Policy on Sex-Based Discrimination, Harassment, and Retaliation
[Effective August 1, 2024]

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POLICY

I. Notice of Non-Discrimination and Policy Overview

A. Notice of Non-Discrimination

Santa Clara University's vision is to educate citizens and leaders of competence, conscience, and compassion and cultivate knowledge and faith to build a more humane, just, and sustainable world. Central to the University's Jesuit values and identity is its commitment to creating an inclusive community that is enriched by people of different backgrounds, respectful of the dignity of all its members, enlivened by mutual respect, open communication, care, and justice.

In furtherance of its core values, the University believes that all members of the University community, including students, faculty, staff, guests, and visitors, should pursue their work, education, and engagement in University programs and activities in a safe environment, free from all forms of unlawful discrimination, harassment, and retaliation. *Cura personalis* calls and inspires us to care for the whole person, body, mind, and spirit, in the fullness of one's dignity, towards belonging and flourishing.

To that end, the University prohibits discrimination against any individual on the basis of race, color, ethnicity, national origin, citizenship, ancestry, religion, age, sex, sexual orientation, sex stereotypes, sex characteristics, gender, gender expression, gender identity, marital status, registered domestic partner status, parental status, veteran or military status, physical or mental disability (including perceived disability), medical conditions (including cancer related or genetic characteristics), pregnancy or related conditions (including childbirth, termination of pregnancy, lactation, or related medical conditions), recovery from pregnancy or related conditions, reproductive health decisionmaking, or any other basis prohibited under applicable federal, state, or local laws and their implementing regulations, in any of the University's educational and other programs and activities, its admissions, and its employment practices.

B. Policy Overview

This Policy is enacted to affirm and advance the University's institutional values, to educate members of the University community about these issues, to define prohibited behavior, to provide for fair and equitable procedures to determine whether this Policy has been violated, and to provide recourse for members of the University community who believe they have experienced conduct prohibited by this Policy.

As a recipient of federal financial assistance for education activities, the University is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex. For the purpose of this Policy, sex includes sex, sexual orientation, sex stereotypes, sex characteristics, gender identity, gender expression, or pregnancy or related conditions. Sex discrimination is prohibited by applicable federal and state laws and University policy. Sexual harassment, sexual assault, dating and domestic violence, and stalking are all forms of prohibited sex discrimination. The University also prohibits retaliation against any person because they have reported, complained of, or otherwise participated in good faith in any matter relating to an allegation of sex discrimination, including sexual harassment or

sexual misconduct, and including any investigation or complaint process internal or external to the University.

This Policy addresses Sex-Based Discrimination, Sex-Based Harassment, and Retaliation which are defined in Section III below. Allegations of other forms of discrimination, harassment, or retaliation (other than Prohibited Conduct as defined in this Policy) are covered by the Policy on Discrimination, Harassment, and Retaliation (Other than Sex-Based).

The University will take necessary measures to end conduct that is in violation of this Policy, prevent its recurrence, and remedy its effect on individuals and the University community. Within any process related to this Policy, the University provides reasonable accommodations to persons with disabilities and reasonable religious accommodations when that accommodation is consistent with state and federal law.

Situations involving conduct that may be in violation of other University student or employee conduct policies should be reported to the Dean of Students Office for matters involving students, to the Provost for matters involving faculty, or to Human Resources for matters involving staff.

II. Glossary of Terms

For a glossary of defined terms used throughout this Policy, please see Appendix A.

The following terms, also included in Appendix A, are used throughout this Policy to refer to the parties to a report:

- **Complainant** means (i) a student or employee who is alleged to have been subjected to Prohibited Conduct as defined by this Policy, or (ii) a person other than a student or employee who is alleged to have been subjected to Prohibited Conduct as defined by this Policy and who was participating or attempting to participate in a University program or activity (including employment) at the time of the alleged misconduct.
- **Respondent** means a person who is alleged to have engaged in conduct that could constitute Prohibited Conduct under this Policy.

III. Scope of Policy

A. *Application to On-Campus and Off-Campus Conduct*

The University's primary concern is student and employee safety. This Policy applies to the education programs and activities of the University, and to conduct that takes place on campus or on any other property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations.

This Policy also applies to conduct that occurs off-campus or otherwise outside of the University's programs or activities if, based on the allegations, there is reason to believe the conduct could contribute to a hostile environment for employees or students or otherwise interfere with an individual's access to the University's education programs and activities.

B. *To Whom This Policy Applies*

This Policy applies to all students, staff, faculty, and other individuals participating in or attempting to participate in the University's education program or activities, including employment. Compliance with this Policy is a term and condition of employment and enrollment with the University. Any member of the University community who acts to deny, deprive, or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the University community, guest, visitor, or other third party by engaging in Prohibited Conduct as defined within this Policy is in violation of this Policy.

All vendors, contractors, guests, visitors, and other third parties are expected to adhere to the behavioral expectations set forth in this Policy and can be subject to actions that limit their access and/or involvement with University programs or activities as a result of their violation of the standards set forth in this Policy. Even if not covered by this Policy, the Director of Equal Opportunity and Title IX shall have the authority to investigate and/or refer any reports against a vendor, contractor, guest, visitor, or other third party to Human Resources or another appropriate administrative office to respond to the report and to take appropriate corrective action. All contractors and vendors serving the University through third party contracts also are subject to the policies and procedures of their employers.

C. *Conduct Prohibited Under this Policy*

This Policy prohibits all forms of Sex Discrimination, Sex-Based Harassment and Retaliation as defined below ("Prohibited Conduct"). These acts shall also be referred to as Prohibited Conduct under this Policy:

1. Sex-Based Discrimination

Discrimination can take two primary forms: disparate treatment discrimination and disparate impact discrimination.

a. ***Disparate Treatment Discrimination***. Disparate treatment discrimination is a distinction, preference, or detriment to an individual as compared to others that is based on an individual's protected characteristic(s) and that (1) excludes an individual from participation in; (2) denies the individual benefits of; (3) treats the individual differently in; or (4) otherwise adversely affects a term, condition, or benefit of an individual's employment, education, living environment, or participation in a University program or activity.

b. ***Disparate Impact Discrimination***. Disparate impact discrimination occurs when there is sufficient evidence that policies or practices that are neutral on their face disproportionately exclude or adversely impact persons within a protected class, where the policies or practices are not: (1) job-related and consistent with business necessity (for employees); or (2) necessary to meet an important educational goal (for students). In determining whether a facially-neutral policy or practice has a disparate impact on a protected class, the University will consider whether there are alternative policies or practices that would meet the

job requirements, business necessities, and/or education goals without resulting in disparate impact.

Sex-based discrimination includes discrimination on the basis of sex, sexual orientation, sex stereotypes, sex characteristics, gender identity, gender expression, or pregnancy or related conditions (including childbirth, termination of pregnancy, lactation, or related medical conditions).

2. Sex-Based Harassment

Sex-based harassment is a form of sex-based discrimination and means sexual harassment and other harassment on the basis of sex, sexual orientation, sex stereotypes, sex characteristics, gender identity, gender expression, or pregnancy or related conditions, that is:

a. ***Quid pro quo harassment***. Quid pro quo harassment refers to a situation in which an employee, agent, or other person authorized by the University provides an aid, benefit, or service under the University's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

b. ***Hostile environment harassment***: Hostile environment harassment is unwelcome conduct that, when viewed from both a subjective and objective perspective, is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or effectively denies an individual's ability to participate in or benefit from the University's educational program or activity; employment access, benefits or opportunities; or other University programs or activities.

Whether a hostile environment exists is a fact-specific inquiry. In evaluating whether a hostile environment exists, the University will evaluate the totality of the circumstances, including, but not limited to:

- The degree to which the conduct unreasonably interfered with the Complainant's educational or work performance or ability to access the University's employment or education benefits, programs, or activities;
- The nature, frequency, and duration of the conduct;
- The Parties' ages, roles within the University's education program or activity, previous interactions, and other factors about each Party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other relevant factors that may arise from consideration of the reported facts and circumstances.

Unwelcome conduct may include verbal, physical, written, electronic, visual or other conduct. Examples of unwelcome sex-based conduct include, but are not limited to, sexual advances, requests for sexual favors, offering employment benefits or giving preferential treatment in exchange for sexual favors, indecent

exposure, being forced to engage in unwanted sexual contact as a condition of membership in a student organization or in exchange for a raise or promotion, being subjected to video exploitation or a campaign of sexually explicit graffiti, or frequently being exposed to unwanted images of a sexual nature in a work environment or in a classroom where the images are unrelated to the coursework.

Claiming that the conduct was not motivated by sexual desire is not a defense to a complaint of Sex-Based Harassment.

c. Sexual assault includes any sexual act directed against another person without that person's Consent, whether forcibly and/or against the person's will, or not forcibly and/or against the person's will where the victim is incapable of giving Consent. The following specific offenses are examples of sexual assault under this Policy:

1. ***Sex Offenses***

A. Rape - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without Consent.

B. Sodomy - Oral or anal sexual intercourse with another person, without Consent.

C. Sexual Assault With An Object - The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without Consent.

D. Fondling - The touching of the private body parts of another person for the purpose of sexual gratification, without Consent.

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

F. Statutory Rape - Non-forcible sexual intercourse with a person who is under the statutory age of consent. (In California, the statutory age of consent is 18.)

G. Sexual Battery – The intentional touching of another person's intimate parts without Consent, intentionally causing a person to touch the intimate parts of another without Consent, or using a person's own intimate parts to intentionally touch another person's body without Consent.

d. ***Dating Violence*** means violence:

- Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- Where the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

For the purpose of this Policy, "violence" is the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior.

e. ***Domestic Violence*** means violence:

- Committed by a person who is a current or former spouse, intimate partner, or cohabitant of the Complainant; or
- Committed by a person who is having or had a dating or engagement relationship with the Complainant; or
- Committed by a person who shares a child in common with the Complainant; or
- Committed by a person against a youth or adult victim who is protected from those acts under the family or domestic violence laws of California.

"Violence" shall have the same meaning as that set forth in part 2.d. above.

f. ***Stalking***:
Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress.

g. ***Sexual Coercion***:
The application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

h. ***Sexual Exploitation***:
The abuse or exploitation of another person's sexuality without Consent, for the perpetrator's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; trafficking; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person; viewing another person's sexual activity or intimate parts, allowing third parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

3. Sexual Harassment (Under 2020 Title IX Regulations)

Effective August 14, 2020, the United States Department of Education ("ED") promulgated regulations under Title IX (the "2020 Title IX Regulations") that require specific procedures to be followed for a narrow set of forms of Sexual Harassment.

On April 19, the ED announced the implementation of new Title IX regulations, effective August 1, 2024 (the "2024 Title IX Regulations"). On or about July 15, 2024, the United States District Court for the District of Kansas issued an injunction prohibiting the ED from implementing, enacting, or enforcing the 2024 Title IX Regulations against several states and nearly 700 institutions, including Santa Clara University (the "Injunction").

As a result of the Injunction, this Policy identifies separate procedures that will be followed for the forms of Sex-Based Harassment that are covered by the 2020 Title IX Regulations, referred to as "Sexual Harassment (Under the 2020 Title IX Regulations)."

For the purpose of this Policy, "Sexual Harassment (Under the 2020 Title IX Regulations)" is Prohibited Conduct and means:

- Any of the following offenses:
    - An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
    - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
    - Sexual Assault, as defined in Section III.C.2.c of this Policy;
    - Dating Violence, as defined in Section III.C.2.d of this Policy;
    - Domestic Violence, as defined in Section III.C.2.e of this Policy;
    - Stalking, as defined in Section III.C.2.f of this Policy
- That occurred on or after August 14, 2020; and
- That occurred either on campus, on any University-owned or leased property, or in a building owned or controlled by an officially recognized University organization, and/or in a University program or activity; and
- That occurred to a Complainant who was participating in or attempting to participate in a University program or activity in the United States or was an applicant to, or employee of, the University.

If and when the Injunction and/or the 2020 Title IX Regulations are no longer in effect, the Director shall have the discretion to process any pending or new cases under the procedures applicable to allegations of Sex-Based Discrimination or Sex-Based Harassment, as set forth in Attachments B, C, and D. The Director's decision will be communicated in writing to the Parties.

4. Complicity

Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

5. Retaliation

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege secured by this Policy or by law, including Title IX or its regulations.

Peer retaliation, which is retaliation by one student against another student, is prohibited. Supportive measures or other good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation. Retaliation may occur even where a Respondent is found to be "not responsible" for other alleged misconduct under this Policy.

The prohibition against Retaliation applies to any individuals who participate in any manner in an investigation, proceeding, or hearing, and to any student or employee who refuses to participate in an investigation, proceeding, or hearing.

D. *Consent, Incapacitation, Force, and Coercion*

The following definitions and understandings apply with respect to the offenses described in Sections III.C. above:

a. Consent. Consent must be:

- Affirmative
- Conscious
- Knowing
- Voluntary, and
- Clear permission
- By word or action
- To engage in sexual activity

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

- If Consent is not clearly provided prior to engaging in the activity, Consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
- For Consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses Person A, Person A can kiss them back (if they want to) without the need to explicitly obtain their Consent to being kissed back.

- Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If Consent is withdrawn, that sexual activity should promptly cease.
- Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be Consent for other sexual activity (such as intercourse).
- A current or previous intimate relationship is not sufficient to constitute Consent.
- Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline/dominance, submission/sadism, or masochism) or other forms of kink, non-Consent, or withdrawal of Consent, may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so Recipient's evaluation of communication in kink situations should be guided by reasonableness and Consent to kink, rather than strict adherence to policy that assumes non-kink relationships as a default.
- Within the scope of the resolution process, proof of Consent or non-Consent is not a burden placed on either Party involved in an incident. Instead, the burden remains on the University to determine whether this Policy has been violated. The existence of Consent is based on the totality of the facts and circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

In assessing Consent, the Respondent's belief is not a valid excuse for a lack of Consent where:

- Respondent's belief arose from the Respondent's own intoxication, being under the influence of drugs, alcohol, or medication, and/or recklessness; or
- Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented; or
- Respondent knew or a reasonable person should have known that the Complainant was unable to Consent because the Complainant could not understand the fact, nature, or extent of the sexual activity because they were asleep or unconscious; incapacitated due to the influence of drugs, alcohol, or medication; or unable to communicate due to a temporary or permanent mental or physical condition.

"Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Individuals under the statutory age of consent cannot give Consent under this Policy. In California, the statutory age of consent is 18.

b. Incapacitation. A person cannot Consent if they are unable to understand what is happening or are disoriented, asleep, or unconscious, for any reason, including by alcohol or other drugs. When alcohol or other drugs, including date rape drugs (such as Rohypnol, Ketamine, GHB, etc.), are involved, a person will be considered unable to give valid Consent if they cannot fully understand the details of a sexual interaction (the who, what, when, where, why, or how) because they lack the capacity to reasonably understand the

situation.

- A Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving Consent.
- Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed Consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).
- Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

It is a defense to a violation of this Policy that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. The question of whether the Respondent "knew or should have known" is determined using an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

c. Force. Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce Consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not Consent. Consent is not demonstrated by the absence of resistance. Resistance is not required or necessary to demonstrate non-Consent, although resistance is a clear demonstration of non-Consent.

d. Coercion. Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain Consent. When someone makes clear that they do not want to engage in certain 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.

E. *Referrals for Other Misconduct*

The University has the discretion to refer complaints of misconduct for handling under any other applicable section of this Policy or any other applicable University policy. When such referred matters are considered under a separate policy or process, the University may use evidence already gathered through any process covered by this Policy.

Should there be a conflict between this Policy and another University policy, procedure, rule, or term or condition of employment, this Policy will govern unless specifically stated otherwise.

This Policy and the procedures set forth in this Policy are separate and distinct from the

University's disciplinary processes set forth in the University's Student Handbook, Faculty Handbook, and staff policies.

F. *Implementation and Changes*

This Policy applies to all reports of Prohibited Conduct received on or after the effective date of this Policy. If the alleged Prohibited Conduct occurred before the effective date of this Policy, applicable definitions of misconduct in University policies that existed at the time of the conduct will be used. With written notice to the Parties, the Director of Equal Opportunity and Title IX shall have the discretion to apply the processes used under this Policy to respond to and resolve matters pending as of the effective date of this Policy and matters that become known after the effective date of this Policy that may have occurred prior to the effective date of this Policy.

The University reserves the right to make changes to this Policy as necessary. Any updates to this Policy are effective once they are posted on the University's website and communicated to the University community.

G. *Academic Freedom and Freedom of Speech*

The University is dedicated to an uncompromising standard of academic excellence and an unwavering commitment to academic freedom, freedom of inquiry, and freedom of expression in the search for truth. This Policy is not intended to inhibit or restrict free expression or exchange of ideas, abridge academic freedom, or prohibit educational content or discussions inside or outside of the classroom that includes germane but controversial or sensitive subject matters protected by academic freedom.

Though not unlimited, this protection extends to the expression of ideas by members of the University community in their teaching, learning, and research, and in the classroom, residential life, and other University-related activities, including those that are controversial, provocative, or unpopular. In contrast, however, Prohibited Conduct does not constitute the exercise of academic freedom or freedom of speech. Allegations of discrimination or harassment involving speech and other expressive activities must be carefully considered in light of the University's commitment to academic freedom and free speech. In cases involving speech and other expressive activities that could be protected by academic freedom or freedom of expression, the University (by and through the Provost and the Director, in consultation with one another) will first consider whether academic freedom and free expression applies before proceeding with an investigation of any report of harassment or retaliation that involves an individual's speech or other communication and will take care to distinguish between viewpoint criticisms and academic discourse, which are not violations of this Policy, and offensive comments that are directed at an individual based on the individual's protected characteristics or status or other conduct which could constitute harassment or sexual harassment.

IV. The University's Title IX Coordinator/Director of the Office of Equal Opportunity and Title IX

A. *Role of the Office of Equal Opportunity and Title IX and the Title IX Coordinator/Director*

The Office of Equal Opportunity and Title IX monitors and oversees the University's compliance with Title IX, equal opportunity, and applicable state and federal civil rights laws, and oversees the coordination of education and training activities, and the response, investigation, and resolution (informal and formal) of conduct alleged to violate this Policy.

The Director of the Office of Equal Opportunity and Title IX (referred to as "the Director" in this Policy) is responsible for coordinating the University's obligations and compliance under Title VI, Title VII, Title IX, and other related federal and state laws. For purposes of this Policy, any reference to the Director for Equal Opportunity and Title IX shall also be considered a reference to the University's Title IX Coordinator. Further, the Director oversees implementation and enforcement of this Policy and compliance with other applicable rules and regulations.

The Director's name and contact information is:

Kassandra Alberico
Director of Equal Opportunity and Title IX Coordinator
Office of Equal Opportunity and Title IX Santa Clara University
Loyola Hall (North), Suite 140
425 El Camino Real
Santa Clara, CA 95050
Phone: (408) 551-3043 (ext 4113)
Email: kalberico@scu.edu
Website: www.scu.edu/title-ix

The Director may delegate responsibilities under this Policy to designated administrators or external professionals. When used in this Policy, the term Director may include the Director's designee.

B. *Conflict of Interest and Bias*

Any individual carrying out any part of this Policy shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter. Should the Director have a conflict of interest in a particular matter, the Director is to immediately notify the Vice President of Inclusive Excellence, who will reassign the role of Acting Director for that matter. Should any Investigator, Hearing Officer, or Appeal Officer have a conflict of interest, the Investigator, Hearing Officer, or Appeal Officer is to notify the Director upon discovery of the conflict so that the Director may reassign the role as appropriate. A party who wishes to object to an Investigator, Hearing Officer, or Appeal Officer on the grounds of an actual conflict of interest or demonstrated bias must notify the Director in writing, who will make a determination as to whether the allegation is substantiated and, if it is, the Director will

reassign the role as appropriate. Concerns of an actual conflict of interest or demonstrated bias by the Director are to be reported to the Vice President of Inclusive Excellence.

V. Privacy and Confidentiality

A. *Privacy and Confidentiality: Understanding the Difference*

The University is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Policy. With respect to any report under this Policy, the University will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to take steps to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects. While the University will take all reasonable steps to protect the privacy of individuals involved in a complaint, it may be necessary to disclose some information to individuals or offices on campus in order to address a complaint or provide for the physical safety of an individual or the campus. Thus, the University cannot, and does not, guarantee that all information related to complaints will be kept confidential.

Privacy and Confidentiality have distinct meanings under this Policy:

Privacy generally means that information related to a report of Prohibited Conduct will be shared only with individuals who have a "need to know" the information in order to assist in the assessment, investigation, resolution, or other response to a report. While not bound by confidentiality, these individuals are expected to respect the privacy of all individuals involved in the process. Student and employee information also will be handled in a manner consistent with applicable state and federal law.

Confidentiality generally means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual or otherwise as may be required by law. The confidentiality of this information generally is governed by California law, including California Evidence Code restrictions on the disclosure of information by mental health providers, ordained clergy, sexual assault counselors, domestic violence counselors, and attorneys, all of whom have legally protected confidentiality. These professionals are generally prohibited from violating confidentiality unless there is an imminent threat of harm to self or others. An individual who seeks confidential assistance may do so by speaking with professionals who are bound by legally-mandated confidentiality. The confidential resources available to individuals at the University ("Confidential Resources") are addressed below. Note, however, that these Confidential Resources are required by state law to notify child protective services and/or local law enforcement of any report which involves suspected abuse of a minor under the age of 18. State law also requires licensed health care providers to report to law enforcement if they provide medical treatment for a physical condition to a patient who they know or reasonably suspect is a victim of assaultive or abusive conduct. Disclosures also may be required in response to subpoenas or other court orders.

B. On-Campus Confidential Employees and Off-Campus Confidential Resources

The University encourages individuals who are considering whether to report or who otherwise are impacted by an incident to seek the support of on-campus Confidential Employees or off-campus confidential resources. These trained confidential professionals can provide guidance in making decisions, provide information about available resources and procedural options, and assist in the event that a report under this Policy is made. These resources are available to either party without regard to when or where the incident occurred.

Confidential Employees are those University employees whose communications are privileged under state or federal law, and generally include those who provide medical or clinical care services, mental health providers, counselors, certain victim advocates, and ordained clergy. For more information about on-campus Confidential Employees and off-campus confidential resources, please visit the Office of Equal Opportunity and Title IX's resources webpage.

While Confidential Employees are not required to refer reports under Section VII.A. of this Policy, they may be required to make certain mandated reports under applicable state or federal law to the local child protection services agency and/or to local law enforcement. Please see Section VII.B. for more information about these mandated reporting responsibilities.

VI. Reporting Options

Anyone may make a report of Prohibited Conduct. The University strongly encourages those who believe they have been subjected to or witnessed Prohibited Conduct to report such acts promptly to the University. The University also strongly encourages those who have experienced physical assault or violence, including sexual assault, to understand their options and rights to seek assistance from a medical provider and report the assault to local law enforcement as soon as possible after the incident, in order to preserve evidence and begin a timely investigative and remedial response.

While there is no timeline for making a report of Prohibited Conduct, the University encourages the prompt reporting of a complaint as the ability of the University to respond to the complaint may be hindered by the passage of time.

An individual may report Prohibited Conduct pursuant to one or more of the following reporting options at any time. The reporting options set forth below are not mutually exclusive.

A. *Reporting to Law Enforcement*

Any individual who has experienced physical assault or violence, including sexual assault, or other criminal conduct, has the right to make a report to law enforcement and the right to decline to make a report to law enforcement. The decision not to make a report to law enforcement shall not be considered as evidence in a determination as to whether or not there was a violation of this Policy.

Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings. However, when a complaint is made to the University as well as to law enforcement, and in response to a request from law enforcement, the University may temporarily delay its process for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. Criminal proceedings apply a higher standard of proof than the standard of proof applied in this Policy. Criminal or civil legal proceedings are separate from the processes in this Policy and do not determine whether this Policy has been violated.

The University operates under a Memorandum of Understanding with the Santa Clara Police Department. The Memorandum of Understanding establishes standards on matters of mutual concern regarding law enforcement on the University campus, including the uniform reporting of criminal activity. Pursuant to the Memorandum of Understanding, the University may be required to report certain Prohibited Conduct that could also be a crime. Consistent with the requirements of the California Education Code, reports of sexual assault will be made without identifying the Complainant or the Respondent unless the Complainant consents to being identified, unless the Respondent represents a serious or ongoing threat to the safety of students, employees, or the University, or the immediate assistance of local law enforcement is necessary to contact or detain the Respondent.

B. ***Reporting in the Event of an Emergency***

In the event of an emergency, where the physical well-being of a member of the University community or the safety of the University as an institution is threatened, any individual with such knowledge should promptly inform Campus Safety Services. The University may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the safety and well-being of the University community.

C. ***Reporting to the University***

All complaints of Prohibited Conduct will be taken seriously and in good faith. The Office of Equal Opportunity and Title IX can provide information and guidance regarding how to make a report to the University and/or file a complaint with local law enforcement, as well as information and assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

The University strongly encourages all individuals to report Prohibited Conduct to the Office of Equal Opportunity and Title IX, whose contact information is:

Office of Equal Opportunity and Title IX
Santa Clara University
Loyola Hall (North), Suite 140
425 El Camino Real
Santa Clara, CA 95050
Phone: (408) 551-3043
Email: titleixadmin@scu.edu
Website: www.scu.edu/title-ix

Individuals may also report Prohibited Conduct to any of the following offices, which will forward any reports of Prohibited Conduct and any information received in connection with the report to the Office of Equal Opportunity and Title IX:

Campus Safety Services
Main Parking Structure, south corner, lower level
Phone: (408) 554-4441
campussafety@scu.edu

Dean of Students Office
Benson Memorial Center, 205
Phone: (408) 554-4583
dso@scu.edu

Office of the Executive Vice President and Provost
Walsh Administration Building, first floor Phone:
(408) 554-4533
provost@scu.edu

Department of Human Resources
Loyola Hall, Suite 100
Phone: (408) 554-4392
hrservicedesk@scu.edu

Reports to the University of potential violations of this Policy will be kept private to the extent possible for the University to respond to the report, but reports made to the University, other than reports made to Confidential Employees, are not confidential.

D. ***Medical Amnesty or Good Samaritan Protections***

To encourage students to offer help and assistance to others in need, a student making a report of Prohibited Conduct or serving as a witness may be eligible for Medical Amnesty or Good Samaritan protections (as defined in the Student Handbook) for certain violations of the Student Handbook that occurred on or around the same time as the incident or that was in connection with the incident.

E. ***Anonymous Reporting***

Any individual may make an anonymous report of Prohibited Conduct under this Policy. In doing so, the individual may make the report without disclosing their name, identifying the Respondent, or requesting any action. The University's ability to respond may be limited, depending on the extent of the information available about the incident or the individuals involved. Anonymous reports can be submitted through EthicsPoint at https://secure.ethicspoint.com/domain/media/en/gui/15780/index.html.

F. *Reporting to External Agencies*

In addition to reporting to law enforcement or the University, employees and students should be aware of the following external governmental agencies that investigate and prosecute complaints of prohibited discrimination and harassment:

United States Department of Education
Office for Civil Rights, San Francisco Office
50 United Nations Plaza
Mail Box 1200, Room 1545
San Francisco, CA 94102
Phone: (415) 486-5555
E-mail: ocr.sanfrancisco@ed.gov

California Civil Rights Department
2218 Kausen Dr., Suite 100
Elk Grove, CA 95758
Phone: (800) 884-1684
E-mail: contact.center@calcivilrights.ca.gov

Equal Opportunity Employment Commission
San Francisco District Office
459 Golden Gate Avenue
5 West, P.O. Box 36025
San Francisco, CA 94102-3661
Phone: (800) 669-4000
E-mail: snfgov@eeoc.gov

California Bureau for Private Postsecondary Education
1747 North Market Blvd., Suite 225
Sacramento, CA 95834
Phone: (916) 574-8900

VII. Employee Responsibility to Report

A. *Required Referrals by Employees*

The University believes it is important to be proactive in taking reasonable steps to identify and prevent incidents of Prohibited Conduct. All employees, with the exception of Confidential Employees, are required to promptly refer all complaints or reports of Prohibited Conduct to the Director and to share all information reported or made available to the employee. If an employee in a supervisory capacity has direct knowledge of an incident of Prohibited Conduct on the part of, or directed toward, any employee of the University community, that supervisor is required to bring the matter to the attention of the Director, even if the supervisor has not received a complaint or report about the incident.

The University also encourages employees who themselves experience Prohibited Conduct to

bring their concerns to the Director, though they are not required to do so.

Failure to make a required referral may be referred to Human Resources or the Office of the Provost for appropriate action.

B. ***Reports Involving Suspected Child Abuse and Neglect or Medical Treatment for Physical Conditions Relating to Assault or Abuse***

The University complies with the California Child Abuse and Neglect Reporting Act (CANRA), which addresses the mandatory reporting of known or suspected child abuse or neglect and identifies roles that are considered mandated reporters under the law. Mandated reporters are responsible for reporting incidents to the local child protection services agency. In addition, all employees and volunteers (regardless of mandated reporter status under the law) are required to report any known or suspected child abuse or neglect that occurs on campus, in any off-campus University building or property, or in connection with any University-related program or activity. The report should be made to Campus Safety Services or the Office of Equal Opportunity and Title IX. For more information, please see the University's Policy on Reporting Child Abuse and Neglect.

In addition, licensed health care providers in the State of California who provide services in a health facility, clinic, or physician's office are required to make a report to local law enforcement if they provide medical treatment for a physical condition to a patient whom they know or reasonably suspect is the victim of assaultive or abusive conduct or a firearm injury.

C. ***Campus Security Authorities (Clery Act)***

Some employees, because of their role at the University, also are considered Campus Security Authorities under the Clery Act and, as a result, have a duty to report Sexual Assault, Dating Violence, Domestic Violence, Stalking, and other Clery Act-defined crimes. Such reports should be made to Campus Safety Services.

The Clery Act is a federal crime and incident disclosure law. It requires, among other things, that the University report the number of incidents of certain crimes, including some of the Prohibited Conduct in this Policy, that occur in particular campus-related locations. The Clery Act also requires the University to issue a warning to the community in certain circumstances.

In the statistical disclosures and warnings to the community, the University will ensure that a Complainant's name and other identifying information is not disclosed. The Director will refer information to the Clery compliance officer when appropriate for a determination about Clery-related actions, such as disclosing crime statistics or sending campus notifications.

D. ***Climate Surveys, Classroom Work, Human Subjects Research, and Public Awareness Events***

Disclosures made in climate surveys, classroom writing assignments or classroom discussions, or at public awareness events such as "Take Back the Night," protests, vigils, and other forums in which community members disclose incidents of Prohibited Conduct must be

shared with the Director, who will determine whether further action is appropriate. Disclosures made during IRB-approved human subjects research do not initiate obligations to report or respond under this Policy. The University may initiate additional educational or prevention efforts in response to such events where appropriate.

VIII. Responding to a Report

The following process will be used following the receipt of a report of Prohibited Conduct under this Policy.

A. *Initial Contact*

Following receipt of a report alleging a potential violation of this Policy, the Director will contact the Complainant to provide the following:

- An invitation to meet to offer assistance and explain their rights under this Policy;
- Access to this Policy, either through a link or an electronic or hard copy;
- Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid, and other available services may be provided;
- Information about seeking a personal protection order from the local courts;
- The availability of Supportive Measures regardless of whether a complaint is made or a resolution is initiated;
- The options for resolution (no action, prevention, agreement, investigation, or, in some cases, investigation and hearing) and how to initiate such resolution processes;
- The right to notify law enforcement as well as the right not to notify law enforcement;
- The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Campus Safety Services or local law enforcement in preserving evidence;
- The right to an Advisor of choice during University proceedings under this Policy including the initial meeting with the Office of Equal Opportunity and Title IX;
- In cases of Sexual Harassment (Under the 2020 Title IX Regulations), information on how to file a Formal Complaint.
- A statement that retaliation for filing a complaint or for participating in the complaint process is prohibited.

The Director will discuss the Complainant's rights and options, and will also assess for, and provide, appropriate Supportive Measures, which are available with or without engaging in a complaint resolution process.

The Director will assess the facts as presented to determine whether the information provided suggests a potential violation of this Policy, and if so, discuss with the Complainant the options to resolve the complaint.

B. ***Initial Assessment***

The initial intake and assessment process seeks to gather information about the nature and circumstances of the report to determine whether this Policy applies to the report and, if so, whether an alternative resolution process may be appropriate, as well as which section of the grievance procedures apply based on the conduct and the status of the Parties. The Director may also determine that the provision of Supportive Measures only is the appropriate response under the Policy. The initial assessment is not a finding of fact or responsibility.

Should the Complainant wish to initiate a resolution process, the Director will then assess the report and determine whether this Policy applies and, if so, the appropriate process under this Policy. The Director will communicate to the Complainant this determination.

If the information provided does not suggest a potential violation of this Policy, the Director will provide the Complainant written notice that the matter is being referred for handling under a different policy, and/or referred to another appropriate office for handling.

C. ***Supportive Measures***

Supportive Measures are non-disciplinary, non-punitive, free of charge individualized services offered to a Complainant and/or the Respondent as appropriate and reasonably available. Such measures are designed to restore or preserve equal access to the University's education program or activity or work environment, or to protect the safety of the Parties or the educational or work environment, without unreasonably burdening the other Party. Supportive Measures are also available whether or not a resolution method is initiated.

Supportive Measures may include, but are not limited to: academic support; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; changes in class, work, housing, extracurricular, or other activities, regardless of whether there is or is not a comparable alternative; unilateral or mutual bans on contact (no-contact directive); leaves of absence; or other measures as determined on a case-by-case basis. Information about any Supportive Measures put in place will not be disclosed to others, including informing one Party of Supportive Measures provided to another Party, unless the disclosure is necessary to provide the Supportive Measures or to restore or preserve a Party's access to the education program or activity or when such disclosure has been consented to by the person involved; when the disclosure is to the authorized legal representative of the person involved; or when the disclosure is required by applicable law or permitted under FERPA.

Supportive Measures may be implemented by the Director or the Director's designee. A Party may challenge, in writing, the University's decision to provide, deny, modify, or terminate Supportive Measures when such measures are applicable to them. When the individual providing Supportive Measures is the Director, then the Vice President for Inclusive Excellence will designate an impartial individual, not otherwise involved in the case, to consider the challenge and determine if the Supportive Measure(s) were reasonable. When the individual providing Supportive Measures is anyone other than the Director, then the

Director will be designated to consider the challenge regarding Supportive Measures. A written response to the challenge will typically be provided within five (5) business days.

D. ***Preliminary Inquiry***

The Director shall have the discretion to initiate a preliminary inquiry to determine whether an investigation, or investigation and hearing, shall be conducted under this Policy. A preliminary inquiry may be useful in those situations in which there may be data available to suggest that no investigation is warranted, for example when an employee alleges they are the lowest paid member of the department but the data shows they are highly paid. Similarly, a preliminary inquiry may be used if a student alleges that they received a lower grade than others due to sex or gender, but the data shows they did not.

E. ***Filing a Formal Complaint of Sexual Harassment (Under the 2020 Title IX Regulations)***

Pursuant to the 2020 Title IX Regulations, to file a complaint of Sexual Harassment (Under the 2020 Title IX Regulations), a written Formal Complaint must first be filed in order to resolve the complaint through either a resolution agreement or an investigation and hearing. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in a University program or activity or be an applicant to, or employee of, the University.

A Formal Complaint has a very specific definition under this Policy and differs from solely making a report to the University or the Office of Equal Opportunity and Title IX. Filing a Formal Complaint results in written notification to the Respondent and the commencement of either the agreement-based or investigation and hearing process, unless the Director determines that the Formal Complaint should be dismissed for reasons under Section K below, and potentially addressed under other sections of this Policy or another University policy.

A Formal Complaint is a written document or electronic submission containing all of the following:

- The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;
- An allegation of Sexual Harassment (Under the 2020 Title IX Regulations) as defined under this Policy. This may include where the incident(s) occurred; what incident(s) occurred; and when the incident(s) occurred.
- Identity of Respondent, if known; and,
- A request for an investigation.

A Formal Complaint may be filed with the Director in person, by mail, or by electronic mail (email), by using the contact information listed on the Equal Opportunity and Title IX website (scu.edu/title-ix) or as described in this Policy.

If a complaint is submitted in a form that does not meet this standard, the Director will contact the Complainant to confirm a Complainant's intent to file a Formal Complaint. Further, if the Formal Complaint does not have sufficient information to determine whether or not the

conduct as alleged will fall under this Policy, the Director will contact the Complainant to schedule a meeting to discuss the matter.

Upon receipt of a Formal Complaint, the Director will contact the Complainant to conduct an initial assessment, discuss (and, when appropriate, implement) Supportive Measures, and to discuss the resolution process. In the event that the Complainant declines to participate in an initial assessment, and if the Formal Complaint contains an allegation meeting all of the jurisdictional elements required to constitute Sexual Harassment (Under the 2020 Title IX Regulations), and contains a request for an investigation, and the Formal Complaint is signed or includes an electronic submission from the Complainant, the Director will notify the Respondent and Complainant of the allegation and commence the investigation process, starting with a Notice of Investigation. (See Attachment E.)

The Director shall have the discretion to sign a Formal Complaint and initiate an investigation when a Complainant's allegations involve violence (which may include whether the Respondent used physical restraints, or engaged in battery), use of weapons, serial predation, multiple victims, the Respondent is a faculty or staff member with oversight over students, or similar factors. When the Director signs a Formal Complaint, the Director does not become the "Complainant" for purposes of this Policy. Upon the Complainant's request, the Director will inform the Respondent that the Complainant did not wish to sign the Formal Complaint.

Anyone who wishes to discuss their options for resolving a complaint prior to filing a Formal Complaint is encouraged to contact the Office of Equal Opportunity and Title IX.

A Formal Complaint may be submitted by a Complainant, but is not required, for reports involving other forms of Sex-Based Discrimination or Sex-Based Harassment.

F. ***Emergency Removal***

If at any time the University determines that the conduct, as alleged, poses a risk of physical harm to one or more members of the University community, or to the University's educational, research, scholarly, work, or living environment, the University may place the Respondent on interim suspension or leave, or on an interim suspension or leave from certain University programs or activities. Any such determination will be made on a case-by-case basis, based on an individualized safety and violence risk analysis. An interim suspension or leave decision will be communicated in writing to the Respondent.

For matters involving students (including student employees), the risk assessment will be performed by the Behavioral Concerns Team. Following the risk assessment, the Vice Provost for Student Life (or designee), after consultation with the Director, shall have the sole discretion under this Policy to implement an emergency removal from the campus, any campus property, programs, activities, or work assignments on an interim basis. When the matter involves a student employee, the Vice Provost for Student Life (or designee) will also consult with Human Resources in advance of implementing an emergency removal that impacts the student's employment.

For matters involving faculty, the risk assessment will be performed by Human Resources in consultation with the Office of the Provost and the Director. Following the risk assessment, the Office of the Provost shall have the sole discretion under this Policy to implement an emergency removal from the campus, any campus property, programs, activities, or work assignments on an interim basis.

For matters involving staff, the risk assessment will be performed by Human Resources. Following the risk assessment, Human Resources shall have the sole discretion under this Policy to implement an emergency removal from the campus, any campus property, programs, activities, or work assignments on an interim basis.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns, pending the outcome of a University investigation and/or resolution process. As determined by the Director, these actions could include, but are not limited to:

- Removing a student or employee from the University and/or University property;
- Removing a student from a residence hall;
- Assigning a change in work responsibilities or assigning a Respondent to remote work;
- Restricting a Respondent's access to or use of facilities or equipment;
- Suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

The Respondent may challenge the decision immediately following the removal, by notifying the Director in writing. The University will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

For all other Prohibited Conduct, the University may defer to its interim suspension policies for students and administrative leave for employees.

Violation of the terms of any emergency actions taken under this Policy will be referred to Student Conduct, Human Resources, or the Office of the Provost and may be grounds for discipline, which may include expulsion or termination.

G. ***Administrative Leave for Employees***

The University retains the authority to place an employee Respondent on administrative leave during a pending complaint process under this Policy, with or without pay as appropriate. Administrative leave may be implemented as a Supportive Measure or emergency removal, or may be implemented separately. Administrative leave implemented as a Supportive

Measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

H. ***Interim Suspension for Students***

The University retains the authority to suspend a student Respondent or to take other disciplinary action on an interim basis in a manner consistent with the Student Handbook pending the outcome of a hearing. An interim suspension may be implemented as a Supportive Measure or emergency removal, or may be implemented separately under the Student Handbook. An interim suspension implemented as a Supportive Measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

I. ***Consolidation of Cases***

In the event that the allegations under this Policy also involve multiple alleged violations under this Policy, or allegations of a violation of a separate policy, including the Policy Against Discrimination, Harassment, and Retaliation (Other than Sex-Based), the Director shall have sole discretion to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Policy.

The Director also may consolidate complaints under this Policy against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations arise out of the same facts or circumstances.

J. ***Requests for Confidentiality or No Further Action***

A person may desire to report Prohibited Conduct to the University but may ask the University not to use their name or other identifiable information as part of any resolution process or not to take any further action, or the person may decline to participate in an investigation. When a Complainant requests that the University not use their name or other identifiable information as part of any resolution process, or asks the University not take any further action, the Director will evaluate the request. In doing so, the Director will balance the Complainant's request with the University's obligation to provide a safe and non-discriminatory environment for its community members. The factors the Director will consider when determining whether to act against the wishes of a Complainant include:

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

- The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decisionmaker in determining whether sex discrimination occurred;
- The existence of similar past complaints regarding the same individual;
- Whether the Complainant is a minor;
- Whether the Respondent is in a supervisory or management position at the University, whether or not the supervisor of the Complainant;
- Whether the Respondent is a faculty or staff member with oversight of students;
- Whether the alleged conduct was alleged to have been committed by multiple individuals;
- Whether the University is able to conduct a thorough investigation and obtain relevant information in the absence of the Complainant's cooperation;
- Whether the University could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures as listed in this Policy.
- Whether the conduct as alleged involved use of a weapon or physical restraints, or otherwise presents an imminent and serious threat to the health or safety of the Complainant or other persons, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity.

The University will take reasonable steps to investigate and respond to a complaint consistent with the Complainant's request for confidentiality, request for no further action, or decision not to participate in an investigation. However, the University's ability to investigate and respond fully to a report may be limited based on the nature of the request by the Complainant or the Complainant's decision not to participate in an investigation. When the University is unable to honor the Complainant's request, the Director will notify the Complainant in writing of the chosen course of action. In circumstances when the Director initiates an investigation, the Director does not become the "Complainant" for purposes of this Policy. Upon the Complainant's request, the Director will inform the Respondent that the Complainant did not wish to initiate an investigation.

Where the Director determines that the Complainant's request(s) can be honored, the University may take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University.

K. ***Dismissal***

The Director may dismiss a complaint if:

- The University is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the University's education program or activity and is not employed by the University;
- The Complainant voluntarily withdraws their complaint in writing and the Director does not initiate a complaint;
- The Complainant voluntarily withdraws some but not all allegations in a complaint in

writing, and the University determines that, the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this Policy;
- The Director determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under this Policy; or
- Specific circumstances prevent the gathering of evidence sufficient to reach a determination as to the complaint or the allegations in the complaint.

For Prohibited Conduct that constitutes Sexual Harassment (Under the 2020 Title IX Regulations), the 2020 Title IX Regulations require the Director to dismiss the Formal Complaint if:
- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment (Under the 2020 Title IX Regulations) even if proved; or
- The conduct alleged in the Formal Complaint did not occur in the University's education program or activity; or
- The conduct alleged in the Formal Complaint did not occur against a person in the United States.

A dismissal of a complaint of one form of Prohibited Conduct does not preclude a complaint involving other conduct that is prohibited under this or any other University policy.

Upon dismissal, the Director will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the Director will notify the parties simultaneously in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these grievance procedures, the Director will include that information in the notification.

The Director will notify the Complainant that a dismissal may be appealed on the bases outlined in the Appeals section. If dismissal occurs after the Respondent has been notified of the allegations, then the Director will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, the Director will follow the procedures outlined in the Appeals section of these grievance procedures.

When a complaint is dismissed, the Director will, at a minimum:
- Offer Supportive Measures to the Complainant as appropriate;
- If the Respondent has been notified of the allegations, offer Supportive Measures to the Respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate to ensure that sex discrimination does not continue or recur within the University's education program or activity.

L. *Withdrawal or Resignation During a Resolution Process*

Should an employee Respondent's employment with the University conclude (by resignation or otherwise) with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the employee. However, the University will continue to address and remedy any systemic issues, including variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination. The Director, in consultation with the Provost's Office (in the case of a faculty

Respondent) or Human Resources (in the case of a staff or student employee Respondent), may conclude that the Respondent is not eligible for rehire or that the Respondent's return is conditioned on the resolutions of the allegations.

Should a student withdraw with unresolved allegations pending, the University reserves the right to continue the investigation process and/or to transfer the concerns for handling under any other appropriate office, policy, or process. The University also may condition the student's return on the completion of the investigation and resolution process.

Should a Complainant withdraw or leave the University, the investigation, or investigation and hearing, will continue.

IX. Options for Resolution

There are multiple ways to resolve a complaint or report of Prohibited Conduct under this Policy. Whenever possible, the University will utilize the resolution method chosen by the Complainant, subject to Section VIII.I above. During the resolution of a complaint, the Director will determine whether to implement reasonable Supportive Measures designed to assist both Complainant and Respondent to maintain access to and participation in University programs, services and activities.

The procedures that are part of this Policy are not intended as an adversarial process between the Complainant, the Respondent, and the Witnesses but rather a process for the University to meet its obligations for a campus free from Prohibited Conduct. Under this process, the Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct. Rather, the burden is on the University through the processes outlined in this Policy to determine whether this Policy has been violated.

A. *Support-Based Resolution*

A support-based resolution is an option when a Complainant does not wish the University to take any further steps to address their concern and the Director determines that another form of resolution, or further action, is not required. A support-based resolution does not preclude later use of another form of resolution. An example is if new information becomes available to the University, and the Director determines there is need for additional steps to be taken, or the Complainant later decides to pursue a Resolution Agreement or investigation.

Examples of types of support that may be appropriate include: adjustments or changes to class schedules; moving from one residence hall room to another; adjusted deadlines for projects or assignments; adjustments to work schedule or arrangements; escorts to and around campus; or counseling.

The Director has the discretion to determine that a support-based resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through the investigation process.

B. ***Resolution Agreement***

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

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

Resolution Agreement Process

Prior to the initiation of the Resolution Agreement process, the Director will provide the Complainant and Respondent written notice that includes:

- The allegations;
- The requirements of the Resolution Agreement process;
- Any consequences resulting from participating in the Resolution Agreement process, including the records that will be maintained or could be shared, and whether the University could disclose such information for use in a future University grievance process, including an investigation and resolution process arising from the same or different allegations, as may be appropriate;
- Notice that an alternative resolution agreement is binding only on the Parties;
- Notice that the agreement, once finalized and signed by the Parties, is binding and not subject to appeal, and that they cannot later initiate a separate complaint arising from the same allegations;
- An explanation that each Party may be accompanied by an Advisor of their choice, who may be a parent, colleague, friend, or attorney;
- A statement that any Party has the right to withdraw from the alternative resolution process and initiate or resume an investigation at any time before agreeing to a resolution;
- The date and time of the initial meeting with staff or the Director, with a minimum of three (3) business days' notice;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

If both Parties are willing to explore a Resolution Agreement, the Director will then meet separately with each Party to discuss the Resolution Agreement process and facilitate an agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Resolution Agreement process, or the

Director does not believe that the terms of the Resolution Agreement or continuing the Resolution Agreement process are appropriate, the Director may decide that the reported conduct will instead be addressed through the investigation process. The Director will inform the Complainant and Respondent of such decision, in writing.

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

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

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

Once the final terms of the Resolution Agreement have been agreed upon by both parties, in writing, and approved by the Director, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The Resolution Agreement process is generally expected to be completed within thirty (30) business days and may be extended by the Director as appropriate. Both parties will be notified, in writing, of any extension and the reason for the extension.

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

C. *Investigation Process*

1. Overview

An investigation is a process where an assigned Investigator interviews the Complainant, the Respondent, and Witnesses and gathers information related to the allegation, and permits both Parties to review and comment upon the evidence.

The University reserves the right to utilize internal or external Investigators (who, in some cases, are also Decisionmakers). Both Complainant and Respondent have the option to participate in the investigation, and both have the same rights during the investigation process including the right to an Advisor.

2. Standards Applicable to All Investigations

The standards set forth in Section (a)-(f) below apply to all investigations.

In addition, for Prohibited Conduct **other than** Sexual Harassment (Under the 2020 Title IX Regulations), the specific processes used for investigations, or investigations and hearings, are based upon the statuses of the Parties (i.e. student, employee, or third party) as follows:

- Student-on-Student Sex-Based Discrimination, Harassment, and Retaliation: See Appendix B.
- Employee and Third-Party Sex-Based Discrimination, Harassment, and Retaliation, when a student is not a Party: See Appendix C.
- Student-on-Employee, or Employee-on-Student, Sex-Based Discrimination, Harassment, and Retaliation: See Appendix D.

For Prohibited Conduct that may constitute Sexual Harassment (Under the 2020 Title IX Regulations), the specific processes used for investigations and hearings for all Parties, regardless of their status (i.e. student, employee, or third party) are set forth in Appendix E.

a. *Notice of Investigation*

Within a reasonable period of time from the receipt of a request for an investigation, or a determination by the Director to initiate an investigation, and prior to the start of an investigation, the Respondent and Complainant shall be provided a written Notice of Investigation communicating the initiation of an investigation and the process to be used. Appendices B, C, D, and E describe the required content of the Notice of Investigation.

Should additional allegations be brought forward, a revised Notice of Investigation shall be provided to both parties, in writing.

b. *Conflict of Interest or Bias*

After a Notice of Investigation is issued to Complainant and Respondent, each Party may object to the participation of the Director or designated Investigator on the grounds of a demonstrated bias or actual conflict of interest. Both parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the Investigator or the Director. Objections to the Director shall be made, in writing, to the Vice President of Inclusive Excellence, or their designee. Objections to the appointment of the Investigator shall be made, in writing, to the Director. If the

objection is substantiated as to either the Director or the Investigator, that individual shall be replaced. Any change will be communicated in writing.

c. ***Timeline and Status Updates***

The University strives to complete the investigation process within ninety (90) days, which may be extended for good cause by the Director. Both parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension and the new anticipated date of conclusion of the investigation.

The University shall not unreasonably deny a Party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The Investigator and/or Director shall provide the Parties with periodic status updates, in writing.

d. ***Standard of Review***

Any findings and determinations made under this Policy regarding whether the Respondent engaged in the conduct alleged will be made using the "preponderance of evidence" standard (meaning whether the relevant evidence supports that it is more likely than not that the conduct occurred).

e. ***Interviews***

The Investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the Parties and any identified Witnesses. Interviews may be conducted in person or via video conference.

For those cases involving a hearing, information or evidence that is not provided to the Investigator during the investigation process will not be allowed during the hearing, unless it can be clearly demonstrated that such information was not reasonably known to exist, nor available, at the time of the investigation, despite due diligence.

f. ***Impermissible Evidence***

The following types of evidence, and questions seeking that evidence, are impermissible. This means this information will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

- Evidence that is protected under a privilege recognized by federal or California law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

- Evidence provided to a Confidential Employee unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure;
- A Party's or Witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or Witness, unless the University obtains that Party's or Witness's voluntary, written consent for use in its grievance procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to other sexual activity or preclude a determination that Prohibited Conduct occurred. In the event that evidence of prior or subsequent sexual relations or dating relationship is considered, prior to allowing consideration of such evidence, the Investigator must explain, in writing, the rationale for allowing consideration of the prior or subsequent sexual relations or dating relationship.

X. Discipline, Sanctions, and Remedies

Upon conclusion of the resolution process, and if and when it has been determined that the Respondent has violated this Policy, the University will take steps to address the violation and prevent the recurrence of the conduct leading to the violation, through sanctions for the Respondent, and to restore or preserve equal access for Complainant to the University's education programs, activities, and/or work environment through remedies for the Complainant.

A. Remedies

The Director is responsible for the implementation of Remedies. Remedies will only be communicated to the Complainant unless notification to the Respondent is necessary to carry out the Remedy. Examples of remedies to the Complainant include but are not limited to: academic support and/or opportunity to retake a class or resubmit work or time extensions on course or degree completion, or non-academic support such as counseling, or changes to work assignments or locations.

B. Sanctions

The Sanctioning Officer determines the sanction/corrective action to be imposed on a Respondent who is found to have engaged in Prohibited Conduct. The form of sanction/corrective action used will depend on the nature of the offense and any prior disciplinary history. Such sanction/corrective action will be imposed pursuant to and in accordance with any and all applicable University rules, policies, and procedures.

Factors that may be considered when determining a sanction/corrective action include:

- The nature, severity of, and circumstances surrounding the violation.
- The Respondent's disciplinary history.
- Previous grievances or allegations against the Respondent involving similar conduct.
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, or retaliation.
- The need for sanctions/corrective actions to prevent the future recurrence of discrimination, harassment or retaliation.
- The need to remedy the effects of the discrimination, harassment or retaliation on the victim and the campus community.

One or more of the sanctions/corrective actions listed below may be imposed on a Respondent who is found responsible for a violation of this Policy. Sanctions or disciplinary steps not listed here may be imposed only in consultation with the Director. The Office of Equal Opportunity and Title IX is authorized to approve and implement a sanctioning matrix that identifies minimum sanctions for certain violations that may be subject to escalation depending on the facts and circumstances.

Possible sanctions/corrective actions for student Respondents include, but are not limited to:

- Verbal or written warning
- Educational sanctions
- Contributed service
- Restitution
- Fines
- Loss of privileges
- No contact directive
- Disciplinary probation
- Deferred suspension
- Interim suspension
- Suspension
- Expulsion

Possible sanctions/corrective actions for faculty or staff Respondents include, but are not limited to:

- Verbal or written warning
- Performance improvement plan or process
- Enhanced supervision or review
- Required training or education
- Probation
- Denial of pay increase
- Removal of supervisory or other oversight responsibility
- Demotion
- Transfer
- Reassignment

- Delay of tenure track progress
- Restrictions on stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Revocation of tenure
- Termination

Sanctions imposed are implemented when the decision is final (after an appeal, or, if there was no appeal, after the appeals period expires). If the Sanctioning Officer has determined sanctions, the Director may implement one or more of the determined sanctions on an interim basis pending the resolution of an appeal.

XI. Appeals

An appeal regarding the outcome of an investigation or investigation and hearing may be filed by either the Complainant or the Respondent. An appeal must be in writing and sent to the Director within five (5) business days following the issuance of the written outcome notice.

Within three (3) business days of the Director's receipt of the appeal, the Director will provide written notification to the other Party of the appeal, along with a copy of the filed appeal. The other Party will have five (5) business days to respond in writing to the appeal. The response to the appeal shall be sent to the Director. Any Party's decision not to submit a reply to an appeal is not evidence that the non-appealing Party agreed with the appeal.

The Director will appoint an Appeal Officer and will notify the parties of the appointment in writing. The Appeal Officer will not have any actual conflict of interest or bias and cannot be the Hearing Officer, the Investigator, or the Director. Within three (3) business days of notification of the identity of the Appeal Officer, either Party may object in writing to the Appeal Officer's selection on the basis of bias or conflict of interest. Any objection is to be sent to the Director. If the Director determines that the Appeal Officer has an actual bias or conflict of interest, the Director will remove the Appeal Officer and appoint another. An objection to an Appeal Officer shall not extend or delay the deadline for a Party to appeal or to respond in writing to an appeal.

Appeals may be filed only on the following four grounds:

1. *Procedural Error*: A procedural error occurred that would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal; or,

2. *New Evidence*: New evidence or information has arisen that was not reasonably available or known to the Party during the investigation or hearing that would change the outcome. Information that was known to the Party during the resolution process but which they chose not to present is not considered new information. A summary of this new evidence and its potential impact on the investigation findings must be included in the written appeal; or,

3. *Actual Conflict of Interest or Demonstrated Bias*: The Director, Investigator, or others with a role in the process had an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual Complainant or Respondent, that would change the outcome; or,

4. *Disproportionate Sanction*: A sanction that is disproportionate to the outcome.

The appeal process is through written submissions only, and no hearing is held. Appeals are not intended to be a full rehearing of the complaint and are confined to a review of the record for the grounds stated above. The Party submitting the appeal carries the burden of proof to demonstrate that one of the grounds for the appeal exists.

The Appeal Officer will determine, based on a preponderance of the evidence, whether any grounds for the appeal are substantiated. The Appeal Officer may deny the appeal, or, if one or more of the appeal grounds have been substantiated, may, in its discretion, take any of the following actions:

- Return the matter to the Investigator, Decisionmaker, or Sanctioning Officer to correct a procedural error or reconsider new evidence;
- Appoint an alternative Decisionmaker or Sanctioning Officer to reconsider the case; and/or
- Following consultation with the Director, revise the Sanction if the Appeal Officer concludes that the original Sanction is disproportionate to the outcome.

The Appeal Officer will notify the Parties in writing of the Appeal Officer's determination regarding the appeal, along with a rationale for the decision. A copy of the determination also will be provided to the Director. The determination generally will be sent within ten (10) business days of the receipt of the non-appealing Party's response statement; however, depending on the circumstances, an appeal determination may require additional time, with the approval of the Director. In the event that the timeline for an appeal is extended, written notice shall be provided to the Parties, with a rationale for the extension and revised timeline. The Appeal Officer's decision is final and not subject to appeal.

XII. Record Retention

The Director will maintain all records relating to complaints and resolutions under this Policy in accordance with the University's records retention policies.

XIII. Disability Accommodations

This Policy does not alter any obligations under federal or state laws addressing disability accommodations and discrimination, including but not limited to the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, or the California Fair Employment and Housing Act. At any time before or during the resolution processes set forth in this Policy, a Party, witness, or other individual participating in the process may request a reasonable accommodation that does not fundamentally alter the process. Students participating in one or more of the processes available through this Policy should contact the Office of Accessible Education for available accommodations as appropriate and/or alert the Director of the need for

accommodations in order to fully participate in the resolution of a complaint. Employees participating in one or more of the processes available through this Policy should contact Human Resources for available accommodations as appropriate and/or alert the Director of the need for accommodations in order to fully participate in the resolution of a complaint.

APPENDIX A
KEY DEFINITIONS

For the purpose of this Policy, the terms listed below shall have the following definitions:

Advisor: An Advisor is any individual (e.g., parent, friend, administrator, colleague, attorney) who helps a Complainant or Respondent to understand the process and procedure. The Advisor may not represent, advocate, or speak on behalf of a Complainant or Respondent. An Advisor may not disrupt or impede any resolution proceeding.

Appeal Officer: An Appeal Officer is a trained University employee or external professional with decision-making authority for appeals conducted under this Policy.

Complainant: A Complainant is either (i) a student or employee who is alleged to have been subjected to Prohibited Conduct as defined by this Policy, or (ii) a person other than a student or employee who is alleged to have been subjected to Prohibited Conduct as defined by this Policy and who was participating or attempting to participate in a University program or activity (including employment) at the time of the alleged misconduct.

Confidential Employee: A Confidential Employee is (1) an employee whose communications are privileged under law, where the communication is received while the employee is functioning within the scope of their duties to which the privilege of confidentiality applies; (2) an employee designated by the University as confidential for the purpose of providing services to persons related to sex discrimination; or (3) an employee who is conducting an Institutional Review Board-approved human subjects research study designed to gather information about sex discrimination, but the employee's confidential status is only with respect to information received while conducting the study. Status as a Confidential Employee only exempts such individuals from disclosure to the Director. It does not affect other mandatory reporting obligations under state child abuse reporting laws, the Clery Act as a campus security authority, or other laws that require reporting to local law enforcement.

Decisionmaker: The Decisionmaker is the individual who decides whether or not the Respondent engaged in Prohibited Conduct under this Policy.

- In processes used for student-on-student Prohibited Conduct, the Decisionmaker is the Hearing Officer.
- In processes used for employee Prohibited Conduct, the Decisionmaker is the Investigator, except for conduct that is Sexual Harassment (Under the 2020 Title IX Regulations).
- In processes used for third party Prohibited Conduct, the Decisionmaker is the Investigator except for conduct that is Sexual Harassment (Under the 2020 Title IX Regulations).
- In processes used for student-on-employee or employee-on-student Prohibited Conduct, the Decisionmaker is the Investigator, except for conduct that is Sexual Harassment (Under the 2020 Title IX Regulations).
- In processes used for Prohibited Conduct by any individual involving Sexual Harassment (Under the 2020 Title IX Regulations), the decisionmaker is the Hearing Officer.

Finding: A Finding is a written conclusion by a preponderance of the evidence, issued by an Investigator or Hearing Officer, that the alleged conduct did or did not occur as alleged.

Hearing Officer: A Hearing Officer is a trained University employee or external professional with decision-making authority for hearings conducted under this Policy.

Party/Parties: A Party is a Complainant or Respondent participating in a resolution process. The Parties are the Complainant and the Respondent participating in a resolution process.

Remedies: Upon conclusion of the investigation and resolution process, when there is a finding of responsibility that Respondent has violated this Policy, the Complainant will be offered such remedies designed to restore or preserve equal access to the institution's education program or activity or work environment (referred to as "Remedies"). Some examples are academic support and/or opportunity to retake a class or resubmit work or time extensions on course or degree completion, or non-academic support such as counseling, or changes to work assignments or locations. The Director is responsible for the implementation of Remedies.

Respondent: A Respondent is an individual who is alleged to have engaged in conduct that could constitute Prohibited Conduct under this Policy.

Sanction: A Sanction is one or more of the disciplinary steps that may be imposed on a Respondent who is found responsible for a violation of this Policy. Sanctions or disciplinary steps not listed in the Policy may be imposed in consultation with the Director.

Sanctioning Officer:

- In processes used for student-on-student Prohibited Conduct, the Sanctioning Officer is the Hearing Officer. Sanctions shall be determined by the Hearing Officer, following consultation with the Associate Dean of students (or designee). Consultation with the Director also is required prior to the determination of sanctions for any student Respondent.
- In processes used for Prohibited Conduct by an employee Respondent, the Sanctioning Officer is the Provost (for faculty Respondents), or the Respondent's supervisor, in consultation with the Department of Human Resources (for staff or student employee Respondents). Consultation with the Director also is required prior to the determination of sanctions for any employee Respondent.
- In processes used for Prohibited Conduct by a third party Respondent, the Sanctioning Officer is the Director.
- In processes used for student-on-employee or employee-on-student Prohibited Conduct, the Sanctioning Officer is the Provost (for faculty Respondents), or the Respondent's supervisor, in consultation with the Department of Human Resources (for staff or student employee Respondents), or the Associate Dean of students (for student Respondents). Consultation with the Director also is required prior to the determination of sanctions for any employee or student Respondent.

Student: A Student, under this Policy, is any individual who has accepted an offer of admission or who has registered or enrolled in coursework at the University or other University education programs, and who maintains an ongoing relationship with the University as a student.

Support Person: A Support Person is an individual who provides emotional support to a Complainant or Respondent during the course of a resolution process. A Support Person may not represent, advocate, or speak on behalf of a Complainant or Respondent and may not disrupt or impede any resolution proceeding. In compliance with FERPA, a Support Person may only accompany a Complainant and Respondent during resolution processes that do not involve a student as a Party.

Witness: A Witness is an individual who may have information relevant to a report of Prohibited Conduct. A witness may be a student, an employee, or a third party.

APPENDIX B
Investigation and Hearing Process to be used for Student-on-Student Prohibited Conduct

[Note: Attachment E governs matters involving Sexual Harassment (Under the 2020 Title IX Regulations)]

A. Overview

The University will assign a trained Investigator and a trained Hearing Officer to conduct an adequate, reliable, and impartial investigation and hearing in a reasonably prompt timeframe. The University reserves the right to utilize internal or external investigators and Hearing Officers (who will also serve as Decisionmakers).

Both Complainant and Respondent have the option to participate in the investigation and hearing, and both have the same rights during the resolution process including the right to an Advisor, to submit relevant witness names and evidence, and to review and respond to the evidence gathered by the Investigator prior to the finalization of the Investigation Report. Similarly, both Parties have the same rights in a hearing, including the right to review any evidence that will be considered by the Hearing Officer prior to the hearing.

B. Notice of Investigation

Prior to the start of an investigation, the Complainant and Respondent will be provided a written Notice of Investigation communicating the initiation of an investigation. The notice will include, at a minimum:

- A copy of or a link to this Policy;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s), to the extent the information is available to the University;
- A statement that retaliation is prohibited;
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately describes the evidence;
- A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney; and
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the resolution procedure.

Should additional allegations be brought forward, or information regarding location or date of the incident(s) change or become known, a revised written Notice of Investigation shall be provided to both Parties.

A Notice of Investigation is deemed to have been properly provided when written notification of the allegations and alleged Policy violation is sent to the assigned University email addresses of the Parties, or delivered via Certified Mail to the local or permanent address(es) of the Parties as indicated in official University records, or personally delivered to the Parties.

C. Conflict of Interest or Bias

After a Notice of Investigation is issued to Complainant and Respondent, each Party may object to the participation of the Director or designated Investigator on the grounds of a demonstrated bias or actual conflict of interest. Both Parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the Investigator or the Director. Objections to the Director are to be made, in writing, to the Vice President for Inclusive Excellence. Objections to the appointment of the Investigator are to be made in writing to the Director. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Director or the Investigator, that individual shall be replaced. Any change will be communicated to the Parties in writing.

D. Written Notice of Interview

The University will provide to a Party or Witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or proceedings with sufficient time to prepare to participate. Members of the University community are expected to provide truthful information in any report, interview, or proceeding under this Policy.

E. Timeline

The University strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation, and complete the hearing within sixty (60) days of completion of the Investigation Report.

The timeline for any part of the resolution process may be extended for good cause by the Director. Both Parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include, but are not limited to, ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The University shall not unreasonably deny a student Party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The Investigator shall establish, and communicate in writing, deadlines for submission of names of relevant witnesses and submission of evidence.

The Investigator and/or Director shall provide the Parties with periodic status updates, in writing.

F. Burden and Standard of Proof

The University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any Party, and any Party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from the University and does not indicate responsibility. The standard of proof used in any investigation or resolution process is the preponderance of the evidence standard, which means more likely than not.

G. Individual Interviews

The Investigator will hold individual interviews with Parties and Witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the Parties the names of relevant Witnesses and relevant evidence.

Only the Investigator and the individual who is being interviewed may attend each individual interview, except as follows. A Party's Advisor may attend these meetings, subject to the rules described in this Policy. Additional attendees may be permitted at the discretion of the Director in connection with an approved disability-related accommodation.

All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process, and may be subject to further University discipline or action for failure to do so.

The Investigator will gather from Parties, Witnesses, and other sources, all relevant evidence. The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option. The Investigator will determine, in their sole discretion, whether Parties and Witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and witnesses to call to an interview. The Investigator may conduct follow-up interviews as they deem appropriate.

The University will share conduct expectations to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all Parties and Advisors. The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved Party, witness, or Advisor who does not comply with these expectations and any other applicable University rules.

H. Investigator Determination of Relevance

The Investigator will determine whether Parties and Witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered.

I. Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Director will determine whether the investigation, or a part of the investigation, should proceed to a decision. If the investigation, or a part of the investigation, proceeds to a decision, the Decisionmaker will make the decision. The designated Sanctioning Officer will issue an appropriate sanction as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

J. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each Party and their Advisor the opportunity to review all relevant and not impermissible evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and to submit the names of any additional Witnesses with relevant information. This is the final opportunity to offer evidence or names of Witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the Parties nor their Advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Parties will have a minimum of five (5) business days to inspect and review the evidence and submit a written response to the Investigator. The Director shall have the discretion to extend the evidence review period based on the volume and nature of the evidence or for other good cause.

When deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the Parties and their Advisors. The Parties shall have five (5) business days to provide a response to the newly-gathered evidence. No additional new evidence will be accepted as part of any response, except that the Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the Parties' written responses before finalizing the investigation report.

K. Investigation Report

The Investigator will prepare a written report (Investigation Report) summarizing all of the relevant evidence gathered and all steps taken during the investigation process. The Investigator will also make available all relevant evidence gathered during the investigation, as well as all interview notes.

L. Conclusion of Investigation, Notice of Hearing

Once the Investigation Report is final, the report together with all attachments shall be made available to each Party and to their Advisor, if any, in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Each Party shall have ten (10) days to provide a response. Each Party's response, if any, shall be provided to the Hearing Officer.

Each Party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Officer, the process to be used at the hearing, of Witnesses, or questions to be reviewed by the Hearing Officer to ensure they are relevant to the allegations. The hearing shall be scheduled no less than ten (10) business days from the date of the Notice of Hearing.

Within three (3) business days of receipt of the Notice of Hearing, either Party may object to the Hearing Officer on the basis of a demonstrated bias or actual conflict of interest. Any objection is to be in writing and sent to the Director. Should the Director determine that there is an actual bias or conflict of interest, the Director shall remove the Hearing Officer and appoint another.

M. Hearing Procedures

1. *Overview*

The purpose of a hearing is for a Hearing Officer to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this Policy. The University expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via videoconferencing. The Director may determine that the hearing continue in the absence of the Complainant, Respondent, or any witness.

The University will appoint a Hearing Officer who will determine whether a violation of this Policy or other University policy has occurred. The Hearing Officer shall be an individual other than the Investigator or Director. The Hearing Officer shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a Party's absence from the hearing or refusal to answer questions posed.

Each hearing shall be recorded by the Hearing Officer and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for listening until the conclusion of the Appeals process to the Complainant, the Respondent, their respective Advisors, the Hearing Officer, and the Appeal Officer by contacting the Director.

2. ***Prior to the Hearing***

The Complainant, Respondent, and the Hearing Officer all have the right to call Witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call Witnesses must submit the name of the witness at least seven (7) business days in advance of the hearing. Only Witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have relevant information during the course of the investigation. If the Witness did not participate in the investigation, the Party must also provide the reason the Witness was not interviewed by the Investigator, and what information the Witness has that is relevant to the allegations. The Hearing Officer will then determine whether the Witness has relevant information and if there is sufficient justification for permitting the Witness to participate. The Hearing Officer may instead send the case back to the Investigator to interview the newly proffered Witness prior to the hearing taking place.

A list of Witnesses approved by the Hearing Officer will be provided to the Parties at least five (5) business days prior to the hearing.

Three (3) business days prior to the hearing, each Party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other Party, or to a Witness. If the Hearing Officer determines that any questions are not relevant or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear, repetitive, or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

3. ***Advisor***

Each Party is entitled to be accompanied by one Advisor at the hearing. The role of the Advisor is to assist the Party with understanding and navigating the proceedings. The Advisor may not advocate for, respond for, or otherwise speak on behalf of, the Complainant or Respondent during the hearing. In the event that a Party does not appear for the Hearing, the Advisor for that Party may not participate in the hearing and or submit questions to be asked on behalf of the Party.

An Advisor of the University's choosing shall be provided for any Party who wants an Advisor but does not have an Advisor.

4. ***Hearing Participation Guidelines***

The Hearing Officer shall have the authority to maintain order at the hearing, including responding to disruptive or harassing behaviors, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the Hearing Officer removes an Advisor, the Hearing Officer will appoint another Advisor for the remainder of the hearing. The Hearing Officer also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions.

5. ***Statements, Questioning and Presentation of Evidence***

Each Party is allowed to be present throughout the hearing and will be permitted to provide an introductory statement. Following introductory statements, the Hearing Officer will call Parties and Witnesses for questioning. The order of questioning shall be determined by the Hearing Officer. The Hearing Officer will pose questions to the Parties and Witnesses including the questions the Hearing Officer approved to be asked that were submitted by each Party prior to the hearing. Each Party will then be provided an opportunity to submit follow-up written questions to the Hearing Officer for the Hearing Officer to pose to the other Party or witnesses. If the Hearing Officer determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing, and offer an opportunity to the Party to reframe or resubmit the question. Questions that are unclear or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, the question will be asked.

Only the Hearing Officer is permitted to ask questions of Parties and Witnesses. Neither Party may directly question the other Party or Witness. Advisors are not permitted to directly or indirectly question the other Party or Witness.

Following the questioning of Parties and Witnesses, each Party will be permitted to provide a closing statement.

N. Hearing Officer's Determination and Written Determination Report

Following the hearing, the Hearing Officer shall prepare a written determination report. All Findings shall be made by a preponderance of the evidence, meaning more likely than not. To the extent credibility determinations need to be made, such determinations shall not be based on a person's status as a Complainant, Respondent, or witness.

If the Hearing Officer determines that the Respondent engaged in Prohibited Conduct, the Hearing Officer will determine the Sanctions for the Respondent, following consultation with the Associate Dean of students (or designee) and the Director.

The Hearing Officer's written determination report will include:

- A description of the allegations of Prohibited Conduct;

- Information about the policies and procedures used to evaluate the allegations;
- An evaluation of the relevant and not otherwise impermissible evidence;
- Findings of fact for each allegation, with the rationale;
- The determination as to whether a violation of this Policy or any other University policy occurred, including which section(s) of this Policy or other University policy the Respondent has or has not violated, and the rationale for the determination;
- If the Hearing Officer determines that a violation of this Policy or any other University policy occurred, the Sanctions that the University will impose on the Respondent; whether remedies other than the imposition of Sanctions will be provided to the Complainant and, to the extent appropriate, other students identified by the University to be experiencing the effects of the Prohibited Conduct; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Officer's report shall be provided to the Director. The Director will communicate the findings to each Party and their Advisor (should the Party wish the Advisor to receive it), along with a copy of the Hearing Officer's written determination report and the procedures for appeal. The Director also will provide written communication to the Complainant regarding any remedies deemed appropriate by the Director. The details of any remedy will only be provided to the Respondent when necessary to implement the remedy.

APPENDIX C
Investigation Process to be used for Employee and Third-Party Prohibited Conduct When a Student is not a Party

[Note: Attachment E governs matters involving Sexual Harassment (Under the 2020 Title IX Regulations)]

A. Overview

The University will assign a trained Investigator who will also act as the Decisionmaker to conduct an adequate, reliable, and impartial investigation in a reasonably prompt timeframe. The University reserves the right to utilize internal or external investigators/Decisionmakers.

Both Complainant and Respondent have the option to participate in the investigation, and both have the same rights during the resolution process including the right to an Advisor and/or Support Person, to submit relevant witness names and evidence, and to review the evidence gathered by the Investigator prior to the Investigator/Decisionmaker making any Findings.

B. Notice of Investigation

Prior to the start of an investigation, the Complainant and Respondent will be provided a written Notice of Investigation communicating the initiation of an investigation. The notice will include, at a minimum:

- A copy of or link to this Policy;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s), to the extent the information is available to the University;
- A statement that retaliation is prohibited;
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately describes the evidence;
- A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Investigator/Decisionmaker;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
- A statement that the Parties may have a Support Person of their choice; and
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the resolution procedure.

Should additional allegations be brought forward, or information regarding location or date of the incident(s) change or become known, a revised written Notice of Investigation shall be provided to both Parties.

A Notice of Investigation is deemed to have been properly provided when written notification of the allegations and alleged Policy violation is sent to the assigned University email addresses of the Parties, or delivered via Certified Mail to the local or permanent address(es) of the Parties as indicated in official University records, or personally delivered to the Parties.

C. Conflict of Interest or Bias

After a Notice of Investigation is issued to Complainant and Respondent, each Party may object to the participation of the Director or designated Investigator/Decisionmaker on the grounds of a demonstrated bias or actual conflict of interest. Both Parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the Investigator/Decisionmaker or the Director. Objections to the Director are to be made, in writing, to the Vice President for Inclusive Excellence. Objections to the appointment of the Investigator/Decisionmaker are to be made in writing to the Director. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Director or the Investigator/Decisionmaker, that individual shall be replaced. Any change will be communicated in writing.

D. Written Notice of Interview

The University will provide to a Party or Witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or proceedings with sufficient time to prepare to participate. Members of the University community are expected to provide truthful information in any report, interview, or proceeding under this Policy.

E. Timeline

The University strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation.

The timeline for any part of the resolution process may be extended for good cause by the Director. Both Parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include, but are not limited to, ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The Investigator shall establish, and communicate in writing, deadlines for submission of names of relevant witnesses and submission of evidence.

The Investigator and/or Director shall provide the Parties with periodic status updates, in writing.

F. Burden and Standard of Proof

The University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any Party, and any Party may decide to limit their participation in part or all of the process, or to decline to

participate. This does not shift the burden of proof away from the University and does not indicate responsibility. The standard of proof used in any investigation or resolution process is the preponderance of the evidence standard, which means more likely than not.

G. Individual Interviews

The Investigator will hold individual interviews with Parties and Witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the Parties the names of relevant Witnesses and relevant evidence. Only the Investigator and the individual who is being interviewed may attend each individual interview, except as follows. A Party's Advisor and Support Person may attend these meetings, subject to the rules described in this Policy. Additional attendees may be permitted at the discretion of the Director in connection with an approved disability-related accommodation. An employee who is a member of a collective bargaining unit may be accompanied by a union representative. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process, and may be subject to further University discipline or action for failure to do so.

The Investigator will then gather from Parties, Witnesses, and other sources, all relevant evidence.

At the initial interview with each Party, the Investigator will invite the Party to provide, in writing and in advance of the individual interviews, questions to ask of the other Party(ies) and Witnesses that are relevant and not otherwise impermissible, including questions exploring credibility. Upon receiving the question list, the Investigator will determine whether a proposed question is relevant and not otherwise impermissible and will explain, in writing in advance of the individual interview, any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, the question will be asked.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option.

The University will share conduct expectations to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all Parties, Advisors, and Support Persons. The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved Party, witness, Advisor, or Support Person who does not comply with these expectations and any other applicable University rules.

H. Investigator Determination of Relevance

The Investigator will determine whether Parties and witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and Witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered.

I. Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Director will determine whether the investigation, or a part of the investigation, should proceed to a decision. If the investigation, or a part of the investigation, proceeds to a decision, the Decisionmaker will make the decision. The designated Sanctioning Officer will issue an appropriate sanction or responsive action as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

J. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each Party and their Advisor the opportunity to review all relevant and not impermissible evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional Witnesses with relevant information. This is the final opportunity to offer evidence or names of Witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the Parties nor their Advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any employee who fails to abide by this may be subject to discipline. Any Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Parties will have a minimum of five (5) business days to inspect and review the evidence and submit a written response to the Investigator. The Director shall have the discretion to extend the evidence review period based on the volume and nature of the evidence or for other good cause.

When deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the parties and their advisors. The Parties shall have five (5) business days to provide a response to the newly-gathered evidence. No additional new evidence

will be accepted as part of any response, except that the Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the Parties' written responses before finalizing the investigation report.

K. Determination, Investigation Report, and Notice of Outcome

The Investigator will serve as the Decisionmaker. The Investigator/Decisionmaker shall evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation, and also determine whether a violation of the Policy occurred. The Investigator/Decisionmaker may choose to place less or no weight upon statements by a Party or Witness who refused to respond to questions deemed relevant and not impermissible. The Investigator/Decisionmaker will not draw an inference about whether Prohibited Conduct occurred based solely on a Party's or Witness's refusal to respond to questions.

The Investigator/Decisionmaker shall prepare a written report which shall include:

- A description of the allegations of Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations;
- An evaluation of the relevant and not otherwise impermissible evidence;
- Findings of fact for each allegation, with the rationale;
- A determination as to whether a violation of this Policy or any other University policy occurred, including which section(s) of this Policy or other University policy the Respondent has or has not violated, and the rationale for the determination;
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The report shall be provided to the Director. In the event that the Investigator/Decisionmaker has determined that a violation of University policy has occurred, the Director shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Director shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

The Director shall then provide the Parties and their Advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

- A statement of, and rationale for, any disciplinary sanctions the University imposed or will impose on the Respondent;
- A statement as to whether remedies will be provided to the Complainant;
- For the Complainant, a description of any remedies that apply to the Complainant. The details of any remedy will only be provided to the Respondent when necessary to implement the remedy;
- The University's procedures and the permitted bases for the Parties to appeal; and
- How to challenge participation by the Appeal Officer for bias or conflict of interest, which the Director will resolve in their sole discretion.

The determination regarding responsibility becomes final either on the date that the University provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

APPENDIX D
Investigation Process to be used for Student-on- Employee or Employee-on-Student Prohibited Conduct

[Note: Attachment E governs matters involving Sexual Harassment (Under the 2020 Title IX Regulations)]

A. Overview

The University will assign a trained Investigator who will also act as the Decisionmaker to conduct an adequate, reliable, and impartial investigation in a reasonably prompt timeframe. The University reserves the right to utilize internal or external Investigators/Decisionmakers.

Both Complainant and Respondent have the option to participate in the investigation, and both have the same rights during the resolution process including the right to an Advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the Investigator prior to the Investigator/Decisionmaker making any Findings.

B. Notice of Investigation

Prior to the start of an investigation, the Complainant and Respondent will be provided a written Notice of Investigation communicating the initiation of an investigation. The notice will include, at a minimum:

- A copy of or link to this Policy;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s), to the extent the information is available to the University;
- A statement that retaliation is prohibited;
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately describes the evidence;
- A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Investigator/Decisionmaker;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney; and
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the resolution procedure.

Should additional allegations be brought forward, or information regarding location or date of the incident(s) change or become known, a revised written Notice of Investigation shall be provided to both Parties.

A Notice of Investigation is deemed to have been properly provided when written notification of the allegations and alleged Policy violation is sent to the assigned University email addresses of the Parties, or delivered via Certified Mail to the local or permanent address(es) of the Parties as indicated in official University records, or personally delivered to the Parties.

C. Conflict of Interest or Bias

After a Notice of Investigation is issued to Complainant and Respondent, each Party may object to the participation of the Director or designated Investigator/Decisionmaker on the grounds of a demonstrated bias or actual conflict of interest. Both Parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the Investigator/Decisionmaker or the Director. Objections to the Director are to be made, in writing, to the Vice President for Inclusive Excellence. Objections to the appointment of the Investigator/Decisionmaker are to be made in writing to the Director. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Director or the Investigator/Decisionmaker, that individual shall be replaced. Any change will be communicated in writing.

D. Written Notice of Interview

The University will provide to a Party or Witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or proceedings with sufficient time to prepare to participate. Members of the University community are expected to provide truthful information in any report, interview, or proceeding under this Policy.

E. Timeline

The University strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation.

The timeline for any part of the resolution process may be extended for good cause by the Director. Both Parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation. Good cause reasons for extension may include, but are not limited to, ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The Investigator shall establish, and communicate in writing, deadlines for submission of names of relevant witnesses and submission of evidence.

The Investigator and/or Director shall provide the Parties with periodic status updates, in writing.

F. Burden and Standard of Proof

The University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any Party, and any Party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from the University and does not indicate

responsibility. The standard of proof used in any investigation or resolution process is the preponderance of the evidence standard, which means more likely than not.

G. Individual Interviews

The Investigator will hold individual interviews with Parties and Witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the Parties the names of relevant Witnesses and relevant evidence. Only the Investigator and the individual being interviewed may attend each individual interview, except as follows. A Party's Advisor may attend these meetings, subject to the rules described in this Policy. Additional attendees may be permitted at the discretion of the Director in connection with an approved disability-related accommodation. An employee who is a member of a collective bargaining unit may be accompanied by a union representative. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process, and may be subject to further University discipline or action for failure to do so.

The Investigator will then gather from Parties, witnesses, and other sources, all relevant evidence.

At the initial interview with each Party, the Investigator will invite the Party to provide, in writing and in advance of the individual interviews, questions to ask of the other Party(ies) and Witnesses that are relevant and not otherwise impermissible, including questions exploring credibility. Upon receiving the question list, the Investigator will determine whether a proposed question is relevant and not otherwise impermissible and will explain, in writing in advance of the individual interview, any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, the question will be asked.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option.

The University will share conduct expectations to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all Parties and Advisors. The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved Party, witness, or Advisor who does not comply with these expectations and any other applicable University rules.

H. Investigator Determination of Relevance

The Investigator will determine whether Parties and witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and Witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered.

I. Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Director will determine whether the investigation, or a part of the investigation, should proceed to a decision. If the investigation, or a part of the investigation, proceeds to a decision, the Decisionmaker will make the decision. The designated Sanctioning Officer will issue an appropriate sanction or responsive action as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

J. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each Party and their Advisor the opportunity to review all relevant and not impermissible evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional Witnesses with relevant information. This is the final opportunity to offer evidence or names of Witnesses. Evidence not provided during the investigation process will not be considered by the Investigator/Decisionmaker. Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the Parties nor their Advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Parties will have a minimum of five (5) business days to inspect and review the evidence and submit a written response to the Investigator. The Director shall have the discretion to extend the evidence review period based on the volume and nature of the evidence or for other good cause.

When deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the Parties and their Advisors. The Parties shall have five (5) business days to provide a response to the newly-gathered evidence. No additional new evidence will be accepted as part of any response, except that the Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the Parties' written responses before finalizing the investigation report.

K. Determination, Investigation Report, and Notice of Outcome

The Investigator will serve as the Decisionmaker. The Investigator/Decisionmaker shall evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation, and also determine whether a violation of the Policy occurred. The Investigator/Decisionmaker may choose to place less or no weight upon statements by a Party or Witness who refused to respond to questions deemed relevant and not impermissible. The Investigator/Decisionmaker will not draw an inference about whether Prohibited Conduct occurred based solely on a Party's or Witness's refusal to respond to questions.

The Investigator/Decisionmaker shall prepare a written report which shall include:

- A description of the allegations of Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations;
- An evaluation of the relevant and not otherwise impermissible evidence;
- Findings of fact for each allegation, with the rationale;
- The determination as to whether a violation of this Policy or any other University policy occurred, including which section(s) of this Policy or other University policy the Respondent has or has not violated, and the rationale for the determination;
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The report shall be provided to the Director. In the event that the Investigator/Decisionmaker has determined that a violation of University policy has occurred, the Director shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Director shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

The Director shall then provide the Parties and their Advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

- A statement of, and rationale for, any disciplinary sanctions the University imposed or will impose on the Respondent;
- A statement as to whether remedies will be provided to the Complainant;
- For the Complainant, a description of any remedies that apply to the Complainant. The details of any remedy will only be provided to the Respondent when necessary to implement the remedy;
- The University's procedures and the permitted bases for the Parties to appeal; and
- How to challenge participation by the Appeal Officer for bias or conflict of interest, which the Director will resolve in their sole discretion.

The determination regarding responsibility becomes final either on the date that the University provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

APPENDIX E
Investigation and Hearing Process to be used for Sexual Harassment (Under the 2020 Title IX Regulations)

A. Overview

The University will assign a trained Investigator and a trained Hearing Officer to conduct an adequate, reliable, and impartial investigation and hearing in a reasonably prompt timeframe. The University reserves the right to utilize internal or external investigators and Hearing Officers (who will also serve as Decisionmakers).

Both Complainant and Respondent have the option to participate in the investigation and hearing, and both have the same rights during the resolution process including the right to an Advisor, to submit relevant witness names and evidence, and to review and respond to the evidence gathered by the Investigator prior to the finalization of the Investigation Report. Similarly, both Parties have the same rights in a hearing, including the right to review any evidence that will be considered by the Hearing Officer prior to the hearing.

B. Notice of Investigation

A Formal Complaint (See Policy, Section VIII.E) is required in order to initiate an investigation and hearing process for incidents of Sexual Harassment (Under the 2020 Title IX Regulations).

Prior to the start of an investigation, the Complainant and Respondent will be provided a written Notice of Investigation communicating the initiation of an investigation. The notice will include, at a minimum:

- A copy of or a link to this Policy;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s), to the extent the information is available to the University;
- A statement that retaliation is prohibited;
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately describes the evidence;
- A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution procedures. Prior to such a determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
- A statement that the Parties may have an Advisor of their choice who may be, but is not required to be, an attorney; and
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during the resolution procedure.

Should additional allegations be brought forward, or information regarding location or date of the incident(s) change or become known, a revised written Notice of Investigation shall be provided to both Parties.

A Notice of Investigation is deemed to have been properly provided when written notification of the allegations and alleged Policy violation is sent to the assigned University email addresses of the Parties, or delivered via Certified Mail to the local or permanent address(es) of the Parties as indicated in official University records, or personally delivered to the Parties.

C. Conflict of Interest or Bias

After a Notice of Investigation is issued to Complainant and Respondent, each Party may object to the participation of the Director or designated Investigator on the grounds of a demonstrated bias or actual conflict of interest. Both Parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the Investigator or the Director. Objections to the Director are to be made, in writing, to the Vice President for Inclusive Excellence. Objections to the appointment of the Investigator are to be made in writing to the Director. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Director or the Investigator, that individual shall be replaced. Any change will be communicated to the Parties in writing.

D. Written Notice of Interview

The University will provide to a Party or Witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or proceedings with sufficient time to prepare to participate. Members of the University community are expected to provide truthful information in any report, interview, or proceeding under this Policy.

E. Timeline

The University strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation, and complete the hearing within sixty (60) days of completion of the Investigation Report.

The timeline for any part of the resolution process may be extended for good cause by the Director. Both Parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include, but are not limited to, ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The University shall not unreasonably deny a student Party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The Investigator shall establish, and communicate in writing, deadlines for submission of names of relevant witnesses and submission of evidence.

The Investigator and/or Director shall provide the Parties with periodic status updates, in writing.

F. Burden and Standard of Proof

The University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any Party, and any Party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from the University and does not indicate responsibility. The standard of proof used in any investigation or resolution process is the preponderance of the evidence standard, which means more likely than not.

G. Individual Interviews

The Investigator will hold individual interviews with Parties and Witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the Parties the names of relevant Witnesses and relevant evidence.

Only the Investigator and the individual who is being interviewed may attend each individual interview, except as follows. A Party's Advisor may attend these meetings, subject to the rules described in this Policy. Additional attendees may be permitted at the discretion of the Director in connection with an approved disability-related accommodation.

All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the resolution process, and may be subject to further University discipline or action for failure to do so.

The Investigator will gather from Parties, Witnesses, and other sources, all relevant evidence. The individual interviews may be conducted with all participants physically present in the same geographic location, or, at the University's discretion, with all participants joining virtually through a video conferencing option. The Investigator will determine, in their sole discretion, whether Parties and Witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and witnesses to call to an interview. The Investigator may conduct follow-up interviews as they deem appropriate.

The University will share conduct expectations to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all Parties and Advisors. The University has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved Party, witness, or Advisor who does not comply with these expectations and any other applicable University rules.

H. Investigator Determination of Relevance

The Investigator will determine whether Parties and Witnesses are likely to provide relevant information about the allegations, and has the sole discretion to determine which Parties and witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered.

I. Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Director will determine whether the investigation, or a part of the investigation, should proceed to a decision. If the investigation, or a part of the investigation, proceeds to a decision, the Decisionmaker will make the decision. The designated Sanctioning Officer will issue an appropriate sanction as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

J. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each Party and their Advisor the opportunity to review all relevant and not impermissible evidence gathered. This shall include evidence that is favorable to and unfavorable to the Complainant and the Respondent. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and to submit the names of any additional Witnesses with relevant information. This is the final opportunity to offer evidence or names of Witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, the University will facilitate this review in a secure manner. None of the Parties nor their Advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The Parties will have a minimum of ten (10) days to inspect and review the evidence and submit a written response to the Investigator. The Director shall have the discretion to extend the evidence review period based on the volume and nature of the evidence or for other good cause.

When deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the Parties and their Advisors. The Parties shall have five (5) business days to provide a response to the newly-gathered evidence. No additional new evidence will be accepted as part of any response, except that the Investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the Parties' written responses before finalizing the investigation report.

K. Investigation Report

The Investigator will prepare a written report (Investigation Report) summarizing all of the relevant evidence gathered and all steps taken during the investigation process. The Investigator will also make available all relevant evidence gathered during the investigation, as well as all interview notes.

L. Conclusion of Investigation, Notice of Hearing

Once the Investigation Report is final, the report together with all attachments shall be made available to each Party and to their Advisor, if any, in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Each Party shall have ten (10) days to provide a response. Each Party's response, if any, shall be provided to the Hearing Officer.

Each Party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Officer, the process to be used at the hearing, of Witnesses, or questions to be reviewed by the Hearing Officer to ensure they are relevant to the allegations. The hearing shall be scheduled no less than ten (10) business days from the date of the Notice of Hearing.

Within three (3) business days of receipt of the Notice of Hearing, either Party may object to the Hearing Officer on the basis of a demonstrated bias or actual conflict of interest. Any objection is to be in writing and sent to the Director. Should the Director determine that there is an actual bias or conflict of interest, the Director shall remove the Hearing Officer and appoint another.

M. Hearing Procedures

1. *Overview*

The purpose of a hearing is for a Hearing Officer to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this Policy. The University expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via videoconferencing. At the request of either Party, the hearing will occur with the Parties located in separate rooms with technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the Witness answering questions. The Director may determine that the hearing continue in the absence of the Complainant, Respondent, or any witness.

The University will appoint a Hearing Officer who will determine whether a violation of this Policy or other University policy has occurred. The Hearing Officer shall be an individual other than the Investigator or Director. The Hearing Officer shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time

allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a Party's absence from the hearing or refusal to answer questions posed.

Each hearing shall be recorded by the Hearing Officer and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of the University but shall be available for listening until the conclusion of the Appeals process to the Complainant, the Respondent, their respective Advisors, the Hearing Officer, and the Appeal Officer by contacting the Director.

2. ***Prior to the Hearing***

The Complainant, Respondent, and the Hearing Officer all have the right to call Witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call Witnesses must submit the name of the witness at least seven (7) business days in advance of the hearing. Only Witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have relevant information during the course of the investigation. If the Witness did not participate in the investigation, the Party must also provide the reason the Witness was not interviewed by the Investigator, and what information the Witness has that is relevant to the allegations. The Hearing Officer will then determine whether the Witness has relevant information and if there is sufficient justification for permitting the Witness to participate. The Hearing Officer may instead send the case back to the Investigator to interview the newly proffered Witness prior to the hearing taking place.

A list of Witnesses approved by the Hearing Officer will be provided to the Parties at least five (5) business days prior to the hearing.

Three (3) business days prior to the hearing, each Party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other Party, or to a Witness. If the Hearing Officer determines that any questions are not relevant or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear, repetitive, or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

3. ***Advisors***

Each Party is entitled to be accompanied by one Advisor at the hearing. The role of the Advisor is to assist the Party with understanding and navigating the proceedings.

The Advisor may not advocate for, respond for, or otherwise speak on behalf of, the Complainant or Respondent during the hearing, except as described below. In the event that

a Party does not appear for the Hearing, the Advisor for that Party may not participate in the hearing and or submit questions to be asked on behalf of the Party.

An Advisor of the University's choosing shall be provided for any Party who wants an Advisor but does not have an Advisor.

4. ***Hearing Participation Guidelines***

The Hearing Officer shall have the authority to maintain order at the hearing, including responding to disruptive or harassing behaviors, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the Hearing Officer removes an Advisor, the Hearing Officer will appoint another Advisor for the remainder of the hearing. The Hearing Officer also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions.

5. ***Statements, Questioning, Cross-Examination, and Presentation of Evidence***

Each Party is allowed to be present throughout the hearing and will be permitted to provide an introductory statement.

Following introductory statements, the Hearing Officer will call Parties and Witnesses for questioning. The order of questioning shall be determined by the Hearing Officer. The Hearing Officer will pose questions to the Parties and Witnesses including the questions the Hearing Officer approved to be asked that were submitted by each Party prior to the hearing. Each Party will then be provided an opportunity to submit follow-up written questions to the Hearing Officer for the Hearing Officer to pose to the other Party or witnesses.

At the hearing, the Hearing Officer must permit each Party's Advisor to ask the other Party and any Witnesses all relevant and not impermissible questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the Party's Advisor and never by a Party personally. If a Party or Witness does not submit to cross-examination at the hearing, the Hearing Officer must not rely on any statement of that Party or Witness in reaching a determination about responsibility. The Hearing Officer cannot draw an inference about the determination about responsibility based solely on a Party's or Witness's absence from the hearing or refusal to answer cross-examination or other questions.

If the Hearing Officer determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing, and offer an opportunity to the Party to reframe or resubmit the question. Questions that are unclear or harassing of the Party or Witness being questioned will not be permitted. The Investigator must give a Party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question, the question will be asked.

Following the questioning of Parties and Witnesses, each Party will be permitted to provide a closing statement.

N. Hearing Officer's Determination and Written Determination Report

Following the hearing, the Hearing Officer shall prepare a written determination report. All Findings shall be made by a preponderance of the evidence, meaning more likely than not. To the extent credibility determinations need to be made, such determinations shall not be based on a person's status as a Complainant, Respondent, or Witness.

If the Hearing Officer determines that the Respondent engaged in Prohibited Conduct, the Sanctioning Officer will determine the Sanctions for the Respondent, in consultation with the Director and others as set forth in Attachment A.

The Hearing Officer's written determination report will include:

- A description of the allegations of Prohibited Conduct;
- A description of the procedural steps taken from the receipt of a Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and Witnesses, site visits, methods used to gather other evidence, and hearings held;
- Information about the policies and procedures used to evaluate the allegations;
- An evaluation of the relevant and not otherwise impermissible evidence;
- Findings of fact for each allegation, with the rationale;
- The determination as to whether a violation of this Policy or any other University policy occurred, including which section(s) of this Policy or other University policy the Respondent has or has not violated, and the rationale for the determination;
- If the Hearing Officer determines that a violation of this Policy or any other University policy occurred, the Sanctions that the University will impose on the Respondent; whether remedies other than the imposition of Sanctions will be provided to the Complainant and, to the extent appropriate, other students identified by the University to be experiencing the effects of the Prohibited Conduct; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Officer's report shall be provided to the Director. The Director will communicate the findings to each Party and their Advisor (should the Party wish the Advisor to receive it), along with a copy of the Hearing Officer's written determination report and the procedures for appeal. The Director also will provide written communication to the Complainant regarding any remedies deemed appropriate by the Director. The details of any remedy will only be provided to the Respondent when necessary to implement the remedy.