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the Counter-Complaint are made in good faith. When Counter-Complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-Complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint, in which case a delay may occur.

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

## **9. Advisors in the Resolution Process**

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

The Parties may each have an Advisor of their choice (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>35</sup>

The Title IX Coordinator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from USF, USF will have trained the Advisor and familiarize them with USF's Resolution Process.

USF 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, USF is not obligated to provide an attorney to advise that party.

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<sup>35</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 an Title IX Coordinator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally, choosing an Advisor who is also a witness in the process creates potential for bias and conflicts 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 Decision-maker(s).

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 the University policies and procedures.

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

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

Advisors appointed by the institution cannot be confidential employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

As a public entity, USF fully respects and accords the Weingarten rights of employees, meaning that for Parties who are entitled to union representation, USF will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses [are **OR** are not] permitted to have union representation or Advisors in Resolution Process interviews or meetings.

#### **B. Advisors in Hearings/University-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, 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 own Advisor, but they may not proceed without an Advisor. If the party's Advisor will 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. Extensive questioning of the parties and witnesses will also be conducted by the Decision-makers during the hearing.

#### **C. Advisor's Role in the Resolution Process**

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

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

Where applicable under state law or USF Policy, Advisors or attorneys are permitted to fully represent their advisees or clients in the Resolution Process, including all meetings, interviews, and hearings. Although USF prefers to hear from Parties directly, in these cases, Parties are entitled to have their chosen representatives provide evidence.

#### **D. Records Shared with Advisors**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. The University provides a consent form that authorizes the University to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentations demonstrating consent to release information to the Advisor before the University is able to share records with an Advisor.

The University will **always** communicate directly with the parties. The University will make every effort to include an Advisor in communication when specifically requested by a party, however, no guarantee can be made to do so and the party bears the ultimate responsibility to share all communication and information directly with their Advisor. Failure of the University to carbon copy an Advisor on any communication, even when requested to do so, is not sufficient to meet a ground for appeal in and of itself. It will be at the discretion of the Title IX Coordinator whether a request for all communication to be made through an attorney Advisor be granted.

Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers.

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 the University. The University may 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.

#### **E. Advisor Expectations**

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

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

All Advisors are subject to the same USF policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by USF. Advisors are expected to advise their advisees without disrupting proceedings.

#### **F. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with USF's established rules of decorum, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including USF requiring the party to use a different Advisor or providing a different USF-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **G. Assistance in Securing an Advisor<sup>36</sup>**

Complainants may wish to contact organizations such as:

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

Respondents may wish to contact organizations such as:

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

### **10. Resolution Option Overview**

This Resolution Process, consisting of Informal Resolution ,or Hearing Resolution, is USF's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, and retaliation. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with USF Policy.

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

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may

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<sup>36</sup> This is being provided for informational purposes and does not constitute the University's endorsement of any of the external individuals/organizations listed.

offer the option to the Parties, in writing. USF will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

Before initiation of an Informal Resolution process, USF will provide the Parties with a NOIA that explains:

- The allegations;
- The requirements of the Informal Resolution process;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume USF's Resolution Process;
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the resolution process arising from the same allegations;
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties; and
- What information USF will maintain, and whether and how it could disclose such information for use in its Resolution Process.

USF offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the Complainant(s) and USF are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue a Hearing Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Hearing Resolution Process.



The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Hearing Process, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

### Categories of Informal Resolution

#### **(1) Supportive Resolution**

The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to USF's education program and activity. Such measures can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

#### **(2) Educational Conversation**

The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of recurrence of any behaviors that may not align with Policy.

#### **(3) Accepted Responsibility<sup>37</sup>**

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept

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<sup>37</sup> [Section 20](#) below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. Section 20, in contrast, is unilateral. Neither the Complainant nor the Title IX Coordinator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. Under Section 20, the outcome involves sanctioning imposed by USF, rather than an agreement to self-sanction, as outlined in this section.

responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

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

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.

When a resolution is reached, the appropriate sanction(s) 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.

#### **(4) Alternative Resolution**

The institution offers a variety of Alternative Resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative Resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate USF officials; and other forms of resolution that can be tailored to the needs of the Parties. Some Alternative Resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an Alternative Resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an Alternative Resolution process.

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

- The Parties' amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the Parties
- The nature and severity of the alleged misconduct
- The Parties' motivation to participate
- Civility of the Parties
- Results of a violence risk assessment/ongoing risk analysis
- Respondent's disciplinary history
- Whether an emergency removal or other interim action is needed
- Skill of the Alternative Resolution facilitator with this type of Complaint
- Complaint complexity

- Emotional investment/capability of the Parties
- Rationality of the Parties
- Goals of the Parties
- Adequate resources to invest in Alternative Resolution (e.g., time, staff, etc.)

The Title IX Coordinator has the authority to determine whether Alternative Resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Alternative Resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the Alternative Resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.). The results of Complaints resolved by Alternative Resolution are not appealable.

If an Informal Resolution option is not available or selected, USF will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

## **B. Hearing Resolution Process (see Section 24 below)**

### **11. Resolution Process Pool**

The Resolution Process relies on a pool of Title IX Team Members ("the Pool") to carry out the process.<sup>38</sup> The Pool is made up of USF staff and faculty.

#### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Title IX Coordinator:

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Hearing Facilitator

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<sup>38</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles.

- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

## **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with Human Resources and supervisors, appoints the Pool, which acts with independence and impartiality. Although 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. The process of role assignment may be the result of particular skills, aptitudes, or talents identified in the members of the Pool that make them best suited to particular roles.

## **12. Notice of Investigation and Allegations**

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written Notice of Investigation and Allegations (NOIA). Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department, office, or office program manager for the area/program being investigated.

The NOIA typically includes:

- 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/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- A statement that USF presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share USF work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process

- A statement informing the Parties that USF's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations during the Resolution Process
- A link to USF's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations
- [A statement that Parties who are members of a union are entitled to union representation throughout the process]

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(es) of the Parties as indicated in official USF records, or emailed to the Parties' USF-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. Updated NOIAs will be made by using one of the above methods.

### **13. Resolution Timeline**

USF will make a good faith effort to complete the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, USF reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

USF may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. USF will promptly resume its Resolution Process as soon as feasible. During such a delay, USF will implement and maintain supportive measures for the Parties as deemed appropriate.

USF action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced. USF reserves the right to alter processes or timing if appropriate.

USF will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the process.

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

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

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

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

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

#### **15. Ensuring Impartiality**

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

The Title IX Coordinator will vet the assigned Investigator(s), Decision-maker(s), and Appeals officers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator(s), Decision-maker(s), or Appeals officers 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 Title IX Coordinator, concerns should be raised with the Associate Vice President/Dean of Students and Human Resources for employees.

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, 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. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

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

#### **16. Investigator Appointment**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two investigators), usually within two (2) business days of determining that an investigation should proceed.

#### **17. Witness Role and Participation in the Investigation**

Employees (not including Complainant and Respondent) are required to cooperate with and participate in USF's investigation and Resolution Process. Student witnesses and witnesses from outside USF community cannot be required to participate but are encouraged to cooperate with USF investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx, etc.), or, in limited circumstances, by telephone. USF will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though this is not a preferred method.

#### **18. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all parties must be made aware of and consent to<sup>39</sup> audio and/or video recording.

#### **19. Evidentiary Considerations<sup>4041</sup>**

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<sup>39</sup> Consent of the interviewer and interviewee is required in "all-party" (otherwise known as "dual-party") recording states, such as California.

<sup>40</sup> CA Educ. Code, Section 66281.8 provides that parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

<sup>41</sup> In the event of a dismissal under Title IX, but where the process still proceeds, the following is applicable: CA Educ. Code, Sec. 66281.8 provides that the investigator(s) or hearing officer(s) prohibit the following evidentiary considerations: (1) the past sexual history of a Complainant or Respondent except when the conditions in (3a and 3b) are present; (2) prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that the physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or (3a) the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and Respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations, (3b) when evidence in (3a) is permitted, investigators and hearing officers who allow consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent.

The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex-based harassment occurred.

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

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

## **20. Respondent Admits Responsibility**

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would also waive all rights to appeal for the Respondent. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion.

## **21. Investigation**

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to

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Respondent are required to consider that the fact the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient by itself to establish the conduct at issue was consensual. Prior to allowing the consideration of any evidence provided under this section, the investigator(s) or hearing officer(s) will provide a written explanation to the parties as to why the evidence is consistent with this clause.



the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

USF may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

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

- Determine the identity and contact information of the Complainant.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct follow-up interviews with each, as necessary.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document in the investigation report which questions were asked, with a rationale for any changes or omissions.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and party and witness interviews, and provides all relevant evidence.

- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback.

## **22. Referral for Hearing**

Provided that there is enough information in the complaint to substantiate an alleged Policy violation, and the complaint is not resolved through the Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter to a hearing.

The Title IX Coordinator will select appropriate Decision-makers(s) from the Pool and provide a copy of the investigation report and the file or directly related evidence. Allegations involving student-employees in the context of their employment will be assessed for the appropriate make-up of the Pool to be the Decision-maker(s).

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

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

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

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

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

## **24. Hearing Resolution Process**

### **1. Live Hearing Requirements**

- **Hearing Venue Options and Recordings.** The live hearing may occur in person or via video technology. The Decision-maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator's discretion.

- The Parties may make a request to the Title IX Coordinator that the hearing occur in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Title IX Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
- All hearings will be recorded, and Parties may request a copy of the recording from the Title IX Coordinator following the live hearing.
- No unauthorized recordings are permitted.
- **Hearing Participants.** Persons who may be present for a hearing include the Decision-maker(s), hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-maker. Witnesses are present only during their portion of the testimony.
- **Advisors.** A form of indirect questioning is required during the hearing and must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, 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 own Advisor, but they may not proceed without an Advisor. If the party's Advisor will 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. Extensive questioning of the parties and witnesses will also be conducted by the Decision-makers during the hearing.
  - During the hearing, all questions that a party wishes to ask must be posed by the Advisor, not the Parties.
  - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.
    - Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a matter consistent with the Policy.
- **Impact Statements.** Each party may submit an impact and/or mitigation statement to the Title IX Coordinator that the Decision-maker will review during any sanction determination.
  - Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist.
  - The Title IX Coordinator will only provide the impact statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Title IX Coordinator shares the impact statements with the Decision-maker, they will also be shared with the Parties.
- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
  - If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

- The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person would let the Title IX Coordinator know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.
- **Conflicts of Interest or Bias.** The Decision-maker must not have a bias for or against complainants or respondents generally or the individual Complainant or Respondent in particular.
  - The Decision-maker must recuse themselves if such bias or conflict of interest exists.
  - If the Decision-maker believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
  - The Parties may raise challenges that the Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator within two (2) business days of receiving the hearing notice.
  - The Title IX Coordinator will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
  - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker and Parties.**
  - The Decision-maker will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least seven (7) business days in advance of the hearing.
  - The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.<sup>42</sup>

## 2. Hearing Notice

The Title IX Coordinator will send the Parties a Notice of Hearing with sufficient time for the Parties to prepare for the hearing<sup>43</sup>, typically at least five (5) business days prior to the hearing. Once mailed, emailed, and/or received-in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.

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<sup>42</sup> Hard-copy materials may be provided upon request to the Title IX Coordinator. The Final Investigation Report and relevant evidence may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

<sup>43</sup> Unless an expedited hearing is agreed to by all parties.

- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. If there is a request made and agreed to by both parties to be in the same room for the hearing, this request will be assessed by the Title IX Coordinator.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the 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. For compelling reasons, the Chair, or Title IX Coordinator, may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and the University will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A statement that questions that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>44</sup>
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>45</sup>
- An invitation to each party to submit to the Title IX Coordinator, or hearing facilitator, an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether the parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

### **3. Witness Participation**

Student witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. Employee witnesses are expected to participate in, and make themselves

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<sup>44</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

<sup>45</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

reasonably available for, the hearing. Witnesses may participate in-person or via video technology that allows the Decision-maker and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an advisor without express permission of the Title IX Coordinator. At the discretion of the Decision-maker, a witness may join by phone if no other reasonable alternative is available.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet USF's resolution timeline and ensure a prompt resolution.

The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- All Parties and the Decision-maker assent to the new witness's participation in the hearing without remanding the complaint back to the investigator, and
- The Decision-maker deems the evidence presented by the new witness to be relevant, not impermissible, and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant, not impermissible, and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing.
- Provide the Parties at least five (5) business days to review the relevant portions of the new witness's statements, if such statements are submitted.
- Remand the Complaint back to the Investigator for further investigation or verification.
- Allow the Parties to review and comment on the testimony of the new witness.

If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing absent the new witness's participation.

#### **4. Pre-Hearing Preparation**

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

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), or have proffered a written statement or answered written questions, unless all

parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>46</sup>

The parties will be given a list of the names of the Decision-maker(s) at least five(5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than three (3) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

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

During the seven (7) business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or the hearing and will be exchanged between each party by the Chair.

## **5. Pre-Hearing Meetings**

The Chair will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Chair to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Parties from submitting a question at the hearing for the first time or asking for a reconsideration on a Chair's pre-hearing decision based on any new information or testimony offered at the hearing. The Chair will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Chair will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Chair, **only** with the agreement of all 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 Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

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<sup>46</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

The pre-hearing meeting(s) will be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format. The Chair will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

## **6. Hearing Procedures**

### **A. Evidentiary Considerations**

The Parties must provide all evidence to the Investigator(s) prior to completing the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant and not impermissible, the Parties and Decision-maker must agree to admit it into the record. If the Parties and Decision-maker do not agree, it will not be admitted into the record. If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing absent the new evidence.

The new relevant evidence will be admitted to the record if:

- All Parties and the Decision-maker assent to the new evidence being included in the hearing without remanding the Complaint back to the investigator, and
- The evidence is not duplicative of evidence already in the record, and
- It is not impermissible, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing.
- Provide the Parties with at least five (5) business days to review the relevant evidence.
- Remand the Complaint back to the Investigator for further investigation or analysis.
- Allow the Parties to review and comment on the new evidence.

If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing without allowing the new evidence.

### **B. Collateral Misconduct**

The procedures may be used to address collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the Fogcutter Student Handbook, and faculty and staff handbooks.

### **C. Joint Hearings**



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

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

#### **D. Introductions and Hearing Procedure Explanation**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis 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 Title IX Coordinator 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 Title IX Coordinator, or the Title IX Coordinator themselves. 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.

#### **E. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties (through their Advisors). The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

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

#### **F. Testimony and Questioning**

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

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.<sup>47</sup>

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

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

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

Any party or student witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. Employee witnesses are required to participate in the hearing if they are reasonably available. The Decision-maker can only rely on the available relevant and not impermissible evidence in making the ultimate determination of responsibility. The Decision-maker may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

#### **H. Hearing Recordings**

USF records hearings (but not deliberations) for purposes of review in the event of an appeal. No other audio or video recording of any kind is permitted during the hearing, unless specifically authorized by the Decision-maker.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate USF officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator. No other disclosure, including sharing, copying, or

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<sup>47</sup> If a dismissal occurs under Title IX, and the hearing process continues, CA law does not permit questioning by Advisors. All questions must be submitted by the parties/Advisors to the Decision-maker or Chair, who will pose them if the questions are relevant.

distribution of the recording or transcript, is permitted without the express written permission of the Title IX Coordinator.

## **7. Deliberation and Determination**

After closing statements from the Parties, the Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of proof. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation in part or whole by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations. Deliberations are not recorded.

When there is a finding of responsibility for one or more of the allegations, the Chair may then consider any previously submitted impact and/or mitigation statement(s) provided by the Parties in determining appropriate sanction(s). The Title IX Coordinator will ensure that any submitted statements are exchanged between the Parties if they are viewed by the Chair. Impact/mitigation statements do not influence the finding, they only potentially influence the sanctions.

The Chair will then prepare and provide the Title IX Coordinator with a written outcome letter detailing all findings and final determinations, the rationale(s) explaining the decision(s), the relevant and not impermissible evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s).

This statement is usually five to fifteen (5-15) pages in length and is typically submitted to the Title IX Coordinator within two (2) business days from the conclusion of the hearing, unless the Title IX Coordinator grants an extension. The Title IX Coordinator will notify the Parties of any extension.

## **8. Sanctions**

Factors considered by the Decision-maker when determining sanctions and responsive actions may include, but are not limited to:

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

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

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

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

#### **A. Student Sanctions<sup>48</sup>**

The following are the common sanctions that may be imposed upon students singly or in combination<sup>49</sup>:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any USF Policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either USF-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership in student organizations.
- *Disciplinary Probation*: An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional Policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Separation from the institution, or one or more of its facilities, for a definite period of time, typically not to exceed two years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript, per institutional policy and/or state law.

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<sup>48</sup> USF policies on transcript notation apply to these proceedings.

<sup>49</sup> Subject to USF's Organizational Code of Conduct.

- *Expulsion*: Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript, per institutional policy and/or state law.
- *Withholding Diploma*: USF may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating Policy.
- *Revocation of Degree*: While very rarely employed, USF reserves the right to revoke a degree previously awarded from USF for fraud, misrepresentation, and/or other violation of USF policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Fines*: Monetary fines may be imposed on students or student organizations for violations of the Student Conduct Code.
- *Loss of Privileges*: Denial of participation in designated privileges and extracurricular activities for a specified period of time. Violation of any conditions in the loss of privileges and exclusion from activities sanction or violations of other policies or campus regulations during the sanction period may be cause for further conduct action, ordinarily in the form of suspension or expulsion.
- *Notifications*: Notification of violations will be made to appropriate officials if the respondent is involved in co-curricular activities (e.g., ROTC, student leadership) or intercollegiate athletics. A violation may result in the loss of the privilege of participating in co-curricular activities if the supervising official deems it appropriate. Parental notifications.
- *Restitution*: Compensation for damage to or misappropriation of University property may be imposed either exclusively or in combination with other conduct action. Reimbursement may also be imposed for damage to the property of or injury to another person as a result of a violation of the policy. Such reimbursement may take the form of monetary payment or appropriate service to repair or otherwise compensate for damages. Restitution may be imposed on any student acting alone, or through group or concerted activities, or on any campus organization that participates in causing the damages or expenses.
- *Exclusion*: Exclusion of a student from specified areas of the campus or campus activities. Violation of the conditions of exclusion or of University policies or campus regulations during the period of exclusion may be cause for further conduct action, which ordinarily is in the form of University suspension.
- *University Housing Relocation*: Relocation of a student in University-operated housing may occur when the student has demonstrated that they are unable to be successful in their current location by virtue of repeated violations of the Student Conduct Code and/or Residence Life policies.
- *University Housing Probation*: Imposed for a period of time to allow residential students to reflect upon their choices and behavior and to demonstrate the ability to abide by student housing community standards and expectations. It also serves as formal notification that the student is not in good standing with regard to their on-campus housing. Housing probation is typically assigned in situations where behavior has been detrimental to the on-campus residential community. Additional residentially-based violations of the Student Conduct Code while on Housing Probation

will result in an evaluation to determine if continued on-campus living is in the best interests of the student and the on-campus residential community. Housing Probation may impact a student's eligibility to participate in the housing lottery process, University-sponsored programs or services, or to serve in leadership positions.

- *University Housing Pre-Removal:* When a student has demonstrated a pattern of behavior that is contrary to the behavioral expectations of community living, they will be given formal notice that any further violation for which they are found responsible will result in immediate residence hall expulsion.
- *University Housing Suspension:* Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- *University Housing Expulsion:* The student is removed and permanently banned from the residence halls.
- *University Probation:* Imposed for a minimum of one (1) academic year in serious cases (including but not limited to illegal drug use or distribution; making threats of, or actually performing physical or sexual violence; acting in a manner that endangers others) for students who repeatedly violate the Student Conduct Code, and for students returning to the University after suspension. University Probation serves as formal notification that the student is not in good standing with the University and that similar or more severe violations of the Student Conduct Code while on this status will result in suspension or expulsion from the University. University Probation will impact a student's eligibility to participate in University-sponsored programs or services, or to serve in leadership positions.
- *University Suspension:* Separation of the student from the University for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.
- *University Expulsion:* Permanent separation of the student from the University.
- *Revocation of Admission and/or Degree:* Admission to the University or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards in obtaining the degree, or for other serious violations committed by a student prior to matriculation or graduation.
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

## **B. Student Group and Organization Sanctions<sup>50</sup>**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

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<sup>50</sup> Subject to USF's Organizational Code of Conduct. Organizational sanctions are included here despite the fact that organizations cannot be charged as Respondents under Title IX. However, nothing would prevent USF from holding a student organization accountable for Policy violations using the Resolution Processes herein, as long as it was clearly noted that Title IX was not applicable. Often, individuals will be charged for their role in organizational misconduct under Title IX, and the organization would be charged as collateral misconduct to the individual charges, resolved in the same process as those charges.

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any USF Policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional Policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of USF funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student group or organization recognition and/or institutional support for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in USF-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from USF.
- *Expulsion*: Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific USF privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, USF may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

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

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*

- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, USF may assign any other responsive actions as deemed appropriate.

## **9. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare the Notice of Outcome letter. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisor within five (5) business days of receiving the Decision-maker(s)' deliberation statement.

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

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notification 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 for 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 and federal law; any sanction(s) issued which the University is permitted to share according to state or federal law; and whether any remedies will be provided to the Complainant to ensure access to the University's educational or employment program or activity.

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

## **10. Rights of the Parties (see Appendix B)**

### **11. Withdrawal or Resignation Before Complaint Resolution**

#### **A. Students**

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from USF, the Resolution Process may continue, or Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, USF will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.



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

When a student withdraws or leaves while the process is pending, the student may not return to USF in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly.

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

## **B. Employees**

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

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

The employee who resigns with unresolved allegations pending is not eligible for academic admissions or rehire with the University, and the records retained by the Title IX Coordinator 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.

## **12. Appeal of the Determination**

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator, but it must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator. No appeal decision-makers will have been previously involved in the Resolution Process for the complaint, including any dismissal appeal that may have been heard earlier in the process.

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

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

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

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome

#### **B. Request for Appeal**

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 parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

The other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be emailed, and/or provided a hard copy of the request with the approved grounds and will then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three (3) business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

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

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

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' University-issued email or otherwise approved account. Once emailed and/or received in person, notice will be presumptively delivered.

### **C. Appeal Determination Process**

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-makers will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, 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. All decisions are made by majority vote and apply the preponderance of the evidence.

An appeal is not an opportunity for the Appeal Panel or Decision-makers to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

### **D. Appeal Outcome**

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-makers with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Panel or Decision-makers may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which USF is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent USF is permitted to share under federal or state law.

Written notification 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' USF-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the five available appeal grounds.

#### **E. Sanction Status During the Appeal**

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

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

If the original sanction(s) include separation in any form, the University may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of the holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator, whose determination is final.

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

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or USF community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

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

At the discretion of the Title IX Coordinator, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

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

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

#### **14. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms**

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

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 USF.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

#### **15. Recordkeeping**

For a period of at least seven (7) years following the conclusion of the Resolution Process, USF will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to USF's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to provide training to the Title IX Coordinator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitator, and any person who is responsible for implementing USF's Resolution Process, or who has the authority to modify or terminate supportive measures. USF will make these training materials available for review upon request.
- 7) All materials used to train all employees consistent with the requirements in the Title IX Regulations

- 8) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

## **16. Accommodations and Support During the Resolution Process**

### **Disability Accommodations**

USF is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to USF's Resolution Process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

### **Other Support**

USF will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

## **17. Revision of these Procedures**

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update these procedures. USF reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

These procedures are effective August 1, 2024.

## APPENDIX A: DEFINITIONS

The following definitions apply to the Sex-Based Harassment Policies and Procedures:

- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the grounds for appeal are met, and directs responsive action(s), accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in USF's education program or activity at the time of the alleged discrimination, harassment or retaliation.
- **Complaint.** An oral or written request to USF that can objectively be understood as a request for USF to investigate and make a determination about the alleged Policy violation(s).
- **Confidential Employee.**
  - An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
  - An employee whom USF has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, or retaliation. If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about discrimination, harassment, or retaliation in connection with providing those services; or
  - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, or retaliation. The employee's confidential status only applies with respect to information received while conducting the study.
- **Day.** A business day when USF is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where USF exercises substantial control over the context in which the discrimination, harassment, and/or retaliation occurs and also includes any building owned or controlled by a student organization that USF officially recognizes.

- **Employee.** A person employed by USF either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Finding.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator’s summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by USF to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When USF receives Notice of conduct that reasonably may constitute harassment, discrimination, or retaliation in its Education Program or Activity.
- **Mandated Reporter.** A USF employee who is obligated by Policy to share Knowledge, Notice, and/or reports of discrimination, harassment, and/or retaliation with the Title IX Coordinator.<sup>51,52</sup>
- **Notice.** When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristics.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or USF Policy. This policy applies to the following protected characteristics [gender, gender expression, gender identity, pregnancy or related conditions, sex, sexual orientation]
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses.

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<sup>51</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

<sup>52</sup> The Title IX Coordinator designated to receive information from Mandated Reporters may vary depending upon the type of alleged discrimination, harassment, or retaliation (e.g., on the basis of sex, on the basis of race, on the basis of disability).



- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to USF’s Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution and/or Hearing Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** Any person who has gained admission.
- **Title IX Coordinator.** The person with primary responsibility for overseeing and enforcing the Sex-Based Harassment Policy and Procedures. As used in these policies and procedures, the “Title IX Coordinator” also includes their designee(s). At least one official designated by USF to ensure ultimate oversight of compliance with Title IX and USF’s Title IX program.
- **Title IX Team.** The Title IX Coordinator, any deputy coordinators, and any member of the [Resolution Process Pool](#).

## APPENDIX B: STATEMENT OF THE PARTIES' RIGHTS

### **Under this Policy and procedures, the Parties have the right to:**

- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Behaviors, when reported in good faith to USF officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any USF public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from USF's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by USF officials.
- Have USF Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without USF pressure, if Informal Resolution is approved by the Title IX Coordinator.
- Not be discouraged by USF officials from reporting discrimination, harassment, retaliation, and Other Prohibited Behavior to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by USF in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by USF law enforcement and/or other USF officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- A USF-implemented no-contact order 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.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from USF staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Rescheduling or adjusting an exam, paper, and/or assignment

- Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options
- Have USF maintain supportive measures for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair USF's ability to provide the supportive measures.
  - Receive sufficiently advanced written notice of any USF meetings or interviews involving another party, when possible.
  - Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
  - Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.
  - Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
  - Access the relevant evidence obtained and respond to that evidence.
  - A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given ten (10) business days to review and comment on the evidence.
  - The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least seven (7) business days to review the report prior to the determination.
  - Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
  - Regular status updates on the investigation and/or Resolution Process.
  - Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
  - A Decision-making panel that is not single-sex in its composition, if a panel is used.
  - Preservation of confidentiality/privacy, to the extent possible and permitted by law.
  - Meetings, interviews, and/or hearings that are closed to the public.
  - Petition that any USF representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
  - Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
  - Apply the appropriate standard of proof, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
  - Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
  - Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.

- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a USF decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with USF's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

## APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms privacy, confidentiality, and privilege have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of USF employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in USF’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
  
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by USF as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Title IX Office can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
  
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court orders release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. USF treats employees who have the ability to have privileged communications as Confidential Employees.

USF reserves the right to determine which USF officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the institution’s unauthorized disclosure policy.

USF may contact students’ 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 prior to doing so.

## APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by a person against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

Implementing a VRA requires specific training. It is typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct professionals, and/or other Behavioral Intervention Team (BIT) (sometimes known as CARE team) members.

A VRA occurs in collaboration with the BIT, CARE team, and/or threat assessment team and must be understood as an ongoing process, rather than as a single evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations. It is supported by research from law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use(s) an evidence-based process consisting of:

- 1) An appraisal of **risk factors** that escalate the potential for violence.
- 2) A determination of stabilizing influences, or **protective factors**, that reduce the risk of violence.
- 3) A contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of the threat; fixation and focus on target; grievance collection; and action and time imperative for violence.
- 4) The application of **intervention and management** approaches to reduce the risk of violence.

To assess a person's level of violence risk, the Title IX Coordinator will initiate the VRA process through the CMBIT. The CMBIT will assign a trained person(s) to perform the assessment, according to the specific nature of the complaint.

The assessor(s) will follow the process for conducting a VRA as outlined in the CMBIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include The NABITA Risk Rubric,<sup>53</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>54</sup> Violence Risk Assessment of the Written Word (VRAWW),<sup>55</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>56</sup> Historical Clinical Risk Management (HCR-20),<sup>57</sup> and MOSAIC.<sup>58</sup>

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<sup>53</sup> <https://www.nabita.org/training/nabita-risk-rubric/>

<sup>54</sup> <https://www.nabita.org/training/sivra-35/>

<sup>55</sup> <https://www.nabita.org/training/vraww/>

<sup>56</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>57</sup> <http://hcr-20.com>

<sup>58</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

The VRA is conducted independently from the Resolution Process, informed by it, but free from outcome pressure. The person(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CMBIT member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of a person or the community.

In some circumstances, the Title IX Coordinator may determine that a VRA should be conducted by the CMBIT as part of the initial evaluation of a Complaint under this Policy. A VRA can aid in critical and/or required determinations, including:

- 1) Whether to remove the Respondent on an emergency basis because of an immediate threat to a person or the community's health/safety (Emergency Removal)
- 2) Whether the Title IX Coordinator should pursue/sign a Complaint absent a willing/able Complainant
- 3) Whether the scope of an investigation should include an incident, and/or pattern of misconduct, and/or climate of discrimination or harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a Complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to permit the Respondent to voluntarily withdraw
- 8) Whether to impose transcript notation or communicate with a transfer institution about a Respondent
- 9) Assessment of appropriate sanctions/remedies (to be applied post-determination)
- 10) Whether a Clery Act Timely Warning/Trespass order/Persona Non Grata is needed

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. Institutions may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.