

UNIVERSITY OF SAN FRANCISCO'S
POLICY AGAINST SEX AND
GENDER-RELATED MISCONDUCT

TABLE OF CONTENTS

I. Policy Statement.....	1
II. Policy Overview.....	1
III. DEFINITIONS.....	1
A. Sex and Gender–Based Misconduct.....	1
B. Sex and Gender-Based Harassment.....	1
C. Sexual Assault.....	2
D. Dating Violence.....	3
E. Domestic Violence.....	3
F. Stalking.....	3
G. Sexual Exploitation.....	3
H. Sexual Battery.....	3
I. Sexual Violence.....	3
J. Affirmative Consent.....	4
K. Incapacitation.....	4
L. Retaliation.....	4
IV. Policy Administration and Title IX Office.....	5
V. Prohibited Conduct.....	5
VI. Reporting Options and Confidentiality.....	5
A. How to Make a Report to the Title IX Office.....	5
B. University Response and Initial Outreach.....	6
C. Formal Complaints.....	6
D. When a complainant does not wish to proceed.....	6
E. Reporting to Responsible Employees; Responsible Employee Reporting Duties; USF Response Obligations.....	7
F. Confidential Employees and Resources.....	7
G. Reporting to Law Enforcement.....	8
H. Requests for Confidentiality.....	8
I. Amnesty.....	9
J. Timeline for Reporting.....	9
K. Training Materials.....	9
L. Recordkeeping.....	10
VII. Supportive Measures.....	10
VIII. Grievance Process Following Formal Complaint.....	10
A. Determination of Proper Resolution Pathway.....	10
1. Title IX Formal Complaint Process (34 C.F.R. § 106.45).....	10
2. USF Policy or California Law, but not Title IX.....	11
3. Sex or Gender Discrimination, but not “Sexual Misconduct”.....	11
B. Notice to Parties for Formal Complaints.....	11

C. Dismissal of Complaints.....	13
D. Consolidation.....	14
E. Advisors.....	14
F. Resolution Agreement.....	14
G. Informal Resolution.....	15
H. Investigation.....	16
1. Investigation Procedures Applicable to All Matters.....	16
A. Title IX Formal Complaint Process - Investigation.....	16
B. Non–Title IX University Process - Investigation.....	16
I. Live Hearings.....	17
1. Applicability and Format.....	17
2. Hearing Officer / Decision-Maker.....	17
3. Questioning and Relevance.....	17
4. Participation and Use of Statements.....	18
5. Record of the Hearing.....	18
6. Outcomes Without a Determination of Responsibility.....	18
J. Determination.....	18
K. Appeals for all matters.....	19
L. Timeframe.....	19
M. Sanctions and Remedies.....	19
IX. Accommodations for Pregnant and Parenting Students and Employees.....	20
X. Relevant Government Agencies.....	20
XI. Revision of this Policy & procedures.....	21

UNIVERSITY OF SAN FRANCISCO'S POLICY AGAINST SEX AND GENDER-RELATED MISCONDUCT

I. Policy Statement

University of San Francisco affirmatively promotes an educational and work environment that is free from sex and gender-based discrimination, harassment, and misconduct. USF responds promptly and fairly to reports and complaints relating to possible misconduct based on sex or gender.

II. Policy Overview

This Policy establishes mandatory procedures for reporting, investigating, and resolving sex and gender-based harassment and misconduct. This Policy is intended to comply with all applicable federal and California law. At the time this Policy is issued, the 2020 Title IX regulations (34 C.F.R. § 106.45) are in effect.

This Policy applies to all USF students, employees, volunteers, independent contractors, and other third parties participating in USF's programs and activities, including admissions and employment, both on and off USF's campus and in the online environment. In some cases it may apply to conduct occurring outside USF's programs or activities, if the facts indicate that conduct contributes to a hostile educational or work environment or interferes with access to USF programs, activities, or employment.

Some matters based on gender or sex may come within broader non-discrimination law principles but not involve sexual misconduct or harassment. This may include claims of disparate treatment based on gender or sex, or requests for accommodation arising from pregnancy, childbirth, or related conditions. In such instances, individuals and Responsible Employees should direct matters to the Title IX office (or Human Resources if an employee is involved), and USF will respond according to applicable USF Policy and law.

III. DEFINITIONS

The following definitions apply under the Policy.

A. Sex and Gender-Based Misconduct

Sex and Gender-Based Misconduct is defined as all sex- or gender-based conduct prohibited by this section.

B. Sex and Gender-Based Harassment.

Sex- or gender-based harassment, as defined by USF, is unwelcome conduct on the basis of sex or gender that, based on the totality of the circumstances, has the purpose or effect of denying or limiting a person's ability to participate in or benefit from USF's education programs, activities, employment, or University-related living environment. USF's definition of the terms "sex and gender" includes gender, gender identity, gender expression, sexual orientation, and related characteristics. Accordingly, it is the policy of USF to ensure equal rights, access, and nondiscrimination protections for members of the LGBTQ+ community. Some conduct may not meet the specific legal definition of sexual harassment or sex discrimination under laws such as Title IX, but may still violate USF Policy. In those situations, and to the extent permitted by law,

USF will apply its broader Policy definitions and standards to address and prevent sex and gender-based misconduct pursuant to USF Policy.

“Sexual harassment,” as defined under applicable California law, includes gender-based harassment and is unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions: (a) submission to the conduct is explicitly or implicitly made a term or a condition of an individual’s employment, academic status, or progress; (b) submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; (c) the conduct has the purpose or effect of having a negative impact upon the individual’s work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; (d) submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution. Sexual harassment includes sexual battery, sexual violence, and sexual exploitation.

California’s protections apply to gender, gender identity, gender expression, and sexual orientation. Under California law, sex includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. Sex also includes, but is not limited to, a person's gender. Gender means sex, and includes a person's gender identity and gender expression. Gender expression means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.

For purposes of the Title IX Formal Complaint Process, “Title IX Sexual Harassment” means conduct on the basis of sex that satisfies one or more of the following: (1) an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct; (2) unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; or (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in this Policy.

C. Sexual Assault

Sexual Assault is defined as any sexual act directed against another person without that person’s consent. Sexual Assault includes instances when the person is incapable of giving consent. Sexual Assault includes Rape, Criminal Sexual Contact, Incest, and Statutory Rape, defined as follows:

- (1) Rape means 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, or by a sex-related object, where the victim does not consent or is incapable of giving consent.
- (2) Criminal Sexual Contact means the intentional touching of the clothed or unclothed body parts without the consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. It also includes forcing the victim to touch the actor’s clothed or unclothed body parts without the victim’s consent for those purposes, including where the victim is incapable of giving consent because of age or temporary or permanent mental or physical impairment or intoxication.
- (3) Incest means nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (4) Statutory Rape means nonforcible sexual intercourse with a person who is under the statutory age of consent.

D. Dating Violence

Dating Violence Or Intimate Partner Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence does not include acts covered under the definition of domestic violence.

E. Domestic Violence

Domestic Violence is defined as a felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by a person with whom the victim shares a child in common; (c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

F. Stalking

Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

G. Sexual Exploitation

Sexual Exploitation is defined as taking sexual advantage of another person, without that person's consent, for the benefit of anyone other than that person. Some forms of sexual exploitation include prostituting or trafficking another person; non-consensual recording, photographing, filming, or audio-recording another person's sexual activity or intimate parts; distributing sexual images or audio when the person depicted did not consent to the disclosure; inducing incapacitation for sexual purposes; or, intentional and non-consensual viewing of another person's sexual activity or intimate parts.

H. Sexual Battery

Sexual Battery is defined as the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

I. Sexual Violence

Sexual Violence is defined as physical sexual acts perpetrated against a person without the person's affirmative consent, as defined under criminal law. Physical sexual acts include both of

the following: (a) rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim; (b) sexual battery, as defined above.

J. Affirmative Consent

Knowing (conscious)
Voluntary
Clear permission
By word or action
To engage in sexual activity.

Affirmative Consent is defined as 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 the person has 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.

K. Incapacitation

Incapacitation is defined as a state in which a person is unable to understand the nature or extent of sexual activity or is unable to communicate consent due to alcohol, drugs, sleep, unconsciousness, or a temporary or permanent physical or mental condition.

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

- 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 or 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 believes that the Complainant consented to the sexual activity under either of the following circumstances:

- 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.

L. Retaliation

Retaliation is defined as intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by this Policy, or because the person 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. Making a false statement in bad faith is a code of conduct violation.

IV. Policy Administration and Title IX Office

The Title IX Coordinator oversees implementation of this Policy, which includes conduct not currently covered under the Title IX regulations currently in effect.

Title IX Office Contacts

- **Emily Gove**, Title IX Coordinator
egove@usfca.edu | (415) 422-4563
- **Lauren Kearney**, Deputy Title IX Coordinator
lkearney2@usfca.edu | (415) 422-4525
- **Diane Nelson**, AVP of Human Resources (Staff/Faculty Contact)
dlnelson3@usfca.edu | (415) 422-2441

Title IX Office

Lone Mountain Main, Room 145

2820 Turk Boulevard, San Francisco, CA 94117

General Email: titleIX@usfca.edu | Office Phone: (415) 422-4563

The Title IX Coordinator and other USF personnel are trained as required by law. The training materials are posted at <https://myusf.usfca.edu/title-ix/what-is-title-ix/training-materials>.

V. Prohibited Conduct

As set forth in this Policy, USF prohibits harassment and misconduct on the basis of sex and gender. Prohibited conduct also includes retaliation. The definitions are described in Section III.

As discussed further below, if a report or complaint discloses a possible violation of USF non-discrimination policy, but which does not come within this Policy's definition of sex or gender-based misconduct, USF will respond in accordance with law and USF's applicable policies for providing equal access.

VI. Reporting Options and Confidentiality

A. How to Make a Report to the Title IX Office

Any person at any time can submit a report of possible Policy violation. Reports may be made by third parties or anonymously. Anonymous reports are accepted and may give rise to a need to investigate to determine if the parties can be identified. If not, no further action is taken, though measures intended to protect the community may be enacted. The University aims to provide supportive measures to all complainants, which may not be possible when an anonymous report does not identify the Complainant.

Reports should be made to the Title IX Office using the online reporting form [here](#) or to the Title IX Office Contacts listed above in Section IV.

B. University Response and Initial Outreach

The Title IX Office will promptly contact the complainant (if known) via email to provide the opportunity to have an intake meeting with the Title IX office. In an intake meeting, possible supportive measures, the overview of possible reporting and resolution options, questions regarding confidentiality, privacy, and process will be discussed.

The Title IX Office will provide prompt written notice that the office has received a report and outreach to individuals as required by federal and state law.

C. Formal Complaints

A Formal Complaint, for purpose of USF Policy and California law, is a document or a clear and unequivocal oral statement presented by a complainant to the Title IX Coordinator or signed by the Title IX Coordinator alleging sex or gender-based misconduct against a respondent(s) and requesting that USF investigate the allegations. Formal complaints may be filed with the Title IX Coordinator in person, by mail, email, or using the online reporting form. The Title IX Coordinator will confirm in writing to the Complainant that the Complainant has made a clear and unequivocal oral statement that the Complainant wishes to present a formal complaint.

Title IX also requires that to proceed as a Title IX Formal Complaint, a Formal Complaint must be written, signed, and filed by either the complainant or the Title IX Coordinator. An oral statement on its own does not qualify as a Title IX Formal Complaint.

D. When a complainant does not wish to proceed

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

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so and may initiate a violence risk assessment to help determine whether or proceed. The Title IX Coordinator may sign a Formal Complaint to initiate a grievance process after reviewing any violence risk assessment results and weighing the following factors:

- 1) Multiple or prior reports of sexual misconduct against the Respondent

- 2) The Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- 3) The Respondent is a faculty or staff member with oversight of students.
- 4) There is a power imbalance between the Complainant and Respondent.
- 5) The Complainant believes that they will be less safe if the Complainant's name is disclosed, or an investigation conducted.
- 6) The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

When the University proceeds, the Complainant may have as much or as little involvement in the process as they wish. The nature and extent of the Complainant's participation may affect the applicable process, and the University will determine how to proceed based on the circumstances, consistent with this Policy and the parties' rights to a fair and equitable process.

E. Reporting to Responsible Employees; Responsible Employee Reporting Duties; USF Response Obligations

All USF employees receive Title IX training and are obligated to report information that may constitute sex or gender discrimination, harassment or sexual misconduct to the Title IX Office, except when the information is received in the employee's capacity as a Confidential Employee, in which case requirements in Section V(E), below, apply.

"Responsible employee," as defined by applicable law, is an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate USF official who has that authority. "Responsible employee" includes, but is not limited to, employees with any of the following types of positions: Title IX coordinator and members of the Title IX office; residential advisors, while performing the duties of employment by the institution; housing directors, coordinators, or deans; student life directors, coordinators, or deans; program assistants or program managers; athletic directors, coordinators, or deans; coaches of any student athletic or academic team or activity; faculty and associate faculty, teachers, instructors, or lecturers; graduate student instructors, while performing the duties of employment for USF; laboratory directors, coordinators, or principal investigators; internship or externship directors or coordinators; and, study abroad program directors or coordinators.

Responsible employees must report in a timely manner to the Title IX Coordinator all relevant details about the alleged sexual misconduct or harassment that were shared by the reporting party, including the names of the alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time, and specific location of the alleged incident.

Responsible Employees are also required to report information to the Title IX Coordinator that may disclose possible sex or gender-based discrimination, even if the conduct does not appear to be a form of sexual misconduct.

If USF knows, or reasonably should know, about possible sexual misconduct or harassment involving individuals subject to USF's policies, USF will promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if USF determines that an investigation is not required. If USF determines that the alleged conduct more

likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects.

F. Confidential Employees and Resources

Some employees are exempted from the obligation to report sex or gender-based misconduct to the Title IX Coordinator:

- Therapists, psychologists, or other professional counselors (including sexual assault and domestic violence counselors and advocates)
- Clergy or other religious advisors
- Physicians providing medical treatment

These confidential employees must explain to any person who discloses information that may constitute sex or gender-based harassment or misconduct: (1) the employee's confidential status and the circumstances under which information is not reported to the Title IX Coordinator; (2) how to contact the Title IX Coordinator and how to make a report; and (3) that the Title IX Coordinator may offer and coordinate supportive measures and other resolution options.

The exemption for therapists, psychologists, and counselors applies only when these individuals are acting in their professional capacity and providing mental health counseling services. If they are not acting in this capacity, and instead are serving in a role such as a faculty member or instructor, they are required to report incidents of sexual harassment and sexual violence to the Title IX Coordinator.

G. Reporting to Law Enforcement

Sex or gender-based misconduct may constitute a violation of both university policy and criminal law. USF encourages complainants to report to law enforcement if they believe there is a crime but it is not required. The Title IX Coordinator can assist in notifying law enforcement if the complainant chooses. Complainants may also decline to notify law enforcement.

USF's grievance process and the criminal justice process are separate and independent. Complainants may pursue both, either, or neither option. Law enforcement investigations do not relieve USF of its obligation to respond to reports of sex or gender-based misconduct.

H. Requests for Confidentiality

USF will protect parties' privacy by only sharing information with those who have a legitimate need to know. Confidentiality cannot be guaranteed but will be maintained to the extent possible. USF will keep confidential the identity of any individual who has made a report or complaint of gender-based misconduct, including any complainant, any individual reported to be the perpetrator, any respondent, and any witness, but confidentiality does not extend to what is necessary to carry out this policy or the law.

If a complainant requests that their identity not be disclosed or that no investigation or disciplinary action be pursued, USF will seriously consider the request and generally seek to

honor it, while also considering its obligation to provide a safe and nondiscriminatory environment.

In determining whether to disclose a complainant's identity or proceed with an investigation over the complainant's objection, the Title IX Coordinator may consider factors including: the seriousness of the alleged conduct, including whether a weapon was used or physical violence occurred; the existence of prior or multiple reports involving the respondent; the respondent's status as a faculty or staff member; the presence of a power imbalance between the complainant and the respondent; the complainant's belief that they would be less safe if their identity were disclosed or an investigation conducted; whether USF can conduct a thorough investigation and obtain relevant evidence without the complainant's participation; and the extent to which honoring the request would limit USF's ability to provide the respondent with notice and a fair process consistent with applicable law.

If USF determines that it can honor the student's request for confidentiality, it will still take reasonable immediate steps to provide for the safety of the complainant and to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. USF will notify the complainant that the steps USF will take to respond to the complaint will be limited by the request for confidentiality.

If USF determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, USF will inform the complainant prior to making this disclosure or initiating the investigation. USF will also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that USF inform the respondent that the student asked USF not to investigate or seek discipline, USF will honor this request.

I. Amnesty

To encourage reporting, USF provides amnesty for student complainants and witnesses who disclose substance abuse or other minor policy violations in the course of reporting sexual misconduct. They will not be subject to disciplinary action for such violations. The Amnesty Policy can be viewed [here](#).

J. Timeline for Reporting

USF does not impose a time limit for reporting sex- or gender-based misconduct. Complainants are encouraged to report as soon as possible so that the University can respond promptly and effectively.

If the respondent is no longer a student or employee, USF may be limited in its ability to impose disciplinary sanctions, but will continue to provide supportive measures to the complainant and take reasonable steps, as appropriate, to address the reported conduct, prevent its recurrence, and mitigate its effects.

K. Training Materials

USF provides required training for campus officials involved in the administration of this Policy, as required by Title IX and California law. The training materials are located at this webpage: <https://myusf.usfca.edu/title-ix/what-is-title-ix/training-materials>.

USF further requires that all full-time and part-time faculty and staff complete Title IX training within 30-60 days of hire. USF provides and requires student participation in a comprehensive prevention and outreach program addressing sexual violence, domestic violence, dating violence, and stalking, including awareness, primary prevention, bystander intervention, and risk reduction, and informing students of University policy, the affirmative consent standard, and students' rights and responsibilities.

L. Recordkeeping

The University will maintain records related to reports, complaints, investigations, resolutions, appeals, supportive measures, and required training materials for seven (7) years.

VII. Supportive Measures

USF will offer appropriate and reasonably available supportive measures to complainants and respondents as necessary to restore or preserve equal access to the University's education programs, activities, or employment and for safety reasons.

Supportive measures are individualized, non-punitive, non-disciplinary, and designed to restore or preserve access without unreasonably burdening the other party. Supportive measures are available even without the filing of a Formal Complaint.

Examples of supportive measures may include appropriate academic or workplace adjustments; extensions of deadlines or other course-related accommodations; modifications of class, work, or housing schedules; changes in work or living locations; mutual or unilateral no-contact directives; access to counseling, advocacy, or medical services; campus escort services; leaves of absence; increased security or monitoring of certain areas; and other measures designed to support the parties and maintain a safe and nondiscriminatory environment.

Supportive measures may be modified, continued, or discontinued as appropriate.

In matters subject to applicable California Education Code requirements, including matters that also proceed under the Title IX Formal Complaint Process, USF will issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the investigation when requested by the Complainant or otherwise determined appropriate. USF will not automatically issue a mutual no-contact directive. A mutual directive will be issued only after consideration of the specific circumstances and a determination that it is necessary or justifiable to protect the noncomplaining party's safety or well-being or to respond to interference with the investigation. Any mutual directive will include a written justification and explanation of its terms. USF will explain the terms of any no-contact directive, including the circumstances, if any, under which a violation may result in disciplinary action. Following a finding of responsibility, any continuing no-contact directive will be unilateral and apply only to the party found responsible.

USF maintains confidentiality about supportive measures to the maximum extent possible, based on a legitimate need to know standard.

VIII. Grievance Process Following Formal Complaint

USF's grievance process treats complainants and respondents equitably, provides an objective evaluation of all relevant evidence, and includes the procedural protections outlined below. Upon receiving a Formal Complaint, USF will provide written notice to known parties and investigate the allegations by gathering evidence and interviewing parties and witnesses. USF bears the burden of gathering evidence¹⁰ sufficient to reach a determination regarding responsibility or policy violation.

A. Determination of Proper Resolution Pathway

Upon receipt of a report or Formal Complaint, the Title IX Coordinator will conduct an initial assessment to determine the applicable resolution pathway. Depending on the nature of the allegations and the parties involved, one or more laws may apply.

When a matter is subject to the Title IX Formal Complaint Process (defined in the paragraph below), USF will comply with Title IX, and any other applicable legal requirements will apply to the extent they are preempted and prohibited by applicable federal law.

1. Title IX Formal Complaint Process (34 C.F.R. § 106.45)

A matter will proceed under the Title IX Formal Complaint Process when a written, signed Formal Complaint is filed and the allegations, if proven, would constitute Sexual Harassment as defined by Title IX federal regulation, and all applicable jurisdictional requirements are satisfied. These requirements include that:

- the alleged conduct occurred within USF's education program or activity, meaning locations, events, or circumstances over which USF exercised substantial control over both the respondent and the context in which the conduct occurred;
- the conduct occurred against a person in the United States; and
- at the time the Formal Complaint is filed, the complainant is participating in or attempting to participate in USF's education program or activity.

USF will conduct a live hearing before issuing any determination regarding responsibility under Title IX, unless the matter is dismissed or resolved through informal resolution.

In addition to Title IX regulations, USF will comply with all applicable California legal requirements except where inconsistent with Title IX when Title IX applies.

2. USF Policy or California Law, but not Title IX

When alleged conduct does not meet the criteria to proceed as a Title IX Complaint, but does come within the provisions California law and USF policy against sex and gender-based misconduct, USF will proceed as required by California law and established by this Policy. The Title IX coordinator has the discretion to assign an alternative process, which may include the Student Conduct Process or HR Process.

3. Sex or Gender Discrimination, but not "Sexual Misconduct"

USF will respond in accordance with its policies and laws for providing equal access to its educational and work environment to complaints that allege sex or gender discrimination but do not involve sex or gender-based misconduct will be addressed through a separate resolution process than the formal grievance processes described below. Possible forms of alleged discrimination outside this Policy's definition of sex or gender-based misconduct may include allegations of disparate treatment such as discrimination related to pregnancy, childbirth; denial of equal access to an educational program or activity, or inequitable treatment or resources, on the basis of sex.

The Title IX Office for students and employees, and the Human Resources office for employees, are the appropriate offices to direct inquiries, concerns, and complaints of this nature.

B. Notice to Parties for Formal Complaints

With respect to **all Formal Complaints**, upon receipt of a Formal Complaint, USF will provide written notice to the parties whose identities are known. The notice will include:

- The applicable resolution process, including any resolution agreement or informal resolution process offered;
- The allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview (including, if known: the identities of the parties involved; the conduct allegedly constituting prohibited conduct under this Policy; and the date and location of the alleged incident);
- A statement that the respondent is presumed not responsible for the alleged conduct and that any determination regarding responsibility is made at the conclusion of the applicable resolution process;
- Notice that the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations, consistent with the applicable process.
- Notice of the right to be accompanied by an advisor of choice, who may be an attorney; and
- Notice of any provisions of USF policy prohibiting knowingly making false statements or knowingly submitting false information during the resolution process.

For **Title IX matters**, the written notice must also include:

- The specific policy provisions alleged to have been violated;
- A description of the Title IX grievance process, including key procedural stages (investigation, hearing if applicable, determination, and appeal);
- Notice of the parties' equal opportunity to present relevant witnesses and other evidence; and
- Any additional notice elements required by applicable Title IX regulations in effect at the time of the notice.

Where **California law** prohibiting sexual misconduct, discrimination or harassment in postsecondary education applies, the written notice must include (in addition to the items required for all Formal Complaints):

- Notice that USF has received a report that the party may have experienced sexual harassment, sexual violence, or other prohibited conduct, if an identifiable student is involved;
- A statement that retaliation for reporting or participating in a resolution process is prohibited;
- Information about available counseling and support resources, on and off campus;

- Notice of the right, but not the obligation, to report the matter to law enforcement where a crime may have occurred;
- A description of the applicable investigation and resolution procedures;
- Information regarding available interim or supportive measures (such as no-contact directives, housing changes, academic or work adjustments, where applicable);
- The importance of preserving evidence; and
- Information about possible resolution outcomes and disciplinary consequences.

When a report involves allegations of sexual assault, dating violence, domestic violence, or stalking, USF will provide written notifications of rights and options as required by the Clery Act and VAWA, including:

- Reporting options, including campus and law enforcement reporting;
- Available supportive and protective measures and how to request them; and
- Information regarding available campus and community resources.

If, during the course of an investigation, USF decides to investigate allegations not included in the initial notice, USF will provide written supplemental notice of the additional allegations to the parties whose identities are known.

USF may include additional information in the written notice as appropriate based on the allegations, the status of the parties, safety considerations, and applicable law. The notice requirements set forth above are not intended to be exhaustive and will be implemented in a manner that complies with applicable law.

Emergency Removal and Administrative Leave: When appropriate and allowed by law, USF may remove a student respondent from its education program or activity on an emergency basis, or place an employee respondent on administrative leave, based on an individualized safety and risk assessment if it finds an immediate threat to the physical health or safety of any student or other individual.

C. Dismissal of Complaints

USF will assess whether a Formal Complaint, or any allegations therein, is eligible to proceed under the Title IX Formal Complaint Process.

USF must dismiss a Formal Complaint, or any allegations therein, for purposes of the Title IX Formal Complaint Process, if the conduct alleged, even if proven:

- Would not constitute Title IX Sexual Harassment as defined by federal regulation;
- Did not occur in USF's education program or activity; or
- Did not occur against a person in the United States.

A dismissal for purposes of the Title IX Formal Complaint Process does not preclude USF from addressing the alleged conduct under the Non-Title IX University Process (as outlined in this

Policy document) or another applicable University policy or code of conduct, as permitted by law.

USF may dismiss a Formal Complaint, or any allegations therein, at any time if:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the Formal Complaint or any allegations therein;
- The respondent is no longer enrolled at or employed by USF; or
- Specific circumstances prevent USF from gathering evidence sufficient to reach a determination.

USF will promptly and simultaneously provide written notice of any dismissal and the reason(s) for the dismissal to the parties. A dismissal may be appealed under the procedure below.

D. Consolidation

USF may consolidate formal complaints of allegations against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

E. Advisors

The complainant and respondent may be accompanied by an advisor of their choice at any meeting or proceeding related to a report or Formal Complaint, including any interview, meeting, hearing, or appeal. Advisors may be attorneys.

USF may establish reasonable rules regarding an advisor's participation and conduct. Any rules must apply equally to both parties. Where the Title IX Formal Complaint Process requires advisor-conducted questioning at a live hearing, USF will follow Title IX's requirements.

If a party does not have an advisor present at a Title IX live hearing, USF will provide that party, without fee or charge, an advisor of USF's choice for the sole purpose of conducting cross-examination on behalf of that party.

F. Resolution Agreement

Resolution Agreement is a process where the Complainant and Respondent each voluntarily agree to resolve the complaint in a way that does not include an investigation, and does not include any finding of responsibility. The Title IX Coordinator, Complainant and/or Respondent may design the Resolution Agreement. The Coordinator must approve the final Resolution Agreement between Complainant and Respondent. A Resolution Agreement may be initiated at any time prior to the written notice of outcome. There is not any determination made as to whether the Respondent violated this Policy.

The Coordinator has the discretion to determine that a Resolution Agreement between the Complainant and Respondent is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through the investigation process. Matters involving sexual violence (sexual assault, dating or domestic violence) may not be resolved under this process.

Resolution Agreement Process

Prior to the initiation of the Resolution Agreement process, the Coordinator will provide the Complainant and Respondent written notice that follows the requirements above.

If both Parties are willing to explore a Resolution Agreement, the Coordinator will then meet separately with each Party to discuss the Resolution Agreement process and facilitate an agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Resolution Agreement process, or the Coordinator does not believe that the terms of the Resolution Agreement or continuing the Resolution Agreement process are appropriate, the Coordinator may decide that the reported conduct will instead be addressed through the investigation process. The Coordinator will inform the Complainant and Respondent of such decision, in writing.

The Complainant and/or Respondent may craft or create the terms of their proposed agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

- An agreement that the Respondent will change classes, housing assignments, or will not participate in one or more of the University's programs or activities;
- An agreement that the Respondent will not attend specific events;
- An agreement that the Parties will not communicate or otherwise engage with one another;
- An agreement that the Parties will not contact one another;
- Completion of a training or educational project by the Respondent;
- Completion of a community service project by the Respondent;
- An agreement to engage in a restorative justice process;
- Discipline agreed upon by both the Complainant and Respondent.

In order to facilitate the Resolution Agreement process, information shared by either the Complainant or Respondent in the facilitation of the Resolution Agreement process will not be used in any related resolution process of the same complaint under this Policy.

Once the final terms of the Resolution Agreement have been agreed upon by both parties, in writing, and approved by the Coordinator, the matter will be considered closed, and no further action will be taken.

Once signed, no appeal is permitted. The Resolution Agreement process is generally expected to be completed within thirty (30) business days and may be extended by the Coordinator as appropriate. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of a Resolution Agreement can be shared with other University offices as appropriate. Any violation of the terms of the Resolution Agreement may result in corrective action. Alleged violations by a student will be referred to the Dean of Students Office. Alleged violations by faculty will be referred to the Office of the Provost in coordination with Human Resources. Alleged violations by staff will be referred to Human Resources.

G. Informal Resolution

After a Formal Complaint is filed, USF may offer an informal resolution process, such as mediation or restorative justice, if appropriate and legally permissible. Participation in informal resolution is voluntary and requires the parties' informed, written consent.

Before commencing informal resolution, USF will provide the parties with written notice describing the allegations, the requirements and consequences of the informal resolution process, including the circumstances under which the matter may or may not be resumed through a formal grievance process, and the records that will be maintained. Any party may withdraw from the informal resolution process at any time prior to agreeing to a resolution and resume the applicable grievance process.

Informal resolution will not be offered or facilitated to resolve allegations of sexual assault, sexual violence, or allegations that an employee sexually harassed a student, or where prohibited by law.

USF will not require, as a condition of enrollment or continuing enrollment, employment or continuing employment, or access to any right or benefit, that any party waive the right to a formal investigation and adjudication of a Title IX Formal Complaint Process matter.

As a condition of participating in informal resolution, the parties may agree that statements made or information shared during the informal resolution process will not be used in any subsequent formal grievance process, except as required by law or unless all parties consent.

H. Investigation

If a Formal Complaint is not dismissed or resolved through informal resolution, USF will investigate the allegations in a timely, fair, and impartial manner. USF bears the burden of gathering evidence sufficient to reach a determination regarding responsibility or policy violation.

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints a Pool member(s) to conduct the investigation, usually within five (5) business days of determining that an investigation should proceed.

1. Investigation Procedures Applicable to All Matters

During the investigation, the investigator will interview the complainant, the respondent, and relevant witnesses; gather relevant documentary, electronic, and other evidence; and provide each party an equal opportunity to present witnesses and other evidence. Prior to completion of the investigative report, USF will send to each party and the party's advisor, if any, all evidence obtained as part of the investigation that is directly related to the allegations, including evidence upon which USF does not intend to rely in reaching a determination, and including inculpatory or exculpatory evidence whether obtained from a party or other source. The parties will be given ten (10) business days to submit a written response, which the investigator will consider before finalizing the investigative report.

After the investigative report is finalized, USF will provide the report to each party and their advisor.

A. Title IX Formal Complaint Process - Investigation

In matters proceeding under the Title IX Formal Complaint Process, the investigator will prepare an investigative report that fairly summarizes the relevant evidence. USF will provide the investigative report to each party and their advisor at least ten (10) business days prior to a live hearing for review and written response. USF will conduct a live hearing before issuing any determination regarding responsibility, unless the matter is dismissed or resolved through informal resolution.

B. Non–Title IX University Process - Investigation

In matters addressed under the Non–Title IX University Process, the investigator will prepare an investigative report that fairly summarizes the evidence and, which may include factual findings and recommendations if permitted by law. When a live hearing is not required by law and is not otherwise utilized, USF may resolve the matter through an investigation and administrative determination. In such cases, USF will provide the investigative report to the parties and afford them a reasonable opportunity to review and respond before a determination is issued.

I. Live Hearings

1. Applicability and Format

USF will conduct a live hearing as part of the grievance process when a live hearing is legally required. USF will also conduct a live hearing if it determines a hearing is appropriate under the circumstances, even if not legally required.

Title IX requires a live hearing before a responsibility determination is issued, if the matter is not dismissed or resolved through informal resolution. If a party requests, USF will conduct the live hearing with the parties located in separate rooms using technology that enables the decision-maker and the parties to see and hear the party or witness answering questions at the same time.

For non-Title IX matters, a live hearing is not necessarily required. If no live hearing is held, USF will resolve the matter through an equitable administrative process that provides the parties with fair notice and opportunity to be heard before any finding of responsibility or policy violation is issued. If a live hearing is held, it will generally follow the hearing procedures described below.

If both Title IX and California law apply to a Formal Complaint process, the Title IX requirements, including those relating to hearing and questioning, will control to the extent of any conflict with state law.

2. Hearing Officer / Decision-Maker

The hearing officer or decision-maker will be appointed by the University from among individuals who have no conflict of interest or bias and who are appropriately trained. The

University may appoint an internal or external professional. The Title IX Coordinator and the investigator(s) may not serve as decision-maker(s) for a responsibility determination.

3. Questioning and Relevance

Only relevant cross-examination and other questions may be asked of a party or witness. The decision-maker will determine relevance before a party or witness answers each question. If they decide to exclude a question, they must explain the decision. Questions about a complainant's prior sexual history are generally not relevant.

In matters proceeding under the Title IX Formal Complaint Process, cross-examination and other questions must be conducted directly, orally, and in real time by each party's advisor and not by the parties personally or by the hearing officer.

In Non-Title IX matters where California law governs hearing procedures for sexual violence allegations, questioning will be conducted by the hearing officer; both parties will have an equal opportunity to submit proposed questions, but neither the parties nor their advisors will directly question the other party or witnesses. The parties may note an objection to a question, and the University may limit objections to written form and will maintain them in the record.

Questions and evidence regarding a complainant's prior sexual history are generally not permitted, except as allowed by applicable law and University policy.

4. Participation and Use of Statements

If a party or witness does not participate in requested questioning, the decision-maker may evaluate the reliability and weight of that person's statements in light of the totality of the evidence and may place appropriate limits on reliance on those statements. The decision-maker will not draw an adverse inference regarding responsibility solely from a party's or witness's absence or refusal to answer questions.

5. Record of the Hearing

USF will create an audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection and review.

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

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

6. Outcomes Without a Determination of Responsibility

Depending on the applicable resolution pathway and the circumstances, a matter may be resolved through dismissal, supportive measures, informal resolution (when permitted), or other administrative action without a determination of responsibility.

J. Determination

The decision-maker will issue a written determination of responsibility based on the preponderance of the evidence standard (more likely than not).

The written determination will include:

- Identification of the allegations
- Description of procedural steps taken (notifications, interviews, site visits, methods of evidence gathering, hearings)
- Findings of fact
- Application of USF policy to the facts
- A rationale for the result of each allegation and determination of responsibility
- Disciplinary sanctions imposed on respondent (if found responsible)
- Whether remedies will be provided to complainant
- Appeal procedures and bases

The determination will be provided to the parties simultaneously. The decision-maker provides the Coordinator their determination. The Coordinator will communicate the findings to each Party along with a copy of the decision-makers' written determination and the procedures for appeal. It becomes final on the date the parties receive the written determination of the appeal, if an appeal is filed, or on the date on which an appeal would no longer be timely.

K. Appeals for all matters

Either party may appeal from a determination or dismissal on the following bases:

- Procedural error that affected the outcome
- New evidence not reasonably available at the time of determination that could affect the outcome
- In Title IX cases, conflict of interest or bias by the Title IX Coordinator, investigator, or decision-maker that affected the outcome

Appeals must be submitted within five (5) business days of receipt of the written determination or dismissal. If an appeal is filed, USF will notify the other party and ensure that the appeal officer is not the same decision-maker or other person involved in the grievance process previously. Both parties will have a reasonable, equal opportunity to submit a written statement supporting or challenging the outcome.

The appeal officer will issue a written decision describing the result of the appeal and rationale, and provide the decision simultaneously to both parties.

L. Timeframe

USF aims to complete the grievance process in a prompt and reasonable timeframe, generally within 60-90 business days, excluding appeals. Extensions may be granted for good cause with written notice to the parties.

M. Sanctions and Remedies

Sanctions for respondents determined to have violated this policy may include warning, probation, suspension, expulsion, transcript notification, termination of employment, or restrictions on access to campus, programs or courses.

Remedies for complainants may include counseling, extensions of deadlines, modifications of work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas, and other measures designed to help the complainant succeed in their education program.

IX. Accommodations for Pregnant and Parenting Students and Employees

USF provides reasonable accommodations, supportive measures, and nondiscriminatory access for students and employees affected by pregnancy, childbirth, parenting responsibilities, and related medical conditions.

Students seeking accommodations, supportive measures, or assistance in relation to those matters should contact the Title IX Office.

Some possible supportive measures and accommodations for students may include excused absences and reasonable opportunities to make up missed coursework due to pregnancy, childbirth, or related conditions; academic flexibility such as deadline extensions or alternative coursework; access to lactation spaces and reasonable breaks; temporary adjustments to schedules or classroom arrangements; and other individualized measures designed to preserve or restore equal access to USF's education programs or activities.

USF Human Resources will process employee requests for accommodation. Employees should refer to USF's Employee Handbook for relevant accommodation policies.

X. Relevant Government Agencies

U.S. Department of Education – Office for Civil Rights (OCR)

The Office for Civil Rights enforces federal civil rights laws, including Title IX.

Office for Civil Rights
U.S. Department of Education
Seattle Office
Office for Civil Rights
U.S. Department of Education
915 Second Avenue Room 3310
Seattle, WA 98174-1099

Telephone: 206-607-1600
FAX: 206-607-1601; TDD: 800-877-8339
Email: OCR.Seattle@ed.gov

Website: www.ed.gov/ocr

California Department of Education (CDE)

The California Department of Education provides state-level oversight of education law and policy.

California Department of Education
1430 N Street
Sacramento, CA 95814-5901
Phone: 916-319-0800
Website: www.cde.ca.gov

XI. Revision of this Policy & procedures

This Policy and procedures supersede any previous policy(ies) addressing sexual harassment, sexual misconduct, discrimination based on sex and gender, and/or retaliation for incidents on or after August 14, 2020, under Title IX. This policy will be reviewed and updated annually by the Title IX Coordinator, or as necessitated by law. The University reserves the right to make changes to this policy as necessary, and once those changes are posted online, they are in effect.

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

The Title IX Coordinator may also vary procedures materially with notice (on the USF website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations. If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be constructed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.