

University of San Diego Title IX Policy Prohibiting Sex Discrimination, Sexual Misconduct and Relationship Violence and Grievance Procedures

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UNIVERSITY OF SAN DIEGO TITLE IX POLICY PROHIBITING SEX DISCRIMINATION, SEXUAL MISCONDUCT AND RELATIONSHIP VIOLENCE AND GRIEVANCE PROCEDURES FOR ALL FACULTY, STUDENTS, EMPLOYEES, AND THIRD PARTIES (Hereinafter, “the Policy”)

1. Purpose

As noted in [University Policy 2.2.2](#), the University of San Diego (USD), hereinafter “the University” is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

USD values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity. USD has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment or allegations of retaliation.

2. Notice of Nondiscrimination

The University of San Diego seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private postsecondary education institutions.

USD does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived:

- Age (40 years and over in the employment context)
- Citizenship status
- Color
- Creed
- Disability (physical or mental)
- Domestic violence victim status
- Ethnicity
- Family responsibilities
- Gender expression
- Gender identity
- Genetic information (including family medical history)
- Height
- Marital status
- National origin (including shared ancestry)
- Personal appearance

- Place of business
- Political belief or affiliation
- Pregnancy or related conditions¹
- Race
- Religion
- Residence
- Sex
- Sexual orientation
- Source of income
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
- Weight
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

USD Policy 2.2.2 (Policy Prohibiting Discrimination and Harassment) covers non-discrimination in both employment and access to educational opportunities. Therefore, any member of the USD community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of the USD community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of USD Policy 2.2.2.

In accordance with Title IX, USD will promptly and effectively address any Sex Discrimination complaints whereby both Complainant(s) and Respondent(s) are students. All such complaints reported will be resolved using the resolution process in the Title IX Policy Prohibiting Sex Discrimination, Sexual Misconduct and Relationship Violence and Grievance Procedures. All other discrimination complaints will be addressed using the procedures outlined in Policy 2.2.2 and other applicable policies and procedures.

3. Critical Incident Response Team Contacts

USD has appointed the Critical Incident Response Team, comprised of the following individual(s), to coordinate the University's compliance with federal, state, and local civil rights laws and ordinances:

For discrimination and harassment allegations, including sex discrimination and sexual misconduct relationship violence:

¹ Refer to Appendix B for USD's Pregnancy and Related Conditions and Parenting Student Policy

Nicki Schuessler Veloz, Ph.D.
Title IX Coordinator/Director of Title IX, EEO and Employee Relations
Maher Hall, Room 101
5998 Alcalá Park
San Diego, CA 92110
(619) 260-4594
TitleIX@sandiego.edu
www.sandiego.edu/TitleIX

Department of Public Safety
Alcala Park West - Durango, Suite A
5998 Alcalá Park
San Diego, CA 92110
(619) 260-7777
publicsafety@sandiego.edu
www.sandiego.edu/safety

Dean of Students
Hahn University Center 232
5998 Alcalá Park
San Diego, CA 92110
(619) 260-4588
deanofstudents@sandiego.edu
www.sandiego.edu/student-affairs/

4. External Contact Information

Concerns about the USD's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:²

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

² University will notify the appropriate federal and state grantee agencies as required in accordance with the law.

For Complaints involving employee-on-employee conduct:

California Civil Rights Division (CCRD)
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
Phone: (800) 884-1684
Email: contact.center@calcivilrights.ca.gov

Equal Employment Opportunity Commission (EEOC)
555 West Beech Street, Suite 504
San Diego, CA 92101
Phone: 619-900-1616
Phone for deaf/hard of hearing callers: 1-800-669-4000
TTY: 1-800-669-6820
ASL Video Line: 844-234-5122
Email: info@eeoc.gov
Web: <https://www.eeoc.gov>

5. Mandated Reporting and Confidential Employees

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

Confidential employees include:

- C.A.R.E. Advocates
- On-campus licensed mental health providers, clinical therapists/counselors in training, and staff working within the scope of their license and/or certification
- On-campus health service providers and staff
- On-campus members of the clergy and University Ministry pastoral counselors working within the scope of their licensure or ordination

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

In addition, Complainants may speak with individuals unaffiliated with USD without concern that the Policy will require them to disclose information to the institution without permission, including:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

6. Scope

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

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s) listed in the [Policy Prohibiting Discrimination and Harassment](#). The Policy may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

7. Jurisdiction

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

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

A substantial University interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.

- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the University's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a USD faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the USD community, the Title IX Coordinator/Title IX Office will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting local law enforcement to file a police report about criminal conduct unless the complainant declines to notify such authorities. Upon receiving a report, the University may be obligated to notify local law enforcement immediately, or as soon as practically possible. A Complainant also has the option to decide whether or not to participate in any investigation conducted by law enforcement. If the Complainant decides to pursue the criminal process, USD will cooperate with law enforcement agencies to the extent permitted by law.

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

When a party is participating in a dual enrollment/early college program, the University will coordinate with the party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the complaint under the appropriate policy and procedures based on the allegations and identities of the Parties.

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

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

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

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Providing information about civil and criminal prosecutions
- Implementing contact limitations (USD No Contact Orders) between the Parties (Students: Dean of Students Office; Employees: Human Resources)
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No Trespass Orders (NTO), Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator/Title IX Office. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with Title IX regulatory definition of supportive measures. The University will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The University typically renders decisions on

supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator/Title IX Office.

8. Standard of Proof

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

9. Online Harassment and Misconduct

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

Although the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to University's education program or activity.

Nothing codified in University policies is intended to infringe upon or limit a person's rights to free speech. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking and harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Supportive measures for Complainants will be provided whenever possible regardless of whether the online posting or electronic communication is subject to this policy and/or protected by free speech laws.

10. Prohibited Conduct

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

The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under the University Policy. When speech or conduct is protected by [academic freedom](#) and/or the First Amendment and/or CA's Leonard Law, it will

not be considered a violation of the University Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

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

Violation of any other University policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

a. Discrimination

Discrimination is different treatment with respect to a person's employment or participation in an education program or activity based, in whole or in part, upon a person's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived protected characteristic and that:
 - Excludes a person from participation in;
 - Denies the a person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes a person from participation in;

- Denies a person benefits of; or
- Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

b. Discriminatory Harassment

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

c. Sexual Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

1) Quid pro quo:

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

2) Hostile Environment Harassment:

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

The University reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct may result in the imposition of discipline under University Policy, but also may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

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

3) Sexual Assault:³

a. Rape:

- Penetration, no matter how slight
- of the vagina or anus of a person
- with any body part or object, or
- oral penetration
 - of a sex organ of the Complainant or,
 - By the Respondent's sex organ
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.

b. Fondling:⁴

- The intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent,
- without the consent of the Complainant,
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- Or, the intentional touching by the Complainant of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts,
- without the consent of the Complainant,
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation

c. Incest:

- Sexual intercourse,
- between persons who are related to each other,

³ This definition set is not taken from the FBI Uniform Crime Reporting (UCR) system verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, and has specified certain body parts. ATIXA also kept the term "Fondling" instead of "Criminal Sexual Contact," which NIBRS updated in 2025 guidance documents. These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

⁴ Contact with private body parts is considered to be done for the purpose of sexual degradation, sexual gratification, or sexual humiliation unless: (1) the contact can be proven inadvertent; (2) the contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider; (3) the contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual); (4) the contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual; or (5) The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s).

- within the degrees wherein marriage is prohibited by California state law.

d. **Statutory Rape:**

- Sexual intercourse,
- with a person who is under the statutory age of consent of 18.

4) **Dating Violence**, defined as:

- Violence,
- on the basis of sex
- committed by a person
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and frequency of the interaction between the persons involved in the relationship. For the purposes of this relationship—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating violence does not include acts covered under the definition of domestic violence.

5) **Domestic Violence⁵** defined as:

- violence
- on the basis of sex
- committed by a current or former spouse or intimate partner of the Complainant
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California.

6) **Stalking**, defined as:

- a. engaging in a course of conduct,

⁵ To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- b. on the basis of sex,
- c. directed at the Complainant, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

7) Sexual Exploitation:

- a person taking non-consensual or abusive sexual advantage of another,
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

Sanction Ranges

The following sanction ranges generally apply for Prohibited Conduct for Title IX violations under this Policy. Sanctions are defined in Section 23. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the Respondent's cumulative conduct record.

- **Discrimination:** warning through expulsion or termination.
- **Discriminatory Harassment:** warning through expulsion or termination.
- **Quid Pro Quo Harassment:** warning through expulsion or termination.
- **Hostile Environment Harassment:** warning through expulsion or termination.

- **Rape:** suspension through expulsion or termination.
- **Fondling:** warning through suspension or termination.
- **Incest:** warning through probation or termination.
- **Statutory Rape:** warning through suspension or termination.
- **Stalking:** probation through expulsion or termination.
- **Dating/Domestic Violence:** probation through expulsion or termination.
- **Sexual Exploitation:** warning through expulsion or termination.
- **Endangerment:** warning through expulsion or termination.
- **Retaliation:** warning through expulsion or termination.
- **Unauthorized Disclosure:** warning through expulsion or termination.
- **Failure to Comply/Process Interference:** warning through expulsion or termination.

In addition to the sanctions listed above, the University may also assign Educational Sanctions and/or Restorative Practice(s).

1) **Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the University, a student, employee, or a 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 law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Policy, including an Informal Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

2) **Unauthorized Disclosure:**⁶

⁶ Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy or other policy violation), consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

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

3) Failure to Comply/Process Interference

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

Sanctions for the above-listed offenses range from warning through expulsion/termination.

d. Consent, Force, and Incapacitation

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

1) Consent

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.⁷

⁷ The state definition of consent is listed under [California Penal Code 261.6](#) which is applicable to criminal prosecutions for sex offenses in California but may differ from the definition used by the University to address Policy violations.

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

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

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

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

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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

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

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

physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.⁸

For the purpose of this policy, “consent” also includes conduct defined under California Penal Code Section 261.6.

2) Force

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

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

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

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

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 substances.

⁸ Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

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

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

11. Reports/Complaints of Discrimination, Harassment, and/or Retaliation

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

- 1) File a Complaint to the Title IX Coordinator or to any member of the Title IX Office, or file an initial report to Public Safety or Dean of Students Office. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator/Title IX Office or any other Critical Issues Response Team member listed in this Policy.
 - a. For incidents that meet the definition of a sexual harassment found within the Federal Regulations for Title IX Sexual Harassment, a student must file a Formal Complaint with the Title IX Office. The Formal Complaint must be filed by a person with actual knowledge of the alleged sexual harassment. The alleged incident(s) must have occurred at a USD education program or activity and must have occurred against a person in the United States.

If you are uncertain whether you are required to file a Formal Complaint pursuant to the Federal Regulations for Title IX Sexual Harassment, you may contact any member of the Title IX Office and they will assist you.

- 2) You may voluntarily report your concerns anonymously and confidentially through the [University's Incident Reporting Helpline](#). The Incident Reporting Helpline can be reached toll free at (1-855-799-8305) or by submitting an online report. The Incident Reporting Helpline is available 24 hours a day, 7 days a week. To ensure caller confidentiality and anonymity, the service is administered by an independent third party, Ethics Point. Anonymous reports are accepted, but the report may give rise to a need to try to determine the Parties' identities. Anonymous reports typically limit the University's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may

be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of an anonymous report.

Reporting carries no obligation to initiate a Complaint, and in most situations, USD is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible, but may choose to move forward with our process to address the behaviors

12. Time Limits on Reporting

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

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

13. False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a Policy violation.

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

14. Confidentiality/Privacy

USD makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and

procedures.^{9,10} In the event of an inquiry, the University will not disclose confidential information pertaining to any party to the press, concerned students and/or parents.

15. Federal Timely Warning Obligations

USD must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community.

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

16. Amnesty/Responsible Torero Harm Reduction

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

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

The University will investigate whether alcohol or drugs were involved in the incident, however to encourage reporting and participation in the process, University maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the University, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

a. Students

The University maintains an amnesty practice for students who offer help to others in need.

b. Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The University may, at its discretion, offer employee Complainants amnesty from such policy violations

⁹ 20 U.S.C. 1232g

¹⁰ 34 C.F.R. § 99

(typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

Furthermore, a Complainant or witness who participates in an investigation of sexual assault, domestic violence, dating violence or stalking will not be subject to disciplinary sanctions for a violation of the Code at or near the time of the incident, unless the university determines that the violation was egregious, including but not limited to an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

For additional information on harm reduction practices related to grievance procedures, please see University's [Responsible Torero Harm Practice](#).

17. Preservation of Evidence and Identification of Witnesses

Any individual who has experienced an act or acts of sexual violence is encouraged to take steps to preserve evidence, as doing so may be necessary to the proof of a criminal act or to obtain a protection order from the court. The University will provide information in writing about the importance of preserving evidence, and the identification and location of witnesses.

In order to preserve evidence, the urge to change clothes, bathe, shower, douche, change clothing or clean the bed or linens where the incident occurred should be resisted. If clothing is changed, each garment should be placed in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (e.g. pictures, texts, social media posts, videos, etc.), preserve copies.

Additional steps that can be taken to preserve evidence include, but are not limited to, the following:

- **Medical-Legal Evidence Collection (SAFE Exam):** A person who has experienced an incident of sexual violence (particularly rape, forcible oral copulation, or sodomy) is encouraged to request collection of medical-legal evidence. This examination is known as the Sexual Assault Forensic Exam (SAFE) in San Diego County. Collection of evidence entails a police report and interaction with the police and the County's Sexual Assault Response Team (SART) at an off-campus medical facility. Prompt collection of physical evidence through an exam is important should a person later decide to pursue criminal prosecution and/or a civil action. For more information regarding the SART exam, or if you wish to get a SART exam without reporting the incident to USD, please contact the Center for Community Solutions Hotline (888- 385-4657) or visit www.ccssd.org/get-help/hotline.

- **Non-Participatory Report (NPR):** A person who wishes to have physical evidence collected pursuant to an incident of sexual violence but does not wish to have law enforcement investigate the incident, may have this evidence collected at one of the SART facilities in San Diego County. This report is known as the Non-Participatory Report (NPR) in San Diego County. This non-investigative reporting process is to allow DNA and other physical evidence to be collected and stored in the event a victim decides to initiate the investigative process at a later time. This evidence may include SAFE kits, clothing, or other items collected, sexual assault exam report forms, and photographs. For more information regarding the NPR option, or if you wish to pursue the NPR option without reporting the incident to USD, please contact the Center for Community Solutions Hotline (888- 385-4657) or visit www.ccssd.org/get-help/hotline.

In addition, an individual who has experienced an act or acts of sex discrimination or sexual misconduct relationship violence (including stalking or relationship violence) is encouraged to identify and locate potential witnesses.

a. Medical and Mental Health Treatment

A person who has experienced or otherwise been impacted by an incident of sexual violence is urged to seek appropriate medical and/or mental health treatment as soon as possible. When the incident is reported to USD, USD will help the individual get to a safe place and seek medical attention.

The following medical treatment options are available:

- For emergency situations, contact 911 or go to the nearest hospital emergency room.
- A list of local hospitals can be found on the [USD Student Health Center website](#).
- For non-emergency situations during regular business hours, students may visit the USD Student Health Center, located in Maher Hall, Room 140, (619) 260- 4595, www.sandiego.edu/healthcenter. To contact a provider after regular business hours, contact the USD Counseling Center at 619-260-4655. A 24-hour Counselor response is available..
- Employees are encouraged to contact the [Employee Assistance Program](#) (EAP) or their own medical provider.

18. Federal Statistical Reporting Obligations

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

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking¹¹
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with [Clery Act Compliance Manager](#) for publication in the Annual Security Report, inclusion in the annual statistical disclosure, timely warning consideration, and daily campus crime log. Reports of crimes made on a voluntary, confidential basis will be included in the annual disclosure of crime statistics. [Campus Security Authorities](#) include student affairs/student conduct staff, campus law enforcement/public safety/security, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

19. Independence and Conflicts of Interest

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

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator/Title IX Office, contact the University President, James T. Harris III at President@sandiego.edu. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator/Title IX Office.

20. Policy Revision

The Policy and associated procedures succeed all previous policies addressing Discrimination, Harassment, sexual misconduct, and/or Retaliation, for incidents occurring on or after August

¹¹ VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

14, 2020. The Title IX Office regularly reviews and updates the Policy and procedures. Incidents occurring before August 14, 2020, will be addressed using the policy that was in place at the time of the incident, but the procedures used will be those in place at the time of the Formal Complaint for Process A. The University reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online.

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

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

A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the University reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The University will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

The Policy is effective November 20, 2025.

**RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF POLICY ON TITLE IX POLICY PROHIBITING
SEX DISCRIMINATION, SEXUAL MISCONDUCT RELATIONSHIP VIOLENCE AND GRIEVANCE
PROCEDURES (Hereinafter the “Resolution Process”)**

1. Overview

The University of San Diego will act on any Notice, Complaint, Formal Complaint or Knowledge of a potential violation of the Title IX Policy Prohibiting Sex Discrimination, Sexual Misconduct and Relationship Violence and Grievance Procedures (“the Policy”) that the Title IX Coordinator/Title IX Office or any other Official with Authority receives. The University uses two sets of procedures, known as Process A (Formal Grievance) and Process B (Resolution Process). Process A is compliant with the federal Title IX regulations. It involves an investigation and live hearing, including cross-examination. It also includes an Informal Resolution option.

Process A is applicable to all Formal Complaints of Discrimination, Harassment, and Retaliation that occur within the University’s Education Program or Activity.

All other behaviors occurring off campus and/or outside of the University’s Education Program or Activity that are covered by the Policy are subject to resolution under Process B, which is less formal than Process A. Occasionally, a Formal Complaint will include conduct that falls within both Processes A and B. When that occurs, Process A will typically be used to address all allegations. The choice between applying Process A or B is solely at the discretion of the Title IX Coordinator/Office.

This Resolution Process, consisting of Informal Resolution, Hearing Resolution or the Administrative Resolution Process, is the University’s chosen approach to addressing complaints of Sex Discrimination whereby both Complainants and Respondents are students. Additionally, this policy applies to all complaints of Sexual Misconduct and Relationship Violence whereby a student is a party. Such complaints may involve actual or perceived discrimination, harassment, or retaliation, involving students, staff, administrators, faculty members, or third parties. Unionized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

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

2. Notice/Complaint

Upon receipt of Notice, a Complaint, a Formal Complaint, or Knowledge of an alleged Policy violation, the Title IX Coordinator/Title IX Office will initiate a prompt initial evaluation to determine the University’s next steps. The Title IX Coordinator/Title IX Office will contact the Complainant/source of the Notice to offer a written explanation of rights and options.

The Title IX Coordinator/Title IX Office will also provide supportive measures, information regarding resolution options, and determine how they wish to proceed.

3. Collateral Misconduct

Collateral misconduct is defined to include potential violations of other University policies not incorporated into this Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all charges. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator/Title IX Office may consult with University officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Title IX Coordinator/Title IX Office. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

4. Initial Evaluation

The Title IX Coordinator/Title IX Office conducts an initial evaluation typically within ten (10) business days of receiving Notice/Complaint/Formal Complaint/Knowledge of alleged misconduct.¹² The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
 - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether the University has jurisdiction over the reported conduct, as defined in the Policy.
 - If the conduct is not within the University's jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate University office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the Resolution Process, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below.

¹² If circumstances require, the President or Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Title IX Coordinator or the Title IX Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the Resolution Process, including a supportive and remedial response, an Informal Resolution option, or the Resolution Process described below, if a Complaint is made.

Helping a Complainant to Understand Options

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

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

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

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

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

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

Title IX Coordinator/Title IX Office Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator/Title IX Office, will offer supportive measures and determine whether to initiate a Complaint themselves. The Title IX Coordinator/Title IX Office has ultimate discretion as to whether a Complaint is initiated. To make this determination, the Title IX Coordinator/Title IX Office will determine, based on the facts available at the time, whether failing to initiate a Complaint would either: 1) create a serious and imminent threat to someone's safety; or 2) prohibit the University from ensuring equal access to an individual. The Title IX Coordinator/Title IX Office will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination would occur if a Complaint is not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is a University employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether the University could end the alleged discrimination and prevent its recurrence without initiating its Resolution Process.

If deemed necessary, the Title IX Coordinator/Title IX Office may consult with appropriate University employees and ensure a safety and risk assessment is completed to aid the determination whether to initiate a Complaint.

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

5. Dismissal

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

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

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

Upon any dismissal, the University will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has

been made aware of the allegations, the University will also notify the Respondent of the dismissal.

This dismissal decision is appealable by any party.

6. Appeal of Dismissal

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within five (5) business days of the notification of the dismissal.

The Title IX Coordinator/Title IX Office will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator/Title IX Office must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the University will:

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

The grounds for dismissal appeals are limited to:

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

Upon receipt of a dismissal appeal in writing from one or more Parties, the Title IX Coordinator/Title IX Office will share the petition with the other party and provide five (5) business days for other Parties to respond to the request. The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. This appeal will be provided in writing to the other Parties, and the Title IX Coordinator/Title IX Office, who will be invited to respond in writing. At the conclusion of the response period, the Title IX Coordinator/Title IX Office will forward the appeal, as well as any response provided by the other Parties to the Dismissal Appeal Officer for consideration.

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

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

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has ten (10) business days to review and decide on the appeal, though extensions can be granted at the discretion of the Title IX Coordinator/Title IX Office, and the Parties will be notified of any extension.

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

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

7. Emergency Removal/Interim Suspension of an Accused Party

The University may remove on an emergency basis a student or employee if accused of Sex Discrimination or Sexual Misconduct Relationship Violence upon receipt of Notice/Knowledge, a Complaint, or at any time during the Resolution Process. Prior to an emergency removal, the University will conduct an individualized risk assessment and may remove the student or employee if that assessment determines that an imminent and serious threat to the health or safety of themselves, a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action.

The Assistant Vice President for Student Affairs/Dean of Students (for students) or Assistant Vice President/Chief Human Resources Officer (for employees) may suspend a student or employee from the University and/or from the residence halls on an interim basis prior to the hearing.

An interim suspension may be imposed to ensure the safety or well-being of any member of the University community; to preserve or protect University of San Diego property; to ensure the student's or employee's own physical or emotional safety and well-being; or if the student or employee poses an ongoing threat to, disruption to, or interference with the normal operations of the University.

During the interim suspension, the Assistant Vice President for Student Affairs/Dean of Students or Assistant Vice President/Chief Human Resources Officer, in their discretion, may restrict or deny access of the student or employee to the residence halls and/or to the campus (including classes) and/or any or all other University activities or privileges for which the student or employee might otherwise be eligible.

A student who is placed on interim suspension shall continue to be subject to these student conduct procedures. An employee who is placed on interim suspension shall continue to be subject to all University Policies and employment policies.

The student or employee will be notified in writing of this action and the reasons for the suspension. The notice will also include instructions regarding the process in which they may show cause why their continued presence on campus does not constitute a threat.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected student or employee will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator/Title IX Office will meet with the student or employee (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified. When this meeting is not requested within two (2) business days, objections to the emergency removal or interim suspension will be deemed waived.

The student or employee may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator/Title IX Office for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator/Title IX Office will communicate the final decision in writing, typically within three (3) business days of the review meeting.

The student or employee placed on an emergency removal or interim suspension may request to be present on campus for official business/meetings/hearings with prior approval from the Assistant Vice President for Student Affairs/Dean of Students or Assistant Vice President/Chief Human Resources Officer.

7. Placing an Employee on Leave

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

8. Counter-Complaints

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

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

9. Advisors in the Resolution Process

A. Who Can Serve as an Advisor

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select any person other than a witness to serve as their Advisor as long as the Advisor is eligible and available.¹³

The Title IX Coordinator/Title IX Office will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from the University, the University will have trained the Advisor on the University's Resolution Process.

The University aims to provide equitable Advisors, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University will provide an attorney to advise that party.

A party may change Advisors during the process and is not obligated to use the same Advisor throughout. However, a party may not change Advisors during the live-hearing. Parties are expected to provide the Office of Ethical Development and Restorative Practices or Title IX Coordinator/Title IX Office with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated.

The University may permit Parties to have an Advisor and a support person, upon special request to the Title IX Coordinator/Title IX Office. The decision to grant this request is at

¹³ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot be a witness, have institutionally conflicting roles, such as being an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

the Title IX Coordinator/Title IX Office's sole discretion and will be granted equitably to all Parties. The Complainant and/or Respondent may select the support person of their choice. The support person shall not speak or participate directly in any proceeding and must comply with any other restrictions placed by the institution on the extent to which they may participate in the proceeding, as long as such restrictions apply equally to both parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the University will agree to copy both the party and their Advisor on all communications.

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

B. Advisor's Role in the Resolution Process

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

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

For Process A, the Title IX Regulations require a form of indirect questioning during the hearing, which must be conducted by the Parties' Advisors. The Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the Parties and witnesses.

C. Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the University shares with them, Section 15 of the Policy addressing Confidentiality. Advisors may not disclose any University work product or evidence the University obtained solely through the Resolution Process for any purpose not explicitly authorized by University.

Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The University may decline to share materials with any Advisor who has not executed the NDA. The University may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

D. Advisor Expectations

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

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

The University expects an Advisor to be physically present for in-person hearings. Similarly, if a hearing is held in a virtual space (Zoom, etc.), an Advisor is expected to participate in that context.

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

E. Advisor Policy Violations

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

10. Informal Resolution (*Applies to both Process A and Process B Cases*)

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator/Title IX Office at any time prior to a final determination, or the Title IX Coordinator/Title IX Office may offer the option to the Parties, in writing. The University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

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

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

USD offers four categories of Informal Resolution:

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

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

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

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

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

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

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

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

11. Resolution Process Pool

The Resolution Process relies on a pool of trained facilitators ("the Pool") to carry out the process.¹⁴

F. Pool Member Roles

¹⁴ External, trained third-party neutral professionals may also be used to serve in Pool roles.

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

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Hearing Facilitator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

G. Pool Member Appointment

The Title IX Coordinator/Title IX Office shall provide a prompt, fair, and impartial investigation and resolution conducted by trained officials, who receive annual training related to domestic violence, dating violence, sexual assault, and stalking; and how to conduct an investigation and hearing process. In consultation with senior administrators as necessary, the Title IX Coordinator/Title IX Office appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, the University can also designate permanent roles for individuals in the Pool.

12. Notice of Investigation and Allegations

Prior to an investigation, the Title IX Coordinator/Title IX Office will provide the Parties with a detailed written Notice of Investigation and Allegations (NOIA). Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence

- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator/Title IX Office, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share University work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- A statement informing the Parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations during the Resolution Process
- A link to the [Written Statement of Rights, Options and Resources](#) (University's VAWA Brochure)
- An instruction to preserve any evidence that is directly related to the allegations
- Parties who are members of a union are entitled to union representation throughout the process.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the Parties as indicated in official University records, or emailed to the Parties' University-issued email accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

13. Resolution Timeline

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

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

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

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

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

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

14. Ensuring Impartiality

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

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

The Administrative and Hearing Resolution Processes involve an objective evaluation of all available relevant and not otherwise impermissible evidence, including evidence that supports that the Respondent engaged in a Policy violation and evidence that supports that the Respondent did not engage in a Policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

15. Investigator Appointment

Once an investigation is initiated, the Title IX Coordinator/Title IX Office appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the University's community.

16. Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in the University's investigation and Resolution Process. Student witnesses are required to respond to requests for participation in investigations and highly encouraged to be cooperative and forthcoming. Witnesses from outside the University community cannot be required to participate but are encouraged to cooperate with University investigations and to share what they know about a Complaint.

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

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

17. Evidentiary Considerations

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

Relevant evidence is that which may aid in determining whether the alleged behavior constitutes a violation of Policy.

Impermissible evidence is defined as evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless 1) evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct, or 2) is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent or preclude a determination that sex discrimination or sexual misconduct relationship violence occurred.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern

allegation, this information is only considered at the sanction stage of the process and is not shared until then.

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

18. Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would also waive all rights to appeal for the Respondent on the finding. The Respondent is able to appeal sanctions, according to the typical process.

19. Investigation

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

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

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

- Determine the identity and contact information of the Complainant.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator/Title IX Office, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator/Title IX Office, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.

- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
- Interview the Complainant and the Respondent and conduct follow-up interviews with each, as necessary.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document in the investigation report which questions were asked, with a rationale for any changes or omissions.
- Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide the Parties with regular status updates throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
- Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
- Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and party and witness interviews, and provides all relevant evidence.
- Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
- The Investigator may share the investigation report with the Title IX Coordinator/Title IX Office and/or legal counsel for their review and feedback.

20. Hearing Resolution Process [*Applies to both Process A (Advisor Cross-Examination) and Process B (Board Questioning) Cases*]

A. Live Hearing Requirements

The following provisions apply to a live hearing:

- **Hearing Venue and Recordings.** The live hearing typically occurs in person. The Hearing Board and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator/Title IX Office's discretion.
 - While hearings are typically held in person, the Parties may make a request to the Title IX Coordinator/Title IX Office that the hearing occur in person or via video technology, but they must do so at least five (5) business days prior to the

- hearing. The Title IX Coordinator/Title IX Office retains discretion to determine whether the hearing will occur in person or via video technology.
- All hearings will be recorded and maintained according to the University Record Retention Policy.
 - No unauthorized recordings are permitted.
- **Hearing Participants.** Persons who may be present for a hearing include the Hearing Board, hearing facilitator, the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Hearing Board. Witnesses are present only during their portion of the testimony.
 - **Advisors.** The Parties may have the assistance of an Advisor of their choosing at the hearing or can request that the University appoint a trained Advisor for them. The University aims to provide equitable Advisors, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University would provide an attorney to advise that party.
 - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator/Title IX Office, with each party being provided the same opportunity.
 - Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a manner consistent with Policy.
 - All questions during the hearing will be asked by the Hearing Board (and Advisors in Process A only). Parties and Advisors may suggest questions to be posed by the Hearing Board during the pre-hearing meetings or by submission of written questions during the hearing. The method of submitting questions to the Hearing Board will be specified by the Hearing Board during the pre-hearing meetings.
 - **Impact Statements.** Each party may submit an impact and/or mitigation statement to the Title IX Coordinator/Title IX Office that the Hearing Board will review during any sanction determination.
 - Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator/Title IX Office will review the impact/mitigation statement to determine whether any immediate needs exist.
 - The Title IX Coordinator/Title IX Office will only provide the impact statements to the Hearing Board if the Hearing Board determines that the Policy has been violated. When the Title IX Coordinator/Title IX Office shares the impact statements with the Hearing Board, they will also be shared with the Parties.

- **Disability Accommodations and Other Assistance.** Complainants, Respondents, Witnesses, and Advisors should contact the Title IX Coordinator/Title IX Office at least five (5) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- **Conflicts of Interest or Bias.** The Hearing Board must not have a bias for or against complainants or respondents generally or the individual Complainant or Respondent in particular.
 - The Hearing Board must recuse themselves if such bias or conflict of interest exists.
 - If the Hearing Board believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator/Title IX Office about possible recusal or removal.
 - The Parties may raise challenges that the Hearing Board is biased or has a conflict of interest at the time of the Pre-Hearing meeting.
 - A Hearing Board member(s) will only be removed and replaced in situations of demonstrated bias or [conflicts of interest](#). Perceptions of bias or conflict are not sufficient to cause removal.
 - If a Hearing Board member(s) recuses themselves as the result of a conflict of interest or bias, or is removed, the Hearing Board Advisor will promptly appoint a new Hearing Board member who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker(s) and Parties.**
 - The Hearing Board will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least five (5) business days in advance of the hearing.
 - The Parties will be provided with electronic copies of all the materials provided to the Hearing Board as part of the hearing notice, unless those materials have already been provided.¹⁵

B. Hearing Notice

The Office of Ethical Development and Restorative Practices or the Title IX Coordinator/Title IX Office (if an employee is a Party) will send the Parties a Notice of Hearing with sufficient time for the Parties to prepare for the hearing, typically at least ten (10) days prior to the hearing. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The hearing notice includes:

¹⁵ Hard-copy materials may be provided upon request to the Title IX Coordinator/Title IX Office. The Final Investigation Report and relevant evidence may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- A description of any technology that will be used to facilitate the hearing.
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance. The identity of the Hearing Board member(s) will be provided at the pre-hearing meeting.

C. Witness Participation

Student witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. Employee witnesses are expected to participate in, and make themselves reasonably available for, the hearing. All witnesses will be directed to sign the University's Non-Disclosure Agreement (NDA) prior to participation in the hearing. Witnesses are not permitted to be accompanied by an advisor without express permission of the Title IX Coordinator/Title IX Office. At the discretion of the Decision-makers, a witness may join by phone if no other reasonable alternative is available.

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

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the University's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Resolution Processes that occur during months between contracts.

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

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

- All Parties and the Decision-maker(s) assent to the new witness's participation in the hearing without remanding the complaint back to the investigator, and

- The Decision-maker(s) deems the evidence presented by the new witness to be relevant, not impermissible, and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

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

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

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

D. Pre-Hearing Meetings

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

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

The Hearing Board Advisor will work with the Parties to finalize a witness list for the hearing, and the Hearing Board Advisor will notify any witnesses of the hearing's logistics. The Hearing Board Advisor, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Hearing Board Advisor will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

E. Hearing Procedures

1. Evidentiary Considerations

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

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

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

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

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

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

2. Collateral Misconduct

The Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, retaliation, and Other Prohibited Behavior

under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with the discrimination, harassment, retaliation, or Other Prohibited Behavior, even though those collateral allegations may not specifically fall within the Policy.

3. Joint Hearings

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

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

4. Introductions and Hearing Procedure Explanation

The Hearing Board will explain the hearing procedures and introduce the participants. The Hearing Board will answer any procedural questions prior to and as they arise throughout the hearing.

5. Testimony and Questioning

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Hearing Board. The Hearing Board will facilitate questioning of the Parties and witnesses first by the Hearing Board and then by the Parties through the Hearing Board or through their Advisors (Process A only).

All questions must be directed toward and asked through the Hearing Board and are subject to a relevance determination before they are asked. The Hearing Board will determine the method by which the Parties will submit their questions to the Hearing Board for their review and, if approved, to be posed. Questions that the Parties wish to have posed can be questions for that party themselves, another party, or witnesses.

The Hearing Board will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and have the final say on all questions and relevance determinations. The Hearing Board may consult with the Hearing Board Advisor, Title IX Office or legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of a Hearing Board member at the hearing, the Hearing Board may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator/Office, and/or preserve them for appeal. If bias is not an issue at the hearing, the Hearing Board should not permit irrelevant questions that probe for Investigator bias.

The Hearing Board will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Board will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive. The Hearing Board has final say on all questions and determinations of relevance and appropriateness. The Hearing Board may consult with legal counsel on any questions of admissibility.

The Hearing Board then poses the questions deemed relevant, not impermissible, and appropriate to the party and/or witness.

The Hearing Board will allow witnesses who have relevant and not impermissible information to appear at a portion of the hearing to respond to specific questions from the Hearing Board and the Parties, and the witnesses will then be excused.

6. Refusal to Submit to Questioning and Inferences

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

7. Hearing Recordings

The University records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Hearing Board, the Parties, their Advisors, Appeal Decision-makers, and other appropriate University officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator/Title IX Office. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

8. Deliberation and Determination

After closing statements from the Parties, the Hearing Board will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of proof. If a panel is used, a simple majority vote is required to determine the finding. Deliberations are not recorded.

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

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

This statement is typically submitted to the Title IX Coordinator/Title IX Office within five (5) business days from the conclusion of the hearing, unless the Title IX Coordinator/Title IX Office grants an extension. The Title IX Coordinator/Title IX Office will notify the Parties of any extension.

21. Administrative Resolution Processes

A. Employees

The Administrative Resolution Process for employees may be used for all Complaints of Sex Discrimination and Sexual Misconduct Relationship Violence whereby both Complainant(s) and Respondent(s) are employees and Complaints of Sex Discrimination and Sexual Misconduct Relationship Violence whereby a student(s) is a Complainant on the basis of discrimination, harassment, or retaliation (as defined in Policy). The Administrative Resolution Process for employees may also apply when the Informal Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process for employees consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Title IX Coordinator/Title IX Office, the assigned Decision-maker will be an individual from trained individuals either internal or external to the institution, or from the Administrative

Resolution Process Pool. Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Title IX Coordinator/Title IX Office, if they believe the grounds are met.

The Administrative Resolution Process for employees typically takes approximately ten (10) business days to complete, beginning with the Decision-maker receipt of the Final Investigation Report. The Parties will be updated regularly on the timing and any significant deviation from this typical timeline.

- The Title IX Coordinator/Title IX Office will provide the Decision-maker with the Final Investigation Report and investigation file.
- The Decision-maker will review the Final Investigative Report, all appendices, and the investigation file.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility.
 - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker(s) in making their findings.
- The Decision-maker will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any attendant sanctions.

B. Students

The Administrative Hearing Process for students may be used for all Complaints of Sex Discrimination and Complaints of Sexual Misconduct Relationship Violence whereby the Respondent is a student. Hearings are conducted by a trained Associate Dean of Students or their designee who shall be the administrative hearing officer. The Administrative Hearing Process for students consists of a hand-off of the investigation report and all relevant evidence to the administrative hearing officer, whose responsibilities include:

1. Determining the allegations.
2. Reviewing all information available to the administrative hearing officer including meeting with Respondent and others as applicable.
3. Determining whether the Respondent has violated the Policy using the preponderance of the evidence standard.
4. Determining appropriate sanctions if applicable.
5. Creating an opportunity for student reflection and education.
6. Documenting the decision and any sanctions.

The Administrative Hearing process for students typically takes approximately thirty (30) business days to complete, beginning with the Associate Dean of Students receipt of the Final Investigation Report.

Both employee and student Administrative Processes include the following:

- **Impact Statements.** Prior to a determination, the Title IX Coordinator/Title IX Office will also provide the Parties an opportunity to submit a written impact and/or mitigation statement. The Title IX Coordinator/Title IX Office will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Title IX Coordinator/Title IX Office and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for reopening a Resolution Process at any time, and/or referring that information to another process for resolution.

22. Sanctions

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

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

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

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

H. Student Sanctions

The following are the common sanctions that may be imposed upon students individually or in combination:

- *Warning:* Written or oral notification that certain conduct or actions are in violation of University policies, rules, or procedures and that continuation of such conduct or actions may result in further disciplinary action

- *Educational Sanctions*: A requirement to conduct research, complete a reading and response paper, prepare and present a program, attend an educational program, seek counseling or engage in other educational activities related to the violation.
- *Fines*: Payment of a specific amount of money as determined by the circumstances of a particular case.
- *Restitution*: Reimbursement for damage to, or misappropriation of property or cost of University resources. This may take the form of monetary or material replacement not in excess of the loss incurred.
- *Restorative Practice*: An agreement to participate in a university restorative justice process (e.g. conferences, impact circle, apology letter, leadership coaching, and/or re-entry circle).
- *Loss of Privileges*: Limitation on University-related activities or services for a specific period of time, consistent with the offense committed, including but not limited to:
 1. eligibility to serve as an officer or member of any University organization, to participate in intercollegiate competition or to receive any award from the University;
 2. housing probation;
 3. removal from housing;
 4. loss of ability to live off campus
 5. restriction from using specific facilities and services;
 6. denial of on-campus use of an automobile;
 7. hold on enrollment;
 8. hold on forwarding personal records to external institutions or individuals until satisfactory completion of disciplinary sanctions.
- *Parental or Guardian Notification*: Parents or guardians may be notified of a violation of the Code and the assigned sanction, if the student is under 21 years of age.
- *University Probation*: A designated period of time that allows for developmental monitoring and the probability of more severe and significant sanctions, including suspension or expulsion, if the student is found in violation of any institutional policies during the probationary period.
- *Non-Academic Suspension*: A designated period of time during which a student may attend only classes and other academic activities. Academic activities will be defined by the Assistant Vice President for Student Affairs/Dean of Students or their designee.
- *Suspension*: Separation of the student from the University community for a designated period of time, which may include specific requirements that must be fulfilled prior to reinstatement within the University community.
- *Expulsion*: Permanent separation of the student from the University.
- *Other Actions*: In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate.

I. Employee Sanctions/Responsive/Corrective Actions

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

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

23. Notice of Outcome

Within three (3) business days of the conclusion of the Hearing or Administrative Resolution Process, the Hearing Advisor provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, any applicable sanctions that the University is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker(s), supporting the findings to the extent the University is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to take to request an appeal, and when the determination is considered final if neither party appeals.

The Hearing Advisor will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official University records, or emailed to the Parties'

University-issued and a designated email account if needed. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

24. Withdrawal or Resignation Before Complaint Resolution

J. Students

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

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

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

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

K. Employees

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

When an employee resigns and the Complaint is dismissed, the employee may not return to the University. Human resources, the registrar, and admissions will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the University. The records retained by the Title IX Coordinator/Title IX Office will reflect that status.

25. Appeal of the Determination

OEDRP will designate an Appeal Board chosen from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-makers will have been previously involved in the Hearing or Administrative Resolution Process for the Complaint, including in any supportive measure or dismissal appeal that may have been heard earlier in the process.

L. Appeal Grounds

[Appeals are limited to the following grounds:](#)

- 1) A procedural irregularity that would change the outcome.
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made.
- 3) To determine whether the sanction(s) imposed are substantially disproportionate to the severity of the violation, outside the range of sanctions designated for this offense, and/or the cumulative conduct record of the Respondent.
- 4) The Title IX Coordinator/Title IX Office, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome.
- 5) The final determination by the Decision-makers is substantially contrary to the weight of the evidence in the record.

M. Request for Appeal

Any party may submit a written request for appeal ("Request for Appeal") to the Assistant Vice President for Student Affairs/Dean of Students within five (5) business days of the delivery of the Notice of Outcome. An appeal should identify which of the five (5) grounds are being used as justification for the review.

The Request for Appeal will be reviewed by the Appeal Board Advisor for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Board Advisor and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Board Advisor will notify all Parties and their Advisors, and the Title IX Coordinator/Title IX Office.

The Appeal Board Advisor will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Board who will promptly render a decision. The Appeal process may take approximately fifteen (15) business days from the time the appeal was received by the Assistant Vice President of Student Affairs/Dean of Students.

N. Appeal Determination Process

Appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeals Panel will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard.

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

O. Appeal Outcome

An appeal may be granted or denied only on the grounds identified by the Appealing Party. Appeals Boards shall not consider an outcome that were not expressly identified in the appeal.

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

Written notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official institutional records, or emailed to the Parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals by that Party are not permitted. When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

P. Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a "show cause" meeting on the justification for doing so must be permitted within two (2) business days of implementation.

26. Long-Term Remedies/Other Actions

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

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

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

- Implementation of adjustments to academic deadlines, course schedules, etc.

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

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

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

27. Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the Hearing Board, Administrative Decision-maker, Appeal Board, or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

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

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

28. Recordkeeping

For a period of at least seven (7) years following graduation from the University or last date of attendance, or seven (7) years after the last date of employment, the University will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's education program or activity
- 4) Any appeal and the result therefrom

- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to provide training to the Title IX Coordinator/Title IX Office, Investigators, Decision-makers, Appeal Board, Informal Resolution Facilitator, and any person who is responsible for implementing the University's Resolution Process, or who has the authority to modify or terminate supportive measures. University will make these training materials available for review upon request.
- 7) All materials used to train all employees consistent with the requirements in the Title IX Regulations.

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

29. Accommodations and Support During the Resolution Process

Disability Accommodations

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

Anyone needing such accommodations or support should contact the Title IX Coordinator/Title IX Office, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation. Students should be registered with the Disability and Learning Difference Resource Center (DLDR) and employees should have an accommodation on file with Human Resources.

Other Support

The University will also address reasonable requests for support for the Parties, Advisors, and witnesses, including:

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

BASED ON THE ATIXA 2025 ONE POLICY, TWO PROCEDURE (1P2P) MODEL.
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(Revised November 20, 2025)

APPENDIX A: DEFINITIONS

The following definitions apply to the Title IX Policy Prohibiting Sex Discrimination, Sexual Misconduct Relationship Violence and Grievance Procedures:

- **Advisor.** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- **Appeal Board.** The panel who accepts or rejects a submitted appeal request, determines whether any of the grounds for appeal are met, and directs responsive action(s) accordingly.
- **Appeal Board Advisor.** The Assistant Vice President/Dean of Students or their designee serves as the Appeal Board's Advisor and is present during all Appeal Board hearings and deliberations.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in the University's education program or activity at the time of the alleged discrimination, harassment or retaliation.
- **Complaint.** An oral or written request to the University that can objectively be understood as a request for the University to investigate and make a determination about the alleged Policy violation(s). When filing with the Title IX Office, all complaints shall be deemed *Formal Complaints (see definition below)*, indicating submission in written form (only).
- **Confidential Employee.**
 - An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, or retaliation. If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about discrimination, harassment, or retaliation in connection with providing those services; or
 - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about

discrimination, harassment, or retaliation. The employee's confidential status only applies with respect to information received while conducting the study.

- **Critical Incident Response Team.** The Title IX Coordinator/Title IX Office, Department of Public Safety, and Dean of Students Office and any member of the Resolution Process Pool.
- **Day.** A business day when the University is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where the University exercises substantial control over the context in which the discrimination, harassment, and/or retaliation occurs and also includes any building owned or controlled by a student organization that the University officially recognizes.
- **Employee.** A person employed by the University either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Finding.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- **Formal Complaint.** A Formal Complaint is an allegation(s) that must constitute sexual harassment as defined by Federal Regulations for Title IX Sexual Harassment. Alleged incident(s) must have occurred at a USD education program or activity. Alleged incidents(s) must have occurred against a person in the United States. Must be filed by a person with actual knowledge of the alleged sexual harassment. Must be filed with the Title IX Office.
- **Hearing Board.** The panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Hearing Board Advisor.** The Associate Dean of Students or their designee serves as the Board's advisor and is present during all Board hearings and deliberations.
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator/Title IX Office that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator's summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.

- **Investigator.** The person(s) authorized by University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When the University receives Notice of conduct that reasonably may constitute harassment, discrimination, or retaliation in its Education Program or Activity.
- **Mandated Reporter.** A University employee who is obligated by Policy to share Knowledge, Notice, and/or reports of discrimination, harassment, and/or retaliation with the Title IX Coordinator/Title IX Office.^{16,17}
- **Notice.** When an employee, student, or third party informs the Title IX Coordinator/Title IX Office of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- **Office of Ethical Development and Restorative Practices (OEDRP).** The Department responsible for managing the Hearing Board.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristics.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or University Policy.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University's Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, Hearing Resolution Process and/or Administrative Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy.

¹⁶ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

¹⁷ The Title IX Coordinator/Title IX Office is designated to receive information from Mandated Reporters may vary depending upon the type of alleged discrimination, harassment, or retaliation (e.g., on the basis of sex, on the basis of race, on the basis of disability).

- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** Any person who has gained admission.
- **Title IX Coordinator.** The person with primary responsibility for overseeing and enforcing the Title IX Policy Prohibiting Sex Discrimination, Sexual Misconduct Relationship Violence and Grievance Procedures. At least one official designated by the University to ensure ultimate oversight of compliance with Title IX and the University's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee from the Title IX Office.

APPENDIX B: PREGNANCY AND RELATED CONDITIONS AND PARENTING STUDENT POLICY

BASED ON THE ATIXA PREGNANCY AND RELATED CONDITIONS MODEL POLICY.

1. Non-Discrimination Statement

University of San Diego (hereinafter the “University”) does not discriminate in its education program or activity against any applicant for admission, student, applicant for employment, or employee on the basis of current, potential, or past pregnancy or related conditions as mandated by Title IX of the Education Amendments of 1972 (Title IX). The University prohibits members of the University community from applying any rule or taking any action which treats an applicant for admission, student, applicant for employment, or employee differently on the basis of current, potential, or past parental, family, or marital status. This policy and its pregnancy-related protections apply to all pregnant persons.

2. Definitions

- ***Familial Status.*** The configuration of one’s family or one’s role in a family.
- ***Marital Status.*** The state of being married or unmarried.
- ***Parental Status.*** The status of a person who, with respect to another person who is under the age of 18,¹⁸ is a biological, adoptive, foster, or stepparent; a legal custodian or guardian; in loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person.
- ***Pregnancy and Related Conditions.*** The full spectrum of processes and events connected with pregnancy, including pregnancy, childbirth, termination of pregnancy, or lactation; related medical conditions; and recovery therefrom.
- ***Reasonable Modifications.*** Individualized modifications to the University’s policies, practices, or procedures that does not fundamentally alter the University’s education program or activity.

3. Information Sharing Requirements

Any University employee who becomes aware of a student’s pregnancy or related condition is encouraged to provide the student with the Title IX Coordinator’s contact information and explain that the Coordinator can help take specific actions to prevent discrimination and ensure equal access to the University’s education program and activity.

¹⁸ Or a person who is 18 or older but who is incapable of self-care because of a mental or physical disability.

Upon notification of a student's pregnancy or related condition, the Title IX Coordinator will contact the student and inform the student of the University's obligations to prohibit sex discrimination on the basis of pregnancy or related conditions. Additionally, the Title IX Coordinator will inform the student of the University's ability to:

- Provide Reasonable Modifications
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence while minimizing any related penalties
- Allow continued participation in all programs and activities, including athletics
- Ensure lactation space availability

When a student is experiencing pregnancy-related conditions, the Title IX Coordinator will notify the student that the University will treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes. The Title IX Coordinator will also notify the student of the process to file a complaint for alleged discrimination, harassment, or retaliation, as applicable.

4. Reasonable Modifications for Students

Students who are pregnant or are experiencing related conditions are entitled to Reasonable Modifications to prevent sex discrimination and ensure equal access to the University's education program and activity. Any student seeking Reasonable Modifications must contact the Title IX Coordinator to discuss appropriate and available Reasonable Modifications based on their individual needs. Students are encouraged to request Reasonable Modifications as promptly as possible, although retroactive modifications may be available in some circumstances. Reasonable Modifications are voluntary, and a student can accept or decline the offered Reasonable Modifications. Not all Reasonable Modifications are appropriate for all contexts.

Reasonable Modifications may include:

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom
- Intermittent absences to attend medical appointments
- Access to online or homebound education
- Changes in schedule or course sequence
- Time extensions for coursework and rescheduling of tests and examinations
- Allowing a student to sit or stand, or carry or keep water nearby
- Counseling
- Changes in physical space or supplies (for example, access to a larger desk or a footrest)
- Elevator access

- A larger uniform or other required clothing or equipment
- Other changes to policies, practices, or procedures determined by the Title IX Coordinator

In situations such as clinical rotations, performances, labs, and group work, the institution will work with the student to devise an alternative path to completion, if possible. In progressive curricular and/or cohort-model programs, medically necessary leaves are sufficient cause to permit the student to shift course order, substitute similar courses, or join a subsequent cohort when returning from leave. Students are encouraged to work with their faculty members and the University's support systems to devise a plan for how to best address the conditions as pregnancy progresses, anticipate the need for leaves, minimize the academic impact of their absence, and get back on track as efficiently and comfortably as possible. The Title IX Coordinator will assist with plan development and implementation as needed.

Supporting documentation for Reasonable Modifications will only be required when it is necessary and reasonable under the circumstances to determine which Reasonable Modifications to offer to determine other specific actions to take to ensure equal access.

Information about pregnant students' requests for modifications will be shared with faculty and staff only to the extent necessary to provide the Reasonable Modification.

Students experiencing pregnancy-related conditions that manifest as a temporary disability under the Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act are eligible for reasonable accommodations just like any other student with a temporary disability. The Title IX Coordinator will consult with the Disability and Learning Differences Resource Center to ensure the student receives reasonable accommodations for their disability as required by law.

5. Certification to Participate

All students should be informed of health and safety risks related to participation in academic and co-curricular activities, regardless of pregnancy status. A student may not be required to provide health care provider or other certification that the student is physically able to participate in the program or activity, unless:

- 1) The certified level of physical ability or health is necessary for participation;
- 2) The institution requires such certification of all students participating; and
- 3) The information obtained is not used as a basis for pregnancy-related discrimination.

6. Lactation Space Access

The University provides students and employees with access to lactation spaces that are functional, appropriate, and safe. Such spaces are regularly cleaned, shielded from view, and free from the intrusion of others.

Lactation spaces are located in the following locations and follow open building hours:

Beyster Institute for Nursing, BINR 200

Knauss School of Business (KSB), Olin 329

Kroc Institute for Peace & Justice (KIPJ), 2nd floor restroom (interior room)

Mother Rosalie Hill Hall (SOLES), Room 120

Pardee Legal Research Center (LRC), Room 214

Student Life Pavilion, Room 420

Warren Hall 135

For more information on Lactation Spaces and their access, please visit <https://www.sandiego.edu/pregnant-and-parenting/lactation-spaces.php> to learn more.

7. Leaves of Absence

A. Students

Students are permitted to take a voluntary [leave of absence](#) for a reasonable time as deemed medically necessary by their health care provider because of pregnancy and/or the birth, adoption, or placement of a child. The leave term may be extended in the case of extenuating circumstances or medical necessity. While registered under that status, students who choose to take a leave of absence under this policy can elect to keep their health insurance coverage and continue residing in University housing, subject to the payment of applicable fees.

To the extent possible, the University will take reasonable steps to ensure that students who take a leave of absence or medical leave return to the same position of academic progress that they were in when they took leave, including access to the same or an equivalent course catalog that was in place when the leave began.

Continuation of students' scholarship, fellowship, or similar University -sponsored funding during the leave term will depend on the students' registration status and the policies of the funding program regarding registration status. Students will not be negatively impacted by or forfeit their future eligibility for their scholarship, fellowship, or similar University -supported funding by exercising their rights under this policy.

The Title IX Coordinator/Title IX Office can and will advocate for students with respect to financial aid agencies and external scholarship providers in the event that a leave of absence places eligibility into question.

In order to initiate a leave of absence, the student must contact the Title IX Coordinator at least 30 calendar days prior to the initiation of leave, or as soon as practicable. The Coordinator will assist the student in completing any necessary paperwork.

B. Employees

Information on employment leave can be found here:

<https://www.sandiego.edu/legal/policies/general/leaves/pregnancy.pdf>

If an employee, including a student-employee, is not eligible for leave under the aforementioned leave policy because they either (1) do not have enough leave time available under that policy, or (2) have not been employed long enough to qualify for leave under that policy, they are eligible to qualify for pregnancy or related condition leave under Title IX. Pregnancy and related conditions will be regarded as a justification for a leave of absence without pay for a reasonable period of time.

Employees who take leave under Title IX must be reinstated to the status held when leave began or a comparable position without a negative effect on any employment privilege or right.

University Housing

A pregnant student's University housing status will not be altered based on pregnancy status unless requested by the student.

Policy Dissemination and Training

A copy of this policy will be made available to faculty and employees in annually required training and posted on the University website. The University will educate all new students about this policy and the location of this policy as part of orientation. The Title IX Coordinator/Title IX Office will make educational materials available to all members of the University community to promote compliance with this policy and familiarity with its procedures.

APPENDIX C: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

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

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

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

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

The University may contact students' parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student prior to doing so.