

## **Grievance Procedure for Title IX (7a) & SB 493 (7b)**

### **7.0(a) Title IX Procedure:**

#### **7.1(a) Initial Assessment**

The first step in addressing any complaint is for the Title IX Administrator to conduct an initial assessment which will determine whether or not the allegation constitutes a potential violation under Title IX. If this policy is invoked, a Formal Investigation (7.2(a) below) shall be conducted to determine whether or not there has been a violation of policy.

The Administrator or Coordinator will provide for the adequate, reliable, and impartial investigation of all complaints.

- a) Reporting incidents or complaints directly to the Title IX Coordinator or Administrator is the most efficient way of beginning the grievance procedure.
  - i. Refer to Section 5.0 above for their contact information;
  - ii. Refer to Section 6.0 above for additional reporting options.
- b) There is no time limit for the reporting of an incident or complaint of sex discrimination or sexual violence, nor beginning the grievance procedure; however, all incidents of sex discrimination, including sexual violence, sexual misconduct, or retaliation, etc. should be reported as soon as practicable.
  - i. Timely reporting is essential for an efficient investigation and the prevention of any future discriminatory actions;
  - ii. Responsible employees are obligated to report any behavior they feel is a violation of this policy.

#### **7.2(a) Formal Investigation**

The formal investigation will be completed over the course of forty-five (45) calendar days from the date the complaint was filed; however, if circumstances permit, more time may be required and an extension warranted. Such a decision will be rendered by the Title IX Coordinator. The purpose of this investigation is to establish whether policy has been violated.

The individual responsible for the investigation shall promptly notify the person against whom the complaint is made (respondent) with a notification of investigation. If warranted, the Title IX Coordinator and/or Administrator shall notify the appropriate University officer or supervisor concerning the nature of the complaint and of the identity of the parties. In general, parties will be simultaneously notified of the allegations and any future allegations that arise.

In conducting the investigation, the assigned investigator may interview the complainant, the person against whom the complaint is made, and any other person(s) believed to have relevant factual knowledge. During the formal investigation, the complainant and respondent are never to be questioned in the same room or directly question each other (for cross-examination in the Title IX hearing, see 7.2.1(a) below). Additionally, the investigator will make a good faith effort to provide adequate notice prior to any interview so as to allow the party being interviewed to prepare for meaningful participation. All parties are afforded the right to fully participate in the investigation, provide evidence and identify witnesses as they deem necessary, and to be accompanied by an advisor (see 7.5(a) below). Any evidence available, but not disclosed during the investigation might not be considered at a subsequent hearing.

#### **Submission Limitations**

Pursuant to California law, the University includes the following submission limits for documentation. This covers all phases of the process (including investigation, adjudication, and appeals). Parties are encouraged to concentrate submissions on factual documents, documents that tend to prove or disprove one or more facts. There are no limits on the submission of relevant factual information. Parties may, but are not required to, submit additional documents that are in the nature of advocacy for their position (making arguments for or against the investigator and/or hearing officer relying on or weighting certain facts and testimony). These non-factual documentation are limited to five type-written, single-spaced pages, Times New Roman or Arial font, one-inch margins all around for each of the investigation, adjudication, and appeals process. Pages beyond this limitation shall not be considered. The Title IX Coordinator shall make the determination as to whether a document or page shall count against this limit by determining whether it is more factual than argument or more argument than factual.

Parties shall have an equitable opportunity to submit evidence and documentation. No party will obtain an extension that is not offered equitably to the other party.

The submission by one party in any timeline does not, in and of itself, extend the timeframe for submission for the other party. In other words if the parties have ten (10) calendar days for a submission as part of the process, and one party timely submits on the ninth day, that does not restart the clock for other parties to submit. They will be bound by the original ten (10) day timeline unless some other reason for extension exists.

In order to promote accuracy, for each conducted interview, the investigator shall produce a transcript within five (5) calendar days and provide to the party being interviewed for commentary. At all times, the investigator shall make a demonstrated and documented effort to maintain privacy; however, the University cannot guarantee complete confidentiality where it would conflict with the obligation to investigate meaningfully and, where warranted, take disciplinary action. Additionally, the University will act to ensure that all participants involved maintain privacy to the degree possible.

Lastly, the Title IX Coordinator and Administrator have the authority to investigate concerns without the request of a formal inquiry.

#### **7.2.1(a) Preliminary Report & Commentary Period**

Upon completion of the investigation, a Preliminary Report documenting the facts and conclusions will be compiled and issued to all parties as well as the Title IX Coordinator. This report will not contain a recommendation concerning whether policy was violated.

All parties will have ten (10) calendar days from the date of issuance to respond to the report with commentary, additional information, recommended corrections, and/or written questions for witnesses and/or parties when necessary and appropriate. All questions will be submitted to the appropriate party indirectly by way of the investigator. Additionally, the investigator reserves the right to modify or reject a question if deemed inappropriate at which point the submitting party will be notified. Further, under no circumstances will a party be compelled to answer questions that may lead to criminal prosecution.

#### **7.2.2(a) Final Report**

The investigator shall produce a Final Report within twenty (20) calendar days of the issuance of the Preliminary Report; however, additional time may be granted if warranted (determined by the Title IX Coordinator). This Final Report will document the facts, conclusions, and recommended sanctions (if any). For each alleged violation, the Final Report will be based on the preponderance of the available evidence, recommend a finding as to whether or not the investigator considers that the alleged conduct which necessitated the investigation did, or did not, occur.

The Final Report will be issued to all parties simultaneously as well as the Title IX Coordinator.

### **7.3(a) Final Determination/Hearing**

#### **7.3.1(a) Scheduling and Medium**

After receiving the Final Report, the Title IX Coordinator will – within fourteen (14) calendar days – schedule a live hearing with the complainant, respondent, advisors, and witnesses (if any/necessary). Said hearing will be conducted by the Title IX Hearing Officer using teleconference technology and will be recorded. Said recording will be made available to all parties no later than three (3) Calendar days after the hearing has concluded. All parties participating in the hearing must attend using both a camera and microphone unless granted a waiver for a disclosed disability that prevents use of such technology.

#### **7.3.2(a) Structure**

The Title IX Hearing Officer will structure and conduct the live hearing as they see fit so as to maintain the integrity and efficacy of the hearing so long as it does not conflict with any policies herein.

#### **7.3.3(a) Witnesses and Evidence**

All parties have an equitable opportunity to identify and present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the Title IX Hearing Officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

#### **7.3.4(a) Cross-Examination and Advisors**

During the hearing, the Title IX Hearing Officer must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Title IX Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the live hearing, the University shall provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, in order to conduct cross-examination on behalf of that party. Said advisor shall only be provided for the purposes of cross-examination during the live hearing.

Cross-examination at the live hearing must be conducted directly, orally, and in real-time by the party's advisor of choice and never by a party personally.

#### **7.3.5(a) Hearing Officer Limitations**

The Title IX Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

#### **7.3.6(a) Final Determination**

At the conclusion of the hearing, the Title IX Hearing Officer will issue a final determination as to whether policy was violated, and whether sanctions are appropriate. Said determination will also be provided in written format to all parties. The written determination will include the following:

- a) Identification of the allegations potentially constituting sexual harassment as defined in Section 4;
- b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c) Findings of fact supporting the determination;
- d) Conclusions regarding the application of the University's code of conduct policies to the facts; and
- e) A statement of, and rationale for, the results as to each allegation, including:
  - a. Any disciplinary sanctions the University imposes on the respondent; and
  - b. Whether remedies designed to restore or preserve equal access to the University's educational program or activity will be provided by the University to the complainant.
- f) The findings letter shall provide assurances, consistent with federal and California law, that the University will take steps to prevent recurrence of any harassment (if found) and to correct its discriminatory effects on the complainant and others, if appropriate.

### **7.3.7(a) Sanctions**

Violation(s) of this Policy may result in the imposition of one or more of the sanctions listed below. In certain limited situations, the Title IX Hearing Officer may impose a sanction but suspend or postpone its actual implementation. Failure to comply with the sanction(s) imposed by the Title IX Officer may result in further disciplinary action, including but not limited to, a registration hold, placement on, or extension of, University probation, suspension, or permanent dismissal. Sanctions are based on general principles of fair treatment. While attempting to be consistent in its disciplinary decisions, the University also seeks to be fair and sensitive to the facts and circumstances of each individual case. The following are the potential sanctions that may be imposed.

- a) **Warning:** Oral or written notice to the individual that the individual is violating or has violated the University's Title IX Policy and that continuation or repetition of misconduct may result in a more severe sanction.
- b) **University Probation:** A status which indicates that an individual's relationship with the University is tenuous. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the individual is found in violation of the University's Title IX Policy or other policy violations. Probation may also result in the loss of privileges, depending on the policies of various University departments and organizations.
- c) **Loss of Privileges:** Such loss may include, but is not limited to, financial assistance, eligibility to represent the University officially, or use of specific University facilities, or services.
- d) **Restitution:** Compensation for loss, damage or injury. Failure to pay such charges may result in additional sanctions (including, but not limited to, denial of re-enrollment or refusal to release official transcripts and records).
- e) **Educational Sanctions:** Reading/writing assignment, drug or alcohol assessment/treatment, seminar attendance, or other discretionary sanctions as deemed appropriate.
- f) **Suspension:** Temporary separation of the individual from the University for a definite period of time, after which the individual (if a student) is eligible to return without reapplying through the office of admissions. Conditions for readmission may be specified.
- g) **Expulsion:** The individual is permanently separated from the University with a notation of the reason(s) for the termination in their file. No refunds are made and the individual will suffer the

academic consequences of their actions.

- h) Termination: The individual's employment with the University is permanently severed with a notation of the reason(s) for the termination placed in their file. No opportunity for reemployment will be afforded.

#### **7.4(a) Appeals Process**

Any decision made by the Title IX Hearing Officer may be appealed by the respondent or by the complainant (if there is one) to the Title IX Appellate Officer within five (5) calendar days of the decision.

The basis for appeal shall only include the following:

- a) A claim of procedural irregularity that affected the outcome of the matter;
- b) A claim that the Title IX Coordinator, Administrator, and/or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or
- c) A claim that there is new evidence to present that is sufficient to alter the decision that was not reasonably available at the time of the determination.

An individual's notice of appeal does not suspend the imposition of sanctions or interim measures until the appeal is finally decided. If an appeal is upheld, the sanctions will be reversed.

If the Title IX Appellate Officer determines there is merit for an appeal, the facts of the incident will be reviewed with the party, typically in a personal meeting with the Title IX Appellate Officer. Appeals, if granted, can result in one of the following:

- a) The original determination/sanction will be upheld.
- b) The original determination/sanction will be modified.
- c) A new hearing will be scheduled.

#### **7.5(a) Right to an Advisor**

Both complainants and respondents have the right to be assisted by an advisor of their choice. The purpose of the advisor is to support an individual during the Grievance Procedure, including accompanying the individual to in-person interviews or other meetings during the process.

- a) With the sole exception of direct cross-examination of parties and witnesses as part of a hearing under the Title IX rules, for cases that fall under those provisions, the advisor may not appear in lieu of the complainant or the respondent or speak on their behalf in either in-person or written communications to the University. The advisor may not communicate directly with the investigator(s), the Title IX Coordinator, the Title IX Administrator, or any other University official involved in the Grievance Procedure and may not interrupt or otherwise delay the Grievance Procedure, except during the course of cross-examination, where applicable, and to raise reasonable objections during the hearing process on behalf of their party.
- b) Advisors may have access to information concerning a case only when accompanying a party (for in-person access to information) or when a party has given permission for the advisor to be copied on emails or other correspondence (for access to written communications). An advisor's access to such information is subject to the same limitations as those placed upon the parties and conditioned upon the advisor's agreement to maintain the confidentiality of any student educational records or other confidential information, as applicable under law.
- c) While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning. No party may act abusively or disrespectfully during the hearing toward any

other party or to witnesses, advisors, or decision-makers. All questions and statements must be conveyed in a neutral tone.

- d) Parties must provide the name of the person they have selected as their advisor to the either the Title IX Coordinator or Title IX Administrator. Advisors will be required to sign an Advisor Agreement acknowledging receipt and understanding of the requirements described herein. Failure to comply with these requirements, including violations of confidentiality or other forms of interference with the complaint resolution procedure by the advisor, may result in the disqualification of an advisor.
- e) The University will notify a party involved in the Grievance Procedure if another party involved has obtained an advisor, and if so, whether the other party's advisor is an attorney.

#### **7.6(a) Emergency Removal of Student Respondent**

The University may remove a student respondent from its education programs or activities on an emergency basis, only after:

- a) Undertaking an individualized safety and risk analysis; and
- b) Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
- c) Providing the respondent with notice and an opportunity to challenge the decision immediately following removal while respecting all rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act, as applicable.

#### **7.7(a) Placing Non-Student Employee on Administrative Leave**

The University may, if warranted, place a non-student employee respondent on administrative leave during the pendency of a grievance process under its existing procedures, without modifying any rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **7.8(a) Temporary Delay of Grievance Process**

The University may temporarily delay the Grievance Process or extend the time frames established above for good cause with written notice to the complainant and the respondent of the delay/extension and the reason(s) for the action. Good cause may include, but is not limited to, considerations such as: the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **7.9(a) Dismissal of Formal Complaints/Suspension of Grievance Procedure**

Formal Complaints *shall* be dismissed if:

- a) The conduct alleged in the Formal Complaint would not constitute sexual harassment even if proved;
- b) The conduct did not occur in the University's education program or activity;
- c) The conduct did not occur against a person in the United States;
- d) At the time of filing a Formal Complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.

Formal Complaints *may* be dismissed, if at any time during the investigation or hearing:

- e) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations therein; and/or
- f) The respondent is no longer enrolled or employed by the University; and/or
- g) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Should a Formal Complaint be dismissed, prompt written notice will be sent to all parties.



Further, if a Formal Complaint is dismissed under these policies (Title IX), the complaint may be reinstated under another provision of the University's code of conduct or other applicable resolution procedures, including Section 7(b) of this policy.

#### **7.10(a) Reservation of Flexibility**

The procedures set forth in this Policy reflect the University's desire to respond to complaints in good faith and in a manner that promotes fairness to all parties. The University recognizes that each case is unique and that circumstances may arise which require that it reserve some flexibility in responding to the particular circumstances of the matter. Where it is not possible or practical to follow these procedures, the University reserves the right to modify the procedures or to take other administrative action as appropriate under the circumstances, with notice to all parties and a reasonable, limited opportunity to provide input, as established by the Title IX Coordinator, on the modifications prior to a determination by the University.

### **Grievance Procedure for California State Law (SB 493)**

#### **7.0(b) California State Law Procedure:**

##### **7.1(b) Initial Assessment**

The first step in addressing any complaint is for the Title IX Administrator to conduct an initial assessment which will determine whether or not the allegation constitutes a potential violation under Title IX and/or California law. If this policy is invoked, a Formal Investigation (7.2(b) below) shall be conducted to determine whether or not there has been a violation of policy.

The Administrator or Coordinator will provide for the adequate, reliable, and impartial investigation of all complaints.

- c) Reporting incidents or complaints directly to the Title IX Coordinator or Administrator is the most efficient way of beginning the grievance procedure.
  - i. Refer to Section 5.0 above for their contact information;
  - ii. Refer to Section 6.0 above for additional reporting options.
- d) There is no time limit for the reporting of an incident or complaint of sexual discrimination or sexual violence, nor beginning the grievance procedure; however, all incidents of sex discrimination, including sexual violence, sexual misconduct, or retaliation, etc. should be reported as soon as practicable.
  - i. Timely reporting is essential for an efficient investigation and the prevention of any future discriminatory actions;
  - ii. Responsible employees are obligated to report any behavior they feel is in violation of this policy.

##### **7.2(b) Formal Investigation**

The formal investigation will be completed over the course of forty-five (45) calendar days from the date the complaint was filed; however, if circumstances permit, more time may be required and an extension warranted. Such a decision will be rendered by the Title IX Coordinator. The purpose of this investigation is to establish whether policy has been violated.

The individual responsible for the investigation shall promptly notify the person against whom the complaint is made (respondent) with a notification of investigation. If warranted, the Title IX Coordinator and/or Administrator shall notify the appropriate University officer or supervisor concerning the nature of the complaint and of the identity of the parties.

In conducting the investigation, the assigned investigator may interview the complainant, the person against whom the complaint is made, and any other person(s) believed to have relevant factual knowledge. During

the formal investigation, the complainant and respondent are never to be questioned in the same room or directly question each other. Additionally, the investigator will make a good faith effort to provide adequate notice prior to any interview so as to allow the party being interviewed to prepare for meaningful participation. All parties are afforded the right to fully participate in the investigation, provide evidence and identify witnesses as they deem necessary, and to be accompanied by an advisor (see 7.5(b) below). Any evidence available, but not disclosed during the investigation might not be considered at a subsequent hearing.

### **Submission Limitations**

Pursuant to California law, the University includes the following submission limits for documentation. This covers all phases of the process (including investigation, adjudication, and appeals). Parties are encouraged to concentrate submissions on factual documents, documents that tend to prove or disprove one or more facts. There are no limits on the submission of relevant factual information. Parties may, but are not required to, submit additional documents that are in the nature of advocacy for their position (making arguments for or against the investigator and/or hearing officer relying on or weighting certain facts and testimony). These non-factual documentation are limited to five type-written, single-spaced pages, Times New Roman or Arial font, one-inch margins all around for each of the investigation, adjudication, and appeals process. Pages beyond this limitation shall not be considered. The Title IX Coordinator shall make the determination as to whether a document or page shall count against this limit by determining whether it is more factual than argument or more argument than factual.

Parties shall have an equitable opportunity to submit evidence and documentation. No party will obtain an extension that is not offered equitably to the other party.

The submission by one party in any timeline does not, in and of itself, extend the timeframe for submission for the other party. In other words if the parties have ten (10) calendar days for a submission as part of the process, and one party timely submits on the ninth day, that does not restart the clock for other parties to submit. They will be bound by the original ten (10) day timeline unless some other reason for extension exists.

In order to promote accuracy, for each conducted interview, the investigator shall produce a transcript within five (5) calendar days and provide to the party being interviewed for commentary.

At all times, the investigator shall make a demonstrated and documented effort to maintain privacy; however, the University cannot guarantee complete confidentiality where it would conflict with the obligation to investigate meaningfully and, where warranted, take disciplinary action. Additionally, the University will act to ensure that all participants involved maintain privacy to the degree possible.

Lastly, the Title IX Coordinator and Administrator have the authority to investigate concerns without the request of a formal inquiry.

#### **7.2.1(b) Preliminary Report & Commentary Period**

Upon completion of the investigation, a Preliminary Report documenting the facts and conclusions will be compiled and issued to all parties as well as the Title IX Coordinator. This report will not contain a recommendation concerning whether policy was violated.

All parties will have ten (10) calendar days from the date of issuance to respond to the report with commentary, additional information, recommended corrections, and/or written cross-examination questions for witnesses and/or parties when necessary and appropriate.

#### **7.2.2(b) Final Report**



The investigator shall produce a Final Report within twenty (20) calendar days of the issuance of the Preliminary Report; however, additional time may be granted if warranted (decided by Title IX Coordinator). This Final Report will document the facts, conclusions, and recommended sanctions (if any). For each alleged violation, the Final Report will, based on the preponderance of the available evidence, recommend a finding as to whether or not the investigator considers that the alleged conduct which necessitated the investigation did, or did not, occur.

The Final Report will be issued to all parties simultaneously as well as the Title IX Coordinator.

### **7.3(b) Final Determination/Hearing**

#### **7.3.1(b) Scheduling and Medium**

After receiving the Final Report, the Title IX Coordinator will – within fourteen (14) calendar days – determine whether or not a hearing is necessary and, if necessary, schedule a live hearing with the complainant, respondent, advisors, and witnesses (if any/necessary). Factors for deciding whether to schedule a hearing include whether the parties elected to participate in the process and whether all parties could suggest questions to be asked of other parties in the investigation. Said hearing will be conducted by the Title IX Hearing Officer using teleconference technology and will be recorded. Said recording will be made available to all parties no later than three (3) Calendar days after the hearing has concluded. All parties participating in the hearing must attend using both a camera and microphone unless granted a waiver for a disclosed disability that prevents use of such technology.

#### **7.3.2(b) Structure**

The Title IX Hearing Officer will structure and conduct the live hearing as they see fit so as to maintain the integrity and efficacy of the hearing so long as it does not conflict with any policies herein.

#### **7.3.3(b) Witnesses and Evidence**

All parties have an equitable opportunity to identify and present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the Title IX Hearing Officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

#### **7.3.4(b) Cross-Examination and Advisors**

During the hearing, the Title IX Hearing Officer shall consider questions to parties that are in the nature of cross-examination that were submitted in writing in advance of the hearing. After each party and witness testifies, the first set of questions will be asked by the Title IX Hearing Officer. Once the Title IX Hearing Officer is satisfied that their questions have been answered (including follow-up questions), they will then turn to the submitted questions and will ask them to the party. At any point, the Title IX Hearing Officer may pause the cross examination process to ask a question, and the questions of the Title IX Hearing Officer shall be primary in nature over those submitted in writing by the parties.

Questions that are harassing in nature, irrelevant, repetitive, or otherwise violate this Policy or Procedure shall not be asked, but shall be marked in writing as such and that document shall remain a part of the record. The Title IX Hearing Officer shall conduct a brief analysis of each question prior to

asking it out loud. The Title IX Hearing Officer may partially or fully discard, rephrase, or modify any question. Either party may object to any question. After verbally stating that they have an objection, the Title IX Hearing Officer will ask them to share the nature of their objection. For standard or simple objections, an oral conversation, where both parties, through their advisors, can be heard on the objection, will suffice. For more complex objections, the Title IX Hearing Officer may request that the objection, and any argument on it, be submitted in writing for consideration. The Title IX Hearing Officer may choose to take a recess to complete this or may move on to another portion of the testimony and come back to the issue at a later time. The determination of the Title IX Hearing Officer to sustain or overrule the objection shall be final. The Title IX Hearing Officer is under no obligation to rule on or respond to any specific objection and may simply include the objection in the record.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the Title IX Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

At the discretion of the Title IX Hearing Officer, a party through their advisor, may submit follow up questions to a response. Such submissions shall be in writing only and shall not be stated out loud or otherwise shared by the advisor or party, but only by the Title IX Hearing Officer after they have reviewed the follow up question or questions under the requirements of this Procedure.

#### **7.3.5(b) Hearing Officer Limitations**

The Title IX Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

#### **7.3.6(b) Final Determination**

At the conclusion of the hearing, the Title IX Hearing Officer will issue a final determination as to whether policy was violated, and whether sanctions are appropriate. Said determination will also be provided in written format to all parties. The written determination will include the following:

- a) Identification of the allegations potentially constituting sexual harassment as defined in Section 4;
- b) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c) Findings of fact supporting the determination;
- d) Conclusions regarding the application of the University's code of conduct policies to the facts; and
- e) A statement of, and rationale for, the results as to each allegation, including:
  - a. Any disciplinary sanctions the University imposes on the respondent; and
  - b. Whether remedies designed to restore or preserve equal access to the University's educational program or activity will be provided by the University to the complainant.
- f) The findings letter shall provide assurances, consistent with federal and California law, that the University will take steps to prevent recurrence of any harassment (if found) and to correct its discriminatory effects on the complainant and others, if appropriate.

#### **7.3.7(b) Sanctions**

Violation(s) of this Policy may result in the imposition of one or more of the sanctions listed below. In

certain limited situations, the Title IX Hearing Officer may impose a sanction but suspend or postpone its actual implementation. Failure to comply with the sanction(s) imposed by the Title IX Officer may result in further disciplinary action, including but not limited to, a registration hold, placement on, or extension of, University probation, suspension, or permanent dismissal. Sanctions are based on general principles of fair treatment. While attempting to be consistent in its disciplinary decisions, the University also seeks to be fair and sensitive to the facts and circumstances of each individual case. The following are the potential sanctions that may be imposed.

- i) **Warning:** Oral or written notice to the individual that the individual is violating or has violated the University's Title IX Policy and that continuation or repetition of misconduct may result in a more severe sanction.
- j) **University Probation:** A status which indicates that an individual's relationship with the University is tenuous. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the individual is found in violation of the University's Title IX Policy or other policy violations. Probation may also result in the loss of privileges, depending on the policies of various University departments and organizations.
- k) **Loss of Privileges:** Such loss may include, but is not limited to, financial assistance, eligibility to represent the University officially, or use of specific University facilities, or services.
- l) **Restitution:** Compensation for loss, damage or injury. Failure to pay such charges may result in additional sanctions (including, but not limited to, denial of re-enrollment or refusal to release official transcripts and records).
- m) **Educational Sanctions:** Reading/writing assignment, drug or alcohol assessment/treatment, seminar attendance, or other discretionary sanctions as deemed appropriate.
- n) **Suspension:** Temporary separation of the individual from the University for a definite period of time, after which the individual (if a student) is eligible to return without reapplying through the office of admissions. Conditions for readmission may be specified.
- o) **Expulsion:** The individual is permanently separated from the University with a notation of the reason(s) for the termination in their file. No refunds are made and the individual will suffer the academic consequences of their actions.
- p) **Termination:** The individual's employment with the University is permanently severed with a notation of the reason(s) for the termination placed in their file. No opportunity for reemployment will be afforded.

#### **7.4(b) Appeals Process**

Any decision made by the Title IX Hearing Officer may be appealed by the respondent or by the complainant (if there is one) to the Title IX Appellate Officer within five (5) calendar days of the decision.

The basis for appeal shall only include the following:

- a) A claim of procedural irregularity that affected the outcome of the matter;
- b) A claim that the Title IX Coordinator, Administrator, and/or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or
- c) A claim that there is new evidence to present that is sufficient to alter the decision that was not reasonably available at the time of the determination.

An individual's notice of appeal does not suspend the imposition of sanctions or interim measures until the appeal is finally decided. If an appeal is upheld, the sanctions will be reversed.

If the Title IX Appellate Officer determines there is merit for an appeal, the facts of the incident will be reviewed with the party, typically in a personal meeting with the Title IX Appellate Officer. Appeals, if granted,

can result in one of the following:

- a) The original determination/sanction will be upheld.
- b) The original determination/sanction will be modified.
- c) A new investigation will be scheduled.

#### **7.5(b) Right to an Advisor**

Both complainants and respondents have the right to be assisted by an advisor of their choice. The purpose of the advisor is to support an individual during the Grievance Procedure, including accompanying the individual to in-person interviews or other meetings during the process.

- a) With the sole exception of direct cross examination of parties and witnesses as part of a hearing under the Title IX rules, for cases that fall under those provisions, the advisor may not appear in lieu of the complainant or the respondent or speak on their behalf in either in-person or written communications to the University. The advisor may not communicate directly with the investigator(s), the Title IX Coordinator, the Title IX Administrator, or any other University official involved in the Grievance Procedure and may not interrupt or otherwise delay the Grievance Procedure, except during the course of cross-examination, where applicable, and to raise reasonable objections during the hearing process on behalf of their party.
- b) Advisors may have access to information concerning a case only when accompanying a party (for in-person access to information) or when a party has given permission for the advisor to be copied on emails or other correspondence (for access to written communications). An advisor's access to such information is subject to the same limitations as those placed upon the parties and conditioned upon the advisor's agreement to maintain the confidentiality of any student educational records or other confidential information, as applicable under law.
- c) While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers. All questions and statements must be conveyed in a neutral tone.
- d) Parties must provide the name of the person they have selected as their advisor to the either the Title IX Coordinator or Title IX Administrator. Advisors will be required to sign an Advisor Agreement acknowledging receipt and understanding of the requirements described herein. Failure to comply with these requirements, including violations of confidentiality or other forms of interference with the complaint resolution procedure by the advisor, may result in the disqualification of an advisor.
- e) The University will notify a party involved in the Grievance Procedure if another party involved has obtained an advisor, and if so, whether the other party's advisor is an attorney.

#### **7.6(b) Emergency Removal of Student Respondent**

The University may remove a student respondent from its education programs or activities on an emergency basis, only after:

- d) Undertaking an individualized safety and risk analysis; and
- e) Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
- f) Providing the respondent with notice and an opportunity to challenge the decision immediately following removal while respecting all rights under the Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act, as applicable.

#### **7.7(b) Placing Non-Student Employee on Administrative Leave**

The University may, if warranted, place a non-student employee respondent on administrative leave

during the pendency of a grievance process under its existing procedures, without modifying any rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **7.8(b) Temporary Delay of Grievance Process**

The University may temporarily delay the Grievance Process or extend the time frames established above for good cause with written notice to the complainant and the respondent of the delay/extension and the reason(s) for the action. Good cause may include, but is not limited to, considerations such as: the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

#### **7.9(b) Dismissal of Formal Complaints/Suspension of Grievance Procedure**

Formal Complaints *shall* be dismissed if:

- a) The conduct alleged in the Formal Complaint would not constitute sexual harassment even if proved;
- b) The conduct did not occur in connection with any educational activity or other program of the University, or occurred outside of those educational programs or activities, whether they occurred on or off-campus, if based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

Formal Complaints *may* be dismissed, if at any time during the investigation or hearing:

- c) A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the Formal Complaint or any allegations therein; and/or
- d) The respondent is no longer enrolled or employed by the University; and/or
- e) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Should a Formal Complaint be dismissed, prompt written notice will be sent to all parties.

#### **7.10(b) Reservation of Flexibility**

The procedures set forth in this Policy reflect the University's desire to respond to complaints in good faith and in a manner that promotes fairness to all parties. The University recognizes that each case is unique and that circumstances may arise which require that it reserve some flexibility in responding to the particular circumstances of the matter. Where it is not possible or practical to follow these procedures, the University reserves the right to modify the procedures or to take other administrative action as appropriate under the circumstances, with notice to all parties and a reasonable, limited opportunity to provide input on the modifications prior to a determination by the University.