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SEXUAL MISCONDUCT POLICY

I. Introduction

Members of the University of San Francisco (hereinafter University) community, guests, and visitors have the right to be free from sexual and gender-based violence and harassment. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been found to be violated.

Any person who believes they have been subjected to sexual misconduct is encouraged to report these incidents. When an allegation of misconduct is brought to an appropriate University official, the University will respond promptly, equitably, and thoroughly to stop the discriminatory behavior, remedy its effects, and prevent its recurrence.

This policy is intended to define University expectations and to establish a mechanism for determining when those expectations have been violated. Consistent with its commitment to addressing sexual misconduct, the University complies with Title IX of the Higher Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. Sexual misconduct, as defined in this policy, constitutes sex and gender discrimination prohibited by Title IX, VAWA, and other applicable federal and state laws.

II. Overview of Sexual Misconduct Policy Expectations

The expectations of our community regarding sexual misconduct can be summarized as follows: The University of San Francisco is committed to creating 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.

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, and voluntary consent prior to and during sexual activity. Consent is further defined below.

Additionally, there is a difference between seduction and coercion. Coercion happens when someone is pressured unreasonably for sex. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Those who consent to sex must be able to understand what they are doing. Under this policy, “yes” always means “yes,” and anything but clear, knowing, and voluntary consent to any sexual activity is equivalent to a “no.”

A student victim or student witness of sexual violence will not be charged with Student Conduct Code violations with regards to alcohol and/or drug use, or other minor policy violations, if they are coming forward to report or assist with a report or investigation of sexual misconduct.

This policy is applicable regardless of the complainant's or respondent's sexual orientation, sex, gender identity, gender expression, age, race, nationality, class status, ability, or religion.

While in campus conduct proceedings, legal terms like "guilt," "innocence," and "burdens of proof" are not applicable. The University never assumes a student is in violation of University policy. Campus conduct proceedings take into account the totality of all evidence available, from all relevant sources.

The University reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of students, employees, and the University community. Such measures include, but are not limited to: modification of University housing and class schedules, interim suspension from campus pending a conduct proceeding (for students), administrative leave pending a disciplinary proceeding (for employees), suspension or expulsion from extracurricular activities for students (e.g., athletics, club sports, Associated Students), and reporting the matter to the local police.

Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions when a student or employee is found to have violated this policy, ranging from verbal warning to expulsion (termination for employees), depending on the severity of the offense. The University will consider the concerns and rights of the complainant, the respondent, and the University.

III. Confidentiality and Reporting

University officials, depending on their roles at the University, have varying reporting responsibilities and abilities to maintain confidentiality. In order to make informed choices, one should be aware of confidentiality and required reporting obligations when consulting campus resources. On campus, some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless one has requested information to be shared. Other resources exist for one to report crimes and policy violations and these resources will take action when one reports an alleged violation to them.

Duty to Report. Except as provided below, **any** employee who knows, or has reason to know, of allegations or acts that violate this policy shall promptly inform the Title IX Coordinator. These employees are required to disclose all information including the names of the parties, **even where the person has requested that their name remain confidential.** The Title IX Coordinator will determine whether confidentiality is appropriate given the circumstances of each such incident.

If a victim of sexual misconduct would like the details of an incident to be kept confidential, they may speak with on-campus counselors, off-campus rape crisis counselors, domestic violence

resources, private agencies, and/or members of the clergy/chaplains who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Students may access campus counselors in Counseling & Psychological Services. Employees may access counselors using the Employee Assistance Program. See *Resources* at the end of this policy for contact information.

Reporting Options: Complainants are encouraged to speak to University representatives and officials, such as the Title IX Coordinator, faculty, Resident Advisors, Community Directors, the Vice Provost for Student Life (or designee), Human Resources, Public Safety, and the San Francisco Police Department to make reports of incidents of sexual misconduct. Complainants have the right, and can expect, to have complaints taken seriously by the University when reported, and to have those incidents investigated and properly resolved through the procedures outlined in this policy. Reporting still affords privacy to the reporter, and only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses, and the respondent. The circle of people with this knowledge will be kept as tight as possible to preserve a complainant's rights and privacy.

IV. **Sexual Misconduct Defined**

Sexual misconduct includes a broad range of behaviors focused on sex and gender discrimination that may or may not be sexual in nature. Offenses of the Sexual Misconduct Policy include, but are not limited to: 1) Sexual Harassment, 2) Non-Consensual Sexual Contact (or attempts to commit same), 3) Non-Consensual Sexual Intercourse (or attempts to commit same), 4) Sexual Exploitation, 5) Aiding or Facilitating Sexual Misconduct, 6) Relationship Violence, and 7) Stalking.

1. **Sexual Harassment** is unwelcome, sex or gender-based verbal or physical conduct that is...

- sufficiently severe, persistent, or pervasive that it creates a hostile environment,

or

- based on power differentials (*quid pro quo*),

...where such conduct unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the university's educational programs and/or activities.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; and/or gender-based bullying.

2. **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, with any object, by a person upon another, that is without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, making another touch someone or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

3. Non-Consensual Sexual Intercourse is any penetration, however slight, with any object or body part, by a person upon another that is without consent and/or by force. Sexual intercourse includes vaginal and/or anal penetration by a penis, object, tongue or finger, and/or oral copulation (mouth to genital contact).

4. Sexual Exploitation refers to a situation in which a person takes non-consensual, or abusive, sexual advantage of another, and situations in which the conduct does not fall within the definitions of sexual harassment, non-consensual sexual contact, or non-consensual sexual intercourse. Examples include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual activity without the consent of the person(s) observed);
- Prostituting another student or person;
- Taking pictures or video or audio recording another in a sexual act, or in any other private 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). This pertains to posting, sharing, videos, pictures, and all forms of media;
- Engaging in sexual activity with another person(s) while knowingly infected with human immunodeficiency virus (HIV), or other sexually transmitted infections (STI), and without informing the other person(s) of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without their consent.

5. Aiding or Facilitating Sexual Misconduct is the promotion or encouragement of the commission of any behavior prohibited by this policy and/or the failure to take action to prevent an imminent prohibited act when it is reasonably prudent and safe to do so.

6. Relationship Violence is abuse or violence between partners, or former partners, involving one or more of the following elements:

- Battering (physical contact) that causes bodily injury;
- Purposely, or knowingly, causing reasonable apprehension of bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage; and/or
- Repeated telephonic, electronic, or other forms of communication – anonymously or directly made - with the intent to intimidate, terrify, harass, or threaten.

7. Stalking is a course of conduct directed at a specific person on the basis of sex or gender that is unwelcome and would cause a reasonable person to feel fear. This includes, but is not limited to, repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely, or knowingly, causes substantial emotional distress.

8. Other forms of sexual misconduct include, but are not limited to, the following:

- exposing one’s genitals in non-consensual circumstances;
- inducing another to expose their genitals;
- sex or gender-based bullying.

V. Retaliation

It is a violation of University policy to retaliate against any person making a complaint of discrimination, harassment, or sexual misconduct, or against any person cooperating in the investigation of any such allegation.

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, for supporting a complainant, or for assisting in providing information relevant to a claim of harassment is a serious violation of the University’s policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator, Director of Student Conduct, Rights & Responsibilities (for students), or the Associate Vice President of Human Resources (for employees) and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. Protection from retaliation may include housing/class modifications and no contact orders.

Examples of such behavior include, but are not limited to:

- Destruction of property
- Any form of threatening behavior
- This includes the use of third parties to complete adverse actions

VI. Additional Applicable Definitions and Information

1. **Force:** The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcomes resistance (e.g., “Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

There is no requirement that a person resists the sexual advance or request, but resistance is a clear demonstration of non-consent.

2. **Coercion:** Unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it clear that they do not want to engage in any 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.

3. **Consent:** Consent is affirmative, clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, may not be interpreted as consent. Consent can be given by words or

actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity.
- Previous relationships, or prior consent, does not imply consent to future sexual activity.
- Mutually understandable consent must be obtained and maintained by all parties throughout the sexual interaction.
- Consent to sexual activity may be withdrawn at any time, as long as that withdrawal is clearly communicated. Once consent is withdrawn, sexual activity must stop immediately.
- Individuals are unable to give consent if they are incapacitated. Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, sleep or unconsciousness, or blackout.

In order to give consent, one must be of legal age. In California, the legal age for consent is 18.

4. Incapacitation: A state where someone cannot make rational and reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction), usually because of alcohol and/or drug use.

Despite anything to the contrary, where a person is incapable of giving consent, conduct of a sexual nature is a violation of this policy, provided the respondent knew, or reasonably should have known, of the other person’s incapacity.

VII. How to File a Complaint Alleging a Violation of the Sexual Misconduct Policy

Anyone (including students, staff, faculty, visitors, or third parties) who wants to file a complaint regarding an alleged incident of sexual misconduct involving any member of the USF community should contact:

Title IX Coordinator: Jess Varga

UC 5th Floor

(415) 422-4563

The Title IX Coordinator is responsible for ensuring Title IX compliance at the University. Additionally, the Title IX Coordinator coordinates the efforts for educating the University community on USF’s policies, programs, and resources as it relates to Title IX and related laws (e.g., VAWA); informing complainants and respondents with reporting options and consequences; facilitating support, resources, and remedies; and tracking and investigating complaints.

The University will act on any complaint or notice of violation of the Sexual Misconduct Policy when received by the Title IX Coordinator or a Deputy Title IX Coordinator.

The persons listed below are the University’s **Title IX Deputy Coordinators**.

The Title IX Deputy Coordinators serve as designees to the Title IX Coordinator and may act on their behalf when necessary; additionally, the Deputy Coordinators serve as persons to whom complaints may be reported.

Julie Orio, Title IX Deputy Coordinator (for students)

Vice Provost of Student Life

(415) 422-5330

orioj@usfca.edu

Shannon Gary, Title IX Deputy Coordinator (for students)

Dean of Students

(415) 422-5330

sgary@usfca.edu

Title IX Deputy Coordinator (for athletics)

Sr. Associate Athletic Director

(415) 422-4927

Diane Nelson, Title IX Deputy Coordinator (for faculty and staff)

Director of Employment and Employee Relations

(415) 422-2441

dlnelson3@usfca.edu

David Philpott, Title IX Deputy Coordinator (for faculty and staff)

Director, Office of General Counsel

(415) 422-2458

philpottd@usfca.edu

VIII. Procedures Under this Policy

Upon receipt of a report of conduct that is prohibited by this policy, the Title IX Coordinator will reach out to the person reporting (hereinafter referred to as “complainant”), and when appropriate, to other persons who may have experienced the reported conduct, to hold an intake meeting.

1. Intake Meeting

The purpose of the intake meeting (in person or by phone/other media) is for a representative of the University to offer information about this policy and resources available. Additionally, the intake meeting is an opportunity to begin to gather further information on the behavior being reported. In most, but not all, cases the Title IX Coordinator will also reach out to the person whose conduct has been reported (hereinafter referred to as “respondent”) to conduct an intake meeting.

During the intake meeting, the complainant will be asked to consider the options afforded by this policy, as well as identify interim measures and remedies the University should consider to promptly assist with the matter. At the intake meetings, the following will also be discussed:

- The right to report the incident(s) to local law enforcement agencies;
- The right to receive medical treatment and the importance of preservation of evidence;
- The University's processes to consider all reports of incidents of possible sexual misconduct and the inability of the University to guarantee complete confidentiality;
- The University's policy against retaliation of any person making a report, or participating in an investigation, or adjudication, of an incident under this policy;
- The possibility for Informal Action;
- The possibility for Formal Resolution, and at times, of a live hearing;
- The use of an advisor or support person at University proceedings;
- The University's advising of the community of a potential threat, where appropriate in the judgment of the University.

2. Initial Assessment

The Title IX Coordinator will make an initial assessment of whether there is a report of prohibited conduct under this policy. The Title IX Coordinator will also assess whether informal action or formal resolution is appropriate. In doing so, the Title IX Coordinator will consider the nature of the report, the safety of the individuals involved and of the campus community, and any expressed preferences for resolution. The Title IX Coordinator may gather information in the course of making the initial assessment.

3. Early Preventative Measures (includes Remedial Actions and Interim Measures) and Timely Warnings

The Title IX Coordinator will determine if any early preventative measures (including remedial action and interim measures), and/or warning to the community is warranted.

These measures can include housing and class modifications; directives to stay away from persons, a facility, or the entire campus; conduct directives; offers of services; and other measures prior to a final outcome. The intent is to facilitate continued access to educational programs and activities, to prevent further reports of, or acts of, harassment or misconduct, or simply to "keep the peace."

These are implemented when, in the judgment of the Title IX Coordinator and/or Director of the Office of Student Conduct, Rights and Responsibility (OSCRR), and/or Human Resources, the safety or well-being of any member(s) of the campus community can be better assured.

Remedial Actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to Employee Assistance Program (EAP – for employees)
- Education to the community
- Altering housing assignments of the respondent and/or complainant
- Providing campus escorts through Public Safety

- Implementing No Contact Orders between students
- Offering adjustments to academic deadlines or course schedules
- Assistance in changing work schedules or work stations (for employees and/or student employees)

Interim Measures may include, but are not limited to:

- Interim Suspension (for students and/or organization). During an interim suspension, a student/organization's access to University housing and/or University campuses/facilities/events may be denied or limited. This measure may include restricting access to classes and/or all other University activities and privileges for which the student/organization might otherwise be eligible. Alternative coursework options may be pursued to ensure as minimal an impact as possible on the affected student. Violation of an interim suspension under this policy will be grounds for expulsion.
- Administrative leave (for employees)
- Others as appropriate

Timely Warnings and/or Emergency Notifications. University administrators will issue timely warnings and/or emergency notifications for incidents that pose a serious, or ongoing, threat to the campus community. When possible, as determined by the University, the University will make effort to not disclose personally identifying information, while still providing enough information for community members to make decisions in light of the potential danger.

4. Possible Outcomes

No Further Action: If a complainant requests no further action, the Title IX Coordinator shall determine whether the situation nonetheless warrants action by the University to mitigate potential risk to the campus community. When possible, the requests of the complainant will be honored. Situations where action may be pursued without the participation of the complainant may include:

- The safety and wellness of the community;
- The nature of the allegation and if there are multiple respondents involved;
- The nature of the allegation and if there was an element of significant physical harm, or threat of harm (e.g., use of a weapon);
- The nature of the allegation and if there are multiple reports with a shared alleged respondent, or a location where multiple incidents have been reported.

When moving forward without the participation of the complainant, attempts to keep the complainant's identity confidential from the respondent will be made; however, depending on the investigation and allegations brought forth, this may not be feasible and the University will inform the complainant of the limitations to confidentiality.

When a complainant requests no further action, this does not preclude the options to review and request resources and/or remedial actions. Additionally, a complainant may come back at any time in the future to request a resolution process (i.e., informal action or formal resolution) under

this policy. There may be limitations to formal resolution, however, if the respondent is no longer within the jurisdiction of the University's disciplinary codes/policies.

Informal Action: Informal Action is intended to resolve the report at the earliest stage possible. Informal Action does not include extensive investigation, or a determination of fault, or validity of a report. The goal through Informal Action is to achieve a resolution that may be acceptable to both the complainant and respondent, and to provide an opportunity for education. Requests for Informal Action, while permitted, may limit the University's ability to understand what happened and implement appropriate response.

Examples of Informal Action include, but are not limited to:

- Discussions with the parties involved (individually or jointly)
- Holding an educational meeting with the respondent
- Referring the parties to different resources (e.g., CAPS)

At the conclusion of an Informal Action, the parties will be asked to agree to an "Informal Resolution Document," which will outline the actions taken and agreements made. If **either or both** parties do not agree to the document, the matter will be referred back to the Title IX Coordinator who will decide whether to refer the matter for formal resolution. If both parties agree to the document, there will be no opportunity for appeal, and no opportunity to pursue a formal resolution process at a later time. Depending on what the informal resolution includes, information resulting from the document may or may not be something included on a student's conduct record. Additionally, it may or may not involve an acknowledgement of responsibility for the behavior alleged.

****Informal Action is not appropriate and will not be used for incidents the University believes could lead to a severe disciplinary sanction result (e.g., suspension, removal from a program or activity, termination of employment, or expulsion). In these cases, the matter will most often proceed to the formal resolution process.****

Formal Resolution: If a matter is not resolved using the options detailed above, the Title IX Coordinator will move the matter to a formal resolution process, and will appoint an investigator(s) to conduct a fact-finding investigation.

Investigations will generally include interviewing relevant parties and witnesses, collection of available evidence, and identification of sources of expert information, if/when necessary, etc. The investigator(s) will conduct the investigation in a manner deemed appropriate in light of the circumstances of the case.

When concurrent criminal and/or civil proceedings are occurring for the same incident, the University is not required to postpone its process in order for the criminal and/or civil matter(s) to be resolved. The University will use its discretion if/when a request is made to delay the investigation, and will communicate any delays to both the complainant and respondent.

- A. **Investigation:** The University most often uses investigations to investigate reported incidents related to sex and gender-based harassment and discrimination, including non-consensual sexual contact and non-consensual sexual intercourse. The Title IX Coordinator will assign, from a pool of trained USF staff, an impartial investigator.¹

A Notice of Investigation letter will be sent to both the complainant and respondent outlining the reported behavior which is being investigated. This letter will include the name(s) of the investigator(s), how scheduling the interviews will be done, and a written notice of each parties' rights and responsibilities in the process.

The investigator(s) will interview the complainant, respondent, and relevant witnesses, and collect relevant evidence (e.g., pictures or communication records). Investigators conduct interviews in a manner that tries to protect the safety of individuals and promote accountability.

The investigator(s) will coordinate with the complainant, respondent, and witnesses to set up interviews. At the conclusion of the interviews with the parties, the investigator(s) will verify the information they received is an accurate reflection of that party's interview, and will compile the details of the investigation into a "Draft Investigation Report," summarizing the information gathered.

- B. **Draft Investigation Report:** This report will be available for review by both the complainant and respondent. It will generally include:
- A description of the incident;
 - Factual agreements and disputes;
 - Summaries of the interviews conducted; and
 - Summaries of other information (relevant evidence gathered, such as communication records or photos).

The complainant and respondent will have the opportunity to respond to the information in the report with further information; but only as it pertains to factual disputes, or clarifying their own information. Parties are unable to change the information provided by other parties; rather, they may respond to the information. Responses may be made in writing or in person at a meeting with the investigator(s). If either the complainant or respondent is reminded of further evidence they have, they may provide this to the investigator(s).

- C. **Final Investigation Report and Outcome:** After the "Draft Investigation Report" has been reviewed by the parties, the investigator(s) will compile any additional details submitted by the parties into the "Final Investigation Report" and share this report with the Title IX Coordinator.

¹ In some circumstances and cases, it may be warranted to use two investigators, or bring in outside, non-University affiliated investigators to conduct investigations, and this will be communicated to the parties.

The Title IX Coordinator will convene a review team to review the report and make a determination of whether or not the matter requires a live hearing. If the Title IX Coordinator determines the matter does not require a live hearing, the Title IX Coordinator (or designee) will issue an Outcome Letter that sets forth the determination of the decision-maker of whether or not the respondent is responsible for violation of policy using a preponderance of the evidence standard.² When there is a finding of responsibility, sanctions will also be determined. The outcome will be communicated in writing to both the complainant and respondent.

Following the issuance of the Outcome Letter, the complainant and respondent will have five (5) business days from the date of the communication of the outcome to either:

1. Accept the outcome; *OR*
2. Do not accept the outcome and submit an appeal (*see Appeal section*)

If **both** parties accept the outcome, there will be no option for an appeal process on any grounds. This outcome then becomes the final determination of the University. If the respondent is found responsible, the sanctions will go into effect. Findings of responsibility and sanctions are disclosable as part of a student conduct record.

- D. **In Some Cases, Live Hearing:** In cases where the Title IX Coordinator makes a judgment that (a) severe disciplinary sanction of the respondent could result and (b) the facts at issue are in conflict and require an assessment of the credibility of a witness or witnesses, the Title IX Coordinator will issue a Notice of Live Hearing letter to both the complainant and respondent.

“Severe disciplinary sanction” includes such action as suspension, expulsion, termination from employment or internship, or probation including major restriction(s) of a student or employee’s engagement in the programs and activities of the University.

A credibility determination is required when there is a conflict in evidence that is material to the determination such that the fact-finder should personally observe the testimony from a witness in order to assess the credibility of such testimony.

Whether the matter will proceed to a live hearing is determined on a case-by-case basis by the Title IX Coordinator. A matter may be referred to the hearing process even where severe disciplinary sanction is not a likely outcome if the Title IX Coordinator believes a hearing is appropriate.

- E. **Live Hearing Panel:** The Live Hearing Panel (hereinafter referred to as “panel”), appointed by the Title IX Coordinator, will be composed of three (3) impartial persons

² A preponderance of the evidence standard is determined using a “more likely than not,” based on the evidence available, that policy has been violated.

who will find facts and make credibility assessments. Panel members receive annual training on how to conduct hearings that protect the safety of individuals and promotes accountability, training on sexual harassment and discrimination, and how to apply the standard of evidence to the information provided from the Final Investigation Report and live hearing testimony.

- F. **Notice of Hearing:** When a case moves to a live hearing, the complainant and respondent will be notified in writing of the date/time/location of the hearing and will have at least five (5) business days advance notice of the hearing. The complainant and respondent will have access to the Final Investigation Report and all evidence the Panel will have access to prior to the hearing.
- G. **Evidence Review:** The complainant and respondent are each given an opportunity to review the information which the Panel will have access to, which shall include the Final Investigation Report, witness statements, statements made by the complainant and respondent, and any other evidence and information that will be presented to the panel.

The review shall be facilitated by the Title IX Coordinator's office. Copying and taking photographs of the evidence reviewed is strictly prohibited. Individual requests for copies or the manner for review of evidence on record will be considered by the Title IX Coordinator on a case-by-case basis.

Complainants and respondents shall maintain the privacy of the report and information contained within, with the exception of sharing the report with the advisor of their choice, who may be supporting the complainant and respondent in the response to the report and preparation for the hearing.

Investigative documents may be redacted for privacy and confidentiality purposes consistent with federal and state law.

- H. **Pre-Hearing Submissions:** Both the complainant and the respondent may, after receiving notice of the hearing, provide the Panel with a list of witnesses whom they wish to call at the hearing, and with copies of any documentation they would like the Panel to consider. Pre-hearing submissions must be submitted no later than 72 hours prior to the scheduled hearing, unless otherwise permitted by the Panel or Title IX Coordinator.

Both the complainant and the respondent may also submit questions to be asked of the other party by the Panel at the hearing.

The Panel has the right to deny the use of any additional documentation or witnesses that the Panel deems inappropriate or irrelevant.

- I. **Hearing Procedures:** Hearings are closed proceedings. Participants who may be present during the hearing include:

- Hearing Panel members
- Complainant (with Advisor)
- Respondent (with Advisor)
- Witnesses (when called by the Panel and only for the duration of their testimony)
- Investigators (when called by the Panel and only for the duration of their testimony)
- Title IX Coordinator (may be present to observe and/or answer policy-related questions)
- University Counsel
- Vice Provost for Student Life, Dean of Students, or designees (may be present as needed or requested)
- In some cases, the Panel may have subject matter experts provide information (when called by the Panel and to answer questions by the Panel)

On the day of the hearing, the complainant and respondent, along with their respective advisor, will be located in separate rooms. The rooms will be equipped with the ability to listen/see the hearing room where the Panel is located. Throughout the duration of the hearing, the complainant and respondent may access the audio and/or video, with the exception of the closed deliberations of the Panel, during times when there is a break, or other extenuating circumstances.

If **both** the complainant and respondent mutually agree to be present in the hearing room at the same time, this will be taken into consideration by the Title IX Coordinator, and barring any concerns, the parties, and their respective advisor, will be allowed to be in the hearing room for the entirety of the hearing (other than the exceptions outlined above).

The hearing will generally proceed in the following order:

1. Opening communication by the Panel
2. Complainant Statement
3. Questions to the Complainant by the Panel
4. Questions to the Complainant by the Respondent*
5. Respondent Statement
6. Questions to the Respondent by the Panel
7. Questions to the Respondent by the Complainant*
8. Witness Statements (if/when applicable)
9. Questions to Witnesses by the Panel (if/when applicable)
10. Questions to Witnesses by the Complainant and Respondent* (if/when applicable)
11. Final Questions to the Complainant and/or Respondent
12. Closing Statement by the Complainant
13. Closing Statement by the Respondent
14. Closed Deliberations by the Panel

**Question asking by the Complainant and Respondent:* Absent advance written consent by the Panel, only Panel members may ask questions of the complainant, respondent,

and witnesses. The complainant and respondent may submit questions in writing to the Panel. During the hearing, the Panel will pause to allow the complainant/respondent to submit questions for the Panel to consider asking the other party(ies). The Panel has the discretion to ask, rephrase, or decline to ask questions submitted that are not in accordance with this policy. If questions are rephrased or declined, the Panel will document the reason on record at the time of the hearing.

- Questions regarding the sexual history of either party will not be considered, except information regarding history between the complainant and respondent to assist with context of the nature of the relationship.
- Questions regarding unrelated disciplinary conduct known to either the complainant or respondent may not be considered.

- J. **Outcome of the Hearing:** At the conclusion of the hearing, the Panel will dismiss the parties and inform the parties that an outcome will be communicated in writing within five (5) business days from the day of the hearing. The Outcome Letter will include the name of the respondent, the violation for which the respondent was or was not found responsible, the essential information on which the findings were based, and the determined sanction(s), if any.

There are no presumptions. A preponderance of the evidence establishes the findings of the hearing panel.

Sanctions: Any student respondent found responsible for violating the Sexual Misconduct 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 the Sexual Misconduct 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 (when applicable), and may also consider the following:

- Impact statements provided by the complainant and respondent – which will not be a part of the determination if 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 the 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?

Acceptance of Responsibility: The respondent may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX Coordinator will render a finding of responsibility for violation of the policy for the admitted conduct, and will confer with the Director of OSCRR for student sanctioning or Human Resource for employee sanctioning. If the sanction/responsive action is accepted by both the complainant and respondent, the Title IX Coordinator and Director of OSCRR/Human Resources will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the complainant and the community. If either party does not accept the sanction/responsive action, they may submit a request for appeal as described in the appeals section.

Advisors: All participants in the Sexual Misconduct investigation process may have the assistance of an advisor of their choosing at any of the meetings and/or proceedings associated with resolution. If the advisor is an attorney, they are permitted to act only as an advisor during this administrative process. Students are expected to ask and respond to questions on their own behalf, without representation by their advisor. The advisor may consult with the advisee quietly or in writing, or outside the meeting during breaks, but may not speak on behalf of the advisee to the investigators.

Withdrawal While Charges Pending (for students): Should a student who has a complaint pending for a violation of the Sexual Misconduct Policy decide to leave the University and not participate in the investigation, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University of San Francisco unless all sanctions have been satisfied. A hold may be placed on the student's account to prohibit re-enrollment and the release of transcripts.

Conflicts of Interest: When designating individuals to perform roles under the procedures identified in this policy, the University seeks to avoid any conflicts of interest and to appoint neutral individuals. If any party becomes aware of a conflict of interest, or bias, of an individual who is participating in the procedures identified above, that party should inform the Title IX Coordinator immediately. The Title IX Coordinator will assess the information and determine if the concern may be addressed or if replacement is required. The Title IX Coordinator will communicate to both parties if a replacement occurs and provide the new name(s) and role(s) of any new individuals in the process.

IX. Appeals

For cases of alleged sexual misconduct, student respondents and complainant shall both have the right to submit an appeal request to the Office for Student Conduct, Rights &

Responsibilities within five (5) business days from the date of the Outcome Letter.³ The written request for appeal must indicate what is being appealed (decision and/or sanctions) and must include answers to the questions on the request form in accordance with the criteria described on the form. OSCRR will forward the request within five (5) business days for appeal to the University Appeals Board (UAB) that reviews and processes all requests for appeal. The appeals process is not a hearing – it is a review of the record and process only.

Criteria for Appeal: A request for appeal will be considered if at least one of the following criteria for appeal is met:

1. *Procedural irregularities sufficient to affect the determination of the decision-maker (Title IX Coordinator, or designee, or Live Hearing Panel):*

- The investigator(s), Title IX Coordinator, and Hearing Panel members, or designees, are expected to conduct themselves in accordance with the policies and procedures of the University. Deviations from those policies and procedures that render their actions fundamentally unfair constitute a sufficient basis for an appeal to the University Appeals Board.
- Procedural irregularities that are considered by the UAB to be harmless and did not, in the judgment of the Board, adversely affect the process, are not a basis for upsetting the determination of the Title IX Coordinator and/or Hearing Panel.
- The person appealing must describe how the procedures were not followed and how the investigation and/or hearing was not conducted fairly in light of the allegations and information provided.

2. *New evidence that was not reasonably available for presentation during the investigation to the investigator(s), or to the Hearing Panel, the introduction of which could reasonably be expected to affect the outcome.*

- All available evidence, including testimony of witnesses, is expected to be presented to the investigator(s) and/or Hearing Panel - only on that basis can the Title IX Coordinator and/or Hearing Panel render fair and reasonable decisions. The party who seeks to introduce new evidence has the burden of demonstrating the evidence was not reasonably available at the time of the original process, and that the introduction of such new evidence can be reasonably expected to affect the determination of the decision-makers.
- If the UAB determines the party appealing has satisfied this burden, the Board remands the case to the Title IX Coordinator or Hearing Panel with instructions to reconsider the case in light of the new evidence.
- The party appealing must submit, provide and describe the new and relevant information and explain why it was not available at the time of the investigation and/or hearing.

Consideration of Request and Determination of Appeal

³ With the exception if both the complainant and respondent agree to the Informal Resolution Agreement under Informal Action.

1. The UAB will review the appeal request(s). The original finding and sanctions/responsive actions will stand if the appeal is not timely, or is not based on the grounds listed above, and such a decision is final.
2. When any party requests an appeal, the other party (parties) will be notified and may be joined in the appeal.
3. The party requesting appeal must show the grounds for an appeal request have been met. The original finding and sanction are presumed to have been decided reasonably and appropriately.
4. Where the UAB finds at least one of the grounds is met, and proceeds, additional principles governing the review of appeals include the following:
 - a. Appeals decisions by the UAB are to be deferential to the original decision-making changes to the finding only where there is clear error and to the sanctions/responsive actions only if there is a compelling justification to do so.
 - b. Appeals are not intended to be a full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal.
 - c. Appeals granted based on new evidence will normally be remanded to the investigative team and Title IX Coordinator, or Hearing Panel, for reconsideration.
 - d. Sanctions imposed are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
 - e. The Chair of the UAB will render a written decision on the appeal to all parties within five (5) business days from review of the appeal.
 - f. The respondent and complainant shall be informed of whether the grounds for an appeal are accepted and the results of the appeal decision.
 - g. Once an appeal is decided, the outcome is final: further appeals are not permitted.

X. Records

In implementing this policy, records of all complaints, resolutions, and investigations will be kept by the Title IX Coordinator indefinitely. Decisions regarding a student found responsible for violations of this policy will be noted in their student conduct records, which are retained as outlined in the Fogcutter Student Handbook. A student who is sanctioned to suspension or dismissal from the University will have a notation on their transcript.

XII. Statements of the Rights and Responsibilities of the Parties

A. Rights and Responsibilities of the Complainant

1. Complainants may select an advisor/support person of their choice. This person's role is limited to providing support and advice, and may not speak on behalf of the complainant, or represent the complainant.
2. Complainants have the right to be informed in advance of any public information regarding the incident; and the right not to have any personally identifiable information released to the public without their consent.
3. Complainants have the right to be informed by University officials of options to notify proper law enforcement authorities, including local police, and to be assisted by campus authorities in notifying such authorities, if the complainant so chooses. This also includes the right not to be pressured to report as well.
4. Complainants will be afforded similar and timely access to any information that will be used during the processes outlined in this policy.
5. Complainants will be given periodic status updates throughout the process, which generally takes 60 days from the date of decision to move to an informal or formal process.
6. Complainants will have equal opportunity to present relevant witnesses and other information during the process.
7. Complainants will never be questioned directly by, or in the physical presence of, the respondent during the formal resolution process (with the exception if there is a mutual request to be present together during the hearing).
8. Complainants may submit a list of questions related to the alleged incident they feel the respondent should be asked during the investigation and/or hearing. Questions asked are at the discretion of the investigator(s) and hearing panel members.
9. Complainants may not have their irrelevant past conduct, including sexual history (except information regarding history between the complainant and respondent to assist with context of the nature of the relationship), discussed at any point in the processes outlined in this policy.
10. Complainants have the right to know the outcome of any resolution processes. There is no limitation on the re-disclosure of this information.
11. Complainants have the right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice.
12. Complainants have the right to appeal the outcome, when permitted and as outlined in this policy.
13. Complainants have the right to be treated with respect by University officials.
14. Complainants have the right to be notified of available counseling, mental health, medical, and services for victims of sexual or gender-based misconduct, both on-campus and in the community.
15. Complainants have the right to preservation of privacy, to the extent possible and allowed by law.
16. Complainants are expected to provide truthful information while participating in any processes outlined in this policy.

B. Rights and Responsibilities of the Respondent

1. Respondents may select an advisor/support person of their choice. This person's role is limited to providing support and advice, and may not speak on behalf of the respondent, or represent the respondent.

2. Respondents have the right to be informed in advance of any public release of information regarding the incident.
3. Respondents will be afforded similar and timely access to any information that will be used during the processes outlined in this policy.
4. Respondents will be given periodic status updates throughout the process, which generally takes 60 days from the date of the decision to move to an informal or formal process.
5. Respondents will have equal opportunity to present relevant witnesses and other information during the process.
6. Respondents will never be questioned directly by, or be in the physical presence of, the complainant during the formal resolution process (with the exception if there is a mutual request to be present during the hearing).
7. Respondents may submit a list of questions related to the alleged incident they feel the complainant should be asked during the investigation and/or hearing. Questions asked are at the discretion of the investigator(s) and hearing panel members.
8. Respondents have the right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice.
9. Respondents may not have their irrelevant past conduct, including sexual history (except information regarding history between the complainant and respondent to assist with context of the nature of the relationship), discussed at any point in the processes outlined in this policy. Previous conduct history may be used when determining appropriate sanctions.
10. Respondents have the right to know the outcome of any resolution processes. There is no limitation on the re-disclosure of this information.
11. Respondents have the right to appeal the outcome of a hearing, when permitted and as outlined in this policy.
12. Respondents have the right to be treated with respect by University officials.
13. Respondents have the right to be informed of, and have access to, campus resources for medical, counseling, and educational support services.
14. Respondents have the right to preservation of privacy, to the extent possible and allowed by law.
15. Respondents are expected to provide truthful information while participating in this process.

C. Right and Responsibilities of Witnesses

1. Witnesses have the right to be treated with respect by University officials.
2. Witnesses have the right to be free from retaliation for participating in any processes outlined in this policy.
3. Witnesses may receive amnesty for minor student misconduct (such as alcohol or other drug violations) that are ancillary to the incident.
4. Witnesses have the right to be informed of, and have access to, campus resources for medical, counseling, and educational support services.
5. Witnesses are expected to provide truthful information while participating in this process.

XIV. Resources

In addition to the resources listed below, more resources are available by visiting <https://myusf.usfca.edu/title-ix/resources>

San Francisco General Hospital Emergency Room
1001 Portrero Avenue
(415) 206-8000

- SF General is the only facility in the city providing medical services for victims of sexual assault (including rape kits, medications, etc.) **free of charge.**
- SF Women Against Rape (SFWAR) is available to victims for medical advocacy during treatment.
- The hospital is required by law to report an incident of a sexual offense to the San Francisco Police Department (SFPD). A decision by the victim to press formal charges does not have to be made at the time of the visit to the hospital.

Public Safety

University Center, 5th Floor
(415) 422-4201 – general line
(415) 422-2911 – emergency line

- Public Safety is required to report all incidents of alleged sexual assaults to SFPD; a decision by the victim to press formal charges does not have to be made at the time the information is provided to Public Safety or SFPD.

Office of Student Conduct, Rights and Responsibilities

University Center, 5th Floor
(415) 422-5330

- OSCRR staff can provide information regarding the conduct process, the complaint process, the investigative process, and other options and resources available to students.

Gender and Sexuality Center

University Center, 412
(415) 422-4431

Obtain psychological support by contacting:

- USF Counseling and Psychological Services (415) 422-6352
- San Francisco Rape Treatment Center (415) 821-3222
- SF Women Against Rape (415) 647-7273

Additional sources of support include:

- California AIDS Hotline (415) 863-2437
- San Francisco Suicide Prevention, Inc.-24-Hour Crisis Line (415) 781-0500

Relevant Government Resources

Additional resources for students wishing to file a complaint of sexual misconduct:

- U.S. Department of Education, Office for Civil Rights <http://www.hhs.gov/ocr>
- U.S. Department of Justice, Office on Violence Against Women <http://www.ovw.usdoj.gov>

For reference to the pertinent state statutes on sex offenses, please see <http://www.rainn.org>