

## SEXUAL MISCONDUCT POLICY<sup>[1]</sup>

### 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.

Students who believe they have been subjected to sexual misconduct are 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 or gender in education programs or activities. Sexual misconduct, as defined in this policy, constitutes sex and/or gender discrimination prohibited by Title IX 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 of service 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.

Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to one form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence-- without actions demonstrating permission--cannot be assumed to show consent.

**Consent:** Consent is affirmative, clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot 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 acts.
- Mutually understandable consent must be obtained and maintained by both parties throughout the sexual interaction
- Consent to sexual activity may be revoked at any time, at which point sexual activity must cease immediately.

- Individuals are unable to give consent if they:
  - Are incapacitated by drugs or alcohol;
  - Suffer from a physical or mental disability that makes them incapable of giving consent;or
  - Are a minor (under 18 years of age).

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

Coercion happens when someone is pressured unreasonably for 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 victim or witness of sexual violence will not be charged with Student Conduct Code violations with regard to alcohol and/or drug consumption or other minor policy violations if they are coming forward to report or assist with a report 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 the students and the University community. Such measures include, but are not limited to: modification of University housing and class schedule, interim suspension from campus pending a conduct proceeding, suspension or expulsion from extracurricular activities (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 is found to have violated this policy, ranging from verbal warning to expulsion, 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 mandatory reporting requirements 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 his/her 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. 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 faculty, Resident Advisors, Community Directors, the Title IX Coordinator, the Vice Provost for Student Life (or designee), 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 these procedures. Reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the accused student/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/or 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, gender or sex-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, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you 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 or anal penetration by a penis, object, tongue or finger, and/or oral copulation (mouth to genital contact), no matter how slight the 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 engaged in sexual acts without the consent of the person 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.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infection (STI) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as "date rape" drugs) to another person without his or her 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 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. Examples, subject but not limited to

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

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 (faculty/staff) 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 accommodation and no contact orders.

#### 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 overcome resistance or ("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 party 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 to you that they do not want sex, 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. **Incapacitation:** A higher level of alcohol consumption. A state where someone cannot make rational, 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 or gender is a violation of this Policy, provided that the Respondent knew or reasonably should have known of the person’s incapacity*

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

1. 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: Leighia Fleming  
UC 5<sup>th</sup> Floor  
(415) 422-5330

Human Resources: Diane Nelson  
Lone Mountain 339  
(415) 422-6707

The Title IX Coordinator is responsible for educating the University community on USF’s Title IX policies, programs, and resources; informing complainants and respondents with reporting options and consequences; facilitating support, resources; and remedies; and tracking and investigating complaints.

2. 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.

3. The persons listed below are the University’s **Title IX Coordinator and Title IX Deputy Coordinators**. The Title IX Coordinator is responsible for the oversight of Title IX procedures as well as ensuring Title IX compliance at the University. 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 reports or complaints may be reported.

Leighia Fleming, Title IX Coordinator  
(415) 422-5330  
lefleming@usfca.edu

Julie Orio, Title IX Deputy Coordinator (for students)  
Vice Provost of Student Life  
(415) 422-5330  
[orioj@usfca.edu](mailto:orioj@usfca.edu)

Shannon Gary, Title IX Deputy Coordinator (for students)  
Dean of Students  
(415) 422-5330  
sgary@usfca.edu

Doug Padron, Title IX Deputy Coordinator (for athletics)  
Sr. Associate Athletic Director  
(415) 422-4927  
dcpadron@usfca.edu

Diane Nelson, Title IX Deputy Coordinator (for faculty and staff)  
Director of Employment and Employee Relations  
(415) 422-2441  
[dnelson3@usfca.edu](mailto:dnelson3@usfca.edu)

David Philpott, Title IX Deputy Coordinator (for faculty and staff)  
Director, Office of General Counsel  
(415) 422-2458  
[philpottd@usfca.edu](mailto:philpottd@usfca.edu)

## 5. Title IX Investigators

Title IX Investigators are trained in Title IX and other relevant authority and in all aspects of the grievance process. Title IX Investigators can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake and initial counseling of complaints
- To serve in a mediation role in conflict resolution
- To investigate complaints
- To act as advisors to those involved in complaints
- To serve on hearing or appeal panels for complaints

Title IX Investigators receive annual training organized by the Title IX Coordinator, including a review of University policies and procedures, so that they are able to provide accurate information to members of the community.

## 6. Federal Timely Warning and/or Emergency Notification Obligations

University administrators must issue timely warnings and/or emergency notifications for incidents reported to them that pose a serious or ongoing threat to the campus community. The University will make every effort to ensure that a victim's name and other personally identifying information is not disclosed, while still providing enough information for community members to make decisions in light of the potential danger.

## 7. Complaint Intake

Following receipt of notice or a complaint, the Title IX Coordinator (or designee) will promptly make an initial determination whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the complaint does not appear to allege a policy violation or if conflict resolution is desired by the complainant, and appears appropriate given the nature of the alleged behavior, then the complaint does not proceed to investigation.

A full investigation will be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The University aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties. Delays could occur when the University is closed or during academic breaks.

### **8. Interim Remedies**

The Title IX Coordinator (or designee) may provide interim remedies intended to address the short or long-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further harassment or violations.

Interim remedies may also be used when, in the judgment of the Title IX Coordinator and/or Director of OSCRR (or designees), the safety or well being of any member(s) of the campus community may be jeopardized by the presence on campus of the accused individual or the ongoing activity of a student organization whose behavior is in question.

These remedies may include referral to counseling and health services, education to the community, altering the housing situation of an accused student (or the alleged victim, if desired), providing campus escorts, implementing No-Contact Orders between the parties (students only), offering adjustments to academic deadlines, course schedules, etc.

The University may impose an interim suspension on a student or student organization pending the completion of the Sexual Misconduct investigation. During an interim suspension, a student (or group) may be denied access to University housing and/or the University campus/facilities/events. As determined by the Title IX Coordinator and Director of OSCRR (or designees), this restriction includes classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Coordinator in conjunction with the appropriate administrative officer, alternative coursework options may be pursued to ensure as minimal an impact as possible on the accused student. Violation of an interim suspension under this policy will be grounds for expulsion.

### **9. Preponderance of Evidence Standard**

The standard for determining a violation of the Sexual Misconduct Policy is that of a "preponderance of the evidence" - meaning it is more likely than not that a violation occurred.

### **10. Complaint Resolution**

During or upon the completion of investigation, the investigators will meet with the Title IX Coordinator. Based on that meeting, the Title IX Coordinator will make a decision on whether there is reasonable cause to proceed with the complaint. If the Title IX Coordinator decides that no policy violation has occurred or that the preponderance of evidence does not support a finding of a policy violation, then the process will end unless the Title IX Coordinator is convinced by new evidence to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator. If there is reasonable cause, the Title IX Coordinator will direct the investigation to continue, or if there is a preponderance of evidence of a violation, then the Title IX Coordinator may recommend conflict resolution, resolution without investigation, or a formal investigation, based on the below criteria.

Procedures for handling reported incidents are fully described below. Deliberately false and/or malicious accusations of harassment, as opposed to complaints which, even if erroneous, are made in good faith, are serious offenses and will be subject to appropriate disciplinary action.

**a. Conflict Resolution**

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the likelihood of successful resolution. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate disciplinary actions.

*Conflict resolution will not be used to address complaints of sexual assault or violent behavior of any kind or in other cases of serious violations of policy.* It is not necessary to pursue conflict resolution first in order to make a formal complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal investigation.

**b. Resolution without an Investigation**

Resolution without an investigation can be pursued for any behavior that falls within the policy, at any time during the process. 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 that the individual is in violation of University policy for the admitted conduct, and will normally proceed to the Director of OSCRR for student sanctioning). If the sanction/responsive action is accepted by both the complainant and respondent, the Title IX Coordinator and Director of OSCRR will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the victim 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.

**c. Investigation**

If a complainant wishes to pursue a formal complaint, or if the University, based on the alleged policy violation, wishes to pursue a formal complaint, then the Title IX Coordinator will appoint investigators to conduct the impartial, fact-finding investigation. Investigation of complaints brought directly by those alleging harm should be completed expeditiously. Investigations may take longer when initial complaints fail to provide direct first-hand information. The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated. University action will not necessarily be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. The student conduct and resolution process is distinct from the criminal investigation and flows from the University's obligation under Title IX to ensure it is providing a safe environment.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

#### **D. Advisors**

All participants in the Sexual Misconduct investigation process may have the assistance of an advisor of their choosing at the meeting. If the advisor is an attorney, they are permitted to act only as an advisor during this administrative process. The student participants 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.

### **VIII. Investigation Process for Resolving Complaints of Alleged Violations of the Sexual Misconduct Policy <sup>[2]</sup>**

A. The following procedures apply to Sexual Misconduct Policy investigations:

1. Once it is determined that a full investigation will commence, the Title IX Coordinator or designee will open a case file and assign investigator(s) who will direct the investigation and confer with the Title IX Coordinator as to interim accommodations and/or remedies.
2. The Title IX Coordinator will establish a timeline (60 working days from the date of receipt of the complaint) in which the investigation, charges and determination should be completed.
3. The Title IX Coordinator will send a notice of investigation to the complainant and respondent. Once emailed to the student's University email address and/or received in person, notice will be presumptively delivered. The letters will contain:
  - A description of the alleged violation(s), a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
  - The time, date and location of the investigative meeting and a reminder that attendance is mandatory, superseding all other campus activities.
  - The Title IX Coordinator (or designee) will be present at the beginning of the investigative meeting with the respondent to explain the process, answer any questions and allow the respondent the opportunity to agree or disagree with the charge(s).
  - If the respondent agrees with the charges and accepts responsibility, the Title IX Coordinator will forward the case to the Director of the Office of Student Conduct, Rights and Responsibilities, who will proceed with determining the appropriate action and sanction(s) as noted in Section VIII.B below.
  - If the respondent disagrees with the charges, the Title IX Coordinator will then refer the respondent to the investigator(s) for the investigative process.
4. The investigator(s) will hold meetings with both the complainant and respondent. The investigator(s) may ask the complainant to clarify some aspects of the complaint. If the complainant learns or remembers any additional information, the complainant should notify the investigator(s) immediately.
5. The investigator(s) will also interview all relevant persons who may have pertinent knowledge of the complaint. Supporting documentation may be collected and analyzed. Note that the past

sexual relationship between the parties may or may not be deemed relevant to the investigation by the investigator(s). For example, past sexual encounters between the parties may provide insight on communication patterns for purposes of determining consent.

6. At the conclusion of the investigation, the investigator(s) will forward their full investigative notes to the Title IX Coordinator. Based upon these notes, the Title IX Coordinator will determine, based on the preponderance of the evidence, whether the alleged acts occurred and whether those acts violate the Sexual Misconduct policy.

The Title IX Coordinator will provide their determination in writing simultaneously to the complainant and the respondent, notifying them of next steps in the process.

### **B. Potential Sanctions**

Any student found responsible for violating the Sexual Misconduct policy will be subject to sanction(s) ranging from 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 any student found responsible for a violation of the Sexual Misconduct policy.

Any faculty or staff found responsible for violating the Sexual Misconduct policy will be subject to sanction(s)/ outcomes ranging from probation to loss of employment, depending on the severity of the incident and taking into account any previous Human Resource complaints.

The Director of OSCRR or designee reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

### **C. Withdrawal While Charges Pending**

Should a student who has a complaint pending for a violation of the Sexual Misconduct policy, or for charges under the Code of Student Conduct 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.

## **IX. Appeals**

For cases of alleged sexual misconduct, the respondent and the complainant shall both have the right to submit an appeal request to OSCRR within five (5) business days of the date noted on the decision notification letter. 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.

### **A. 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 Title IX Coordinator and/or the decision of the Director of OSCRR or designee.*

- The investigator(s), the Title IX Coordinator and the Director of OSCRR 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 the decision of the Director of OSCRR or designee.
- *The student must describe how the procedures were not followed and how the conduct meeting 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), the introduction of which could reasonably be expected to affect the determination of the investigator(s).*

- All available evidence, including testimony of witnesses, is expected to be presented to the investigator(s) - only on that basis can the investigator(s) and the Title IX Coordinator render fair and reasonable decisions. A student who seeks to introduce new evidence has the burden of demonstrating that 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 investigator(s).
- If the UAB determines that the student has satisfied this burden, the Board remands the case to the Title IX Coordinator with instructions to reconsider the case in light of the new evidence.
- *The student must submit, provide and describe the new and relevant information and explain why it was not available at the time of the investigation and conduct meeting.*

### **B. Consideration of Request and Determination of Appeal**

1. The UAB will review the appeal request(s). The original finding and sanction/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 that 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 that 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 sanction/responsive action 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 should normally be remanded to the investigative team and Title IX Coordinator for reconsideration.
- d. Sanctions imposed are implemented immediately unless the Title IX Coordinator or designee 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 5 business days from review of the appeal.
- f. All parties should 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 his/her student conduct file, 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.

#### XI. Statement of Complainant's Rights

- To be treated with respect by University officials.
- To access campus support resources (such as Counseling & Psychological Services, clergy affiliated with the University, and University health services.)
- To request and receive disability-related reasonable accommodations
- To be informed of the option to file criminal charges in addition to pursue a complaint through the University's process.
- To experience a safe living, educational and work environment.
- To have an advisor during this process.
- To have his/her identity or personally identifiable information withheld during the investigation.
- To refuse to have an allegation resolved through conflict resolution procedures
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To request remedial and responsive actions from the University intended to restore a sense of safety and/or ability to participate in University programs and activities. To have complaints heard in substantial accordance with these procedures.

- To full participation of the injured party in any process whether the injured party is serving as the complainant or the University is serving as complainant.
- To be kept informed of the status of the complaint and anticipated resolution timeline.
- To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible and the rationale for the outcome where permissible.
- To be informed about how to appeal the outcome.

**XII. Statement of Respondent's Rights**

- To be treated with respect by University officials.
- To access campus support resources (such as Counseling & Psychological Services, clergy affiliated with the University, and University health services).
- To have an advisor during this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To request and receive disability related reasonable accommodations
- To have complaints heard in substantial accordance with these procedures.
- To request reasonable accommodations to ensure equitable participation in meetings/hearings.
- To be informed of the outcome/resolution of the complaint and the rationale for the outcome, in writing.
- To be informed about how to appeal the outcome.

**XIII. Statement of Witnesses' Rights**

- To be treated with respect by University officials.
- To be free from retaliation.
- To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To request and receive disability related reasonable accommodations.

**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, 5<sup>th</sup> 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, 5<sup>th</sup> Floor

(415) 422-5330

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

*Gender and Sexuality Center*

University Center, 412

(415) 422-4431

*University Ministry*

Toler Hall, Lower Level

(415) 422-4463

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>

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[1] Much of the sexual misconduct policy and definitions was adapted with permission from Brett Sokolow, J.D., and the National Center for Higher Education Risk Management, Ltd

[2] Much of the Investigation Process for Resolving Sexual Misconduct was adapted from Vanderbilt University