

TITLE IX AND SEXUAL MISCONDUCT POLICY FOR ALL STUDENTS AND UNIVERSITY PERSONNEL

Policy

MAINTAINED BY: Student Affairs Committee

APPROVED: December 22, 2021

POLICY STATEMENT

Under Title IX of the Education Amendments of 1972 (20 U.S.C. 1681) and its implementing regulations (34 C.F.R. 106) sexual harassment is a form of prohibited sex discrimination. Title IX provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.

Title IX requires colleges and universities to provide enhanced, improved, sustained and consistent response to sexual violence on campus and if a college or university is found to be out of compliance with federal regulation, each violation can be assessed a fine of up to \$35,000 if the Office of Civil Rights (OCR) determine that the institution did not adequately respond to reports of sexual violence.

The Campus Sexual Violence Elimination (SAVE) Act adds to what must be reported annually on the Clery report, expanding the definition of sexual violence to include domestic violence and stalking, mandating that colleges and universities provide prevention, bystander awareness training, clear policies and a clear process for reporting. California standard SB 967 was signed into law on September 28, 2014 changing the “Yes Means Yes” standard from requiring having to say “No” to sexual activity to requiring an affirmative consent and requiring colleges and universities to set this as the standard for conduct.

PURPOSE

Vanguard University (throughout this policy, Vanguard University will further be referred to as the “University”) is a Christian university affiliated with the Southern California Network of the Assemblies of God. The University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational environment. The University’s mission is to pursue knowledge, cultivate character, deepen faith, and equip each student for a Spirit empowered life of Christ-centered leadership and service. In accordance with its mission, the University is committed to provide a learning, living, and working environment that is free of all forms of prohibited discrimination and harassment, including all forms of sexual misconduct, including sexual harassment, sexual assault, dating or domestic violence, stalking, sexual exploitation, or retaliation.

The University does not unlawfully discriminate according to age, race, color, gender, and national and ethnic origin or any other protected class in its employment practices or in administering admissions and educational policies, scholarship and loan programs, and athletic and other school-administered programs, except to the extent that religious freedom exemptions apply, in compliance with this Policy and Title VII of the Civil Rights Act of 1964

Further, the University is committed to providing a learning and living environment that promotes safety, transparency, personal integrity, civility, mutual respect and freedom from discrimination. As a Christian university affiliated with the Southern California Network of the Assemblies of God, the University is exempted from certain provisions of the California Equity in Higher Education Act that are not consistent with its religious tenets and mission. These exemptions may apply to, but are not limited to, requirements in the university’s community standards, housing policies, admissions processes and employee hiring and general employment practices. The University retains all rights afforded under federal law and the laws of the State of California.

Through this policy, and its appendices, the Title IX Office will equitably address any concerns or complaints within its jurisdiction related to unlawful discrimination and sexual harassment to include retaliation. The University will also

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strive to support any person who has been impacted by discrimination, sexual harassment, or other sexual misconduct, whether or not the complainant elects to report to law enforcement and whether or not the alleged offense occurred within the jurisdiction of the University.

The Title IX Office provides training for faculty, staff, and students to help support and foster an environment free from all forms of prohibited discrimination. Through our training, policy, and procedures, the University will strive to deter discrimination and retaliation and ensure just outcomes when a complaint of sex discrimination is reported.

Violations of this Policy may result in the imposition of sanctions up to, and including, termination, dismissal, suspension, or expulsion, as determined by the appropriate officials at the University.

Retaliation against an individual for raising an allegation of sexual or gender-based harassment, or harassment based on status of a protected class, or for cooperating in an investigation of such a complaint, or for opposing discriminatory practices is prohibited. Submitting a complaint that is not in good faith or providing false or misleading information in any investigation of complaints is also prohibited.

Nothing in this Policy shall be construed to abridge academic freedom and inquiry or the University's educational mission.

REVIEW

The Board of Trustees maintains the right to revise this policy at any time. Any recommendation for changes and/or additions to this policy should be presented to the Vice President for Student Affairs for review and discussion with the University President.

APPROVAL

Upon review by the University President or his designee, final recommendation for changes and/or additions to this policy will be presented to the Board of Trustees for approval, via the Student Affairs Committee. All authority for adoption of this policy is set forth in the minutes of the Board of Trustees.

1. Glossary

- *Advisor* means a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator(s) alleging harassment or unlawful discrimination based upon an allegation of sexual misconduct in relation to a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.

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- *Confidential Resource* means an employee who is not a Responsible Employee or Official With Authority for Title IX purposes of notice of harassment, discrimination, and/or retaliation. These same resources, however, may have obligations under either federal or state law to report certain information outside of Title IX.
- *Day* means a business day when the University is in normal operation.
- *Directly Related Evidence* is evidence connected to the complaint but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- *Education program or activity* means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- *Final Determination:* A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding:* A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Grievance Process Pool* includes any Investigators, Hearing Officers, Appeal Officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Panel* refers to those who have decision-making and sanctioning authority within the University’s Formal Grievance process.
- *Investigator* means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Responsible Employee* means an employee formally attached to the Title IX office, i.e. the Title IX Team, excluding student workers, who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator(s). Responsible Employee further means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. All Vanguard University employees are considered responsible employees.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator(s) or other Official with Authority of the alleged occurrence of sexual misconduct to include harassing, discriminatory, and/or retaliatory conduct.

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- *Official with Authority (OWA)* means an employee of the University in a designated role within the Title IX Team or in a Senior Official University position. At Vanguard, this shall include the Title IX Team, the President, Provost, Deans of Schools, Director of Athletics, Vice Presidents, and Vice Provosts of the University.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- *Title IX Coordinator(s)* is at least one official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator(s), any deputy coordinators, and any member of the Grievance Process Pool.

2. Applicable Scope

The Title IX Sexual Harassment Policy shall address complaints of Sexual Harassment as defined by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972, and this process shall be limited by, among other things, conduct that occurs within the United States and conduct that occurs within the University's education program or activity (a concept further defined and discussed below) (hereinafter **Process A**, i.e. Title IX Sexual Harassment).

All students, faculty, staff, affiliates and others participating in University programs and activities in the United States are subject to this Process A. The Title IX regulations define "sexual harassment" to include three types of misconduct on the basis of sex which jeopardize the equal access to education that Title IX is designed to protect. These types of misconduct include: any instance of quid pro quo harassment by a University employee; any conduct on the basis of sex that in the view of a reasonable person is so severe and pervasive and objectively offensive that it effectively denies a person equal access to a University education program or activity; and any instance of sexual assault, dating violence, domestic violence, or stalking

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Complaints of other Sexual Misconduct or other Misconduct related to a Persons Status in a Protected Class, i.e. Civil Rights Violations, not falling under the narrowed definition of Sexual Harassment under Title IX, shall be addressed by the Title IX Office through **Process B, Sexual Misconduct and Civil Rights violations** (further described below).

Further, complaints of civil rights violations or other harassment or discrimination based on a person's status in a protected class shall be evaluated in accordance with this document and shall follow the procedures of Process B (further described below).

When a complaint of discrimination on the basis of sex is received by the Title IX Co-Coordinator or OWA, the Title IX Co-Coordinator shall make the determination as to whether the incident shall be resolved under 1) Process A, Title IX Sexual Harassment, or 2) dismissed from Process A and referred to Process B, Sexual Misconduct and/or a civil rights violation or 3) dismissed from Process A and forwarded to another office for other conduct violations in accordance with University policies and regulations.

When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students,¹ student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

3. Title IX Coordinator(s)

Angela Bennett serves as the Title IX Coordinator and oversees the University's policy related to Title IX. The Title IX Coordinator(s) have the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual misconduct including unlawful discrimination, harassment, and retaliation prohibited under this policy in regard to Process A, Title IX Sexual Harassment, and Process B, other Sexual Misconduct.

4. Independence and Conflict-of-Interest

The Title IX Coordinator(s) manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator(s) oversee all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator(s), contact the University Vice President for Student Affairs at OfficeVPSA@vanguard.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should also be raised with the Title IX Coordinator(s).

Reports of misconduct or discrimination committed by the Title IX Coordinator(s) should be reported to the University Vice President for Student Affairs at OfficeVPSA@vanguard.edu. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator(s).

¹ For the purpose of this policy, the University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the University.

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5. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Angela Bennett
 Title IX Coordinator and Clery Compliance Officer
 Office of Title IX – Smith Hall Building, 1st Floor
 55 Fair Drive, Costa Mesa, CA 92626
 (714) 662-5271 | VUTitleIX@vanguard.edu
<https://www.vanguard.edu/resources/title-ix>

Elizabeth Banks
 Student Services and Program Coordinator
 Counseling and Health Center, Office of Title IX – Smith Hall Building, 1st Floor
 55 Fair Drive, Costa Mesa, CA 92626
 (714) 662-5271 | VUTitleIX@vanguard.edu
<https://www.vanguard.edu/resources/title-ix>

Title IX Deputy Coordinators: Deputy Coordinators may fill any role within the grievance process and thus, may serve as Coordinator, Advisor, Investigator, Hearing Panel Chair or Member, or Appeals Panel Chair or Member.

Ken Bott, Sr. Director, Human Resources
 Title IX Deputy Coordinator of Staff and ADA/504 Coordinator– Smith Annex

Stephanie D’Auria, Associate Professor, Chair, Department of Sociology
 Title IX Deputy Coordinator of Faculty – Social Sciences Offices

Dellareese Cofield-Martinez, Director of Diversity and Inclusion
 Title IX Deputy Coordinator of Students – The Bridge, Huntington Hall

Jane Teixeira , Assistant Athletic Director of Compliance,
 Title IX Deputy Coordinator of Athletics – Athletics Administration Offices

Tom Weizoerick, Assistant Director of Campus Safety
 Title IX Deputy Coordinator – Laguna Hall, 1st Floor

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Grievance Process Pool: Members of the Grievance Process Pool and the Title IX Team named above, may serve as Investigators, Hearing Officers, Appeal Officers, and Advisors and may perform any or all of these roles (though not at the same time or with respect to the same case). See Grievance Process Pool below for more information.

The University has also classified only members of the Title IX Team, excluding Confidential Resources, as mandated reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation in regard to sexual misconduct. The section below on mandated reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

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>

California

Office for Civil Rights,
San Francisco Office
 U.S. Department of Education
 50 United Nations Plaza
 San Francisco, CA 94102
 Telephone: (415) 486-5555
 Facsimile: (415) 486-5570
 Email: OCR.SanFrancisco@ed.gov

Any person who believes an organization has violated HIPAA (Health Insurance Portability and Accountability Act) may file a complaint by contacting:

Office for Civil Rights

U.S. Department of Health and Human Services (HHS)
 200 Independence Avenue, SW
 Room 509F, HHH Building
 Washington, D.C. 20201
 Toll-free: (800) 368-1019
 TDD toll-free: (800) 537-7697
<https://www.hhs.gov/hipaa/filing-a-complaint/index.html>

The logo for Vanguard University, featuring a circular emblem with the text "VANGUARD UNIVERSITY" around the perimeter and a central shield-like design.

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Pacific Region - California
Michael Leoz, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
90 7th Street, Suite 4-100
San Francisco, CA 94103
Customer Response Center: (800) 368-1019
Fax: (202) 619-3818
TDD: (800) 537-7697
Email: ocrmail@hhs.gov

Messages to the Department of Justice, including the Attorney General, may be sent using the online form at <https://www.justice.gov/doj/webform/your-message-department-justice>. Your message will be forwarded to the responsible Department of Justice component for appropriate handling.

Correspondence to the Department of Justice, including the Attorney General, maybe sent to:
U.S. Department of Justice
950 Pennsylvania Avenue, NY
Washington, DC 20530-0001

The Department of Justice may be contacted by phone at the following:

- Department Comment Line: 202-353-1555
- Department of Justice Main Switchboard: 202-514-2000
- TTY/ASCII/TDD: 800-877-8339

For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC)
Contact: <https://www.eeoc.gov/contact-eeoc>

Los Angeles District Office
Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, CA 90012
(800) 669-4000
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

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6. Notice/Complaints of Sexual Misconduct and Unlawful Discrimination, Harassment, and/or Retaliation

Notice or complaints of unlawful discrimination, sexual harassment, and/or retaliation may be made using any of the following options:

- a) File a complaint with, or give verbal notice to, the Title IX Coordinator(s), a Title IX Deputy Coordinator, or other designated Official with Authority through the University website or VUTitleIX@vanguard.edu or by phone.

Such a report may be made at any time (including during non-business hours) by using the Title IX Office telephone number, 714-662-5271 or email VUTitleIX@vanguard.edu, or by mail to the office address, listed for the Title IX Coordinator(s) or any other official listed.

Report online, using the reporting form posted at www.vanguard.edu/title-ix-reporting. Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University respects a Complainant request to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

- b) Vanguard offers students, faculty and staff access to a confidential, anonymous reporting system that is not part of the university. Available 24/7/365, LIGHTHOUSE sends the report to VU while protecting the reporter's identity and allowing anonymous follow-up.

Lighthouse does not replace existing university processes for reporting concerns. It's an alternative for anyone who feels unsafe using the existing reporting channels. To make a report through LIGHTHOUSE, call (855) 636-0005 or online at <https://www.lighthouse-services.com/vanguard/IncidentLandingPageV2-vanguard.asp>.

7. Formal Complaints

A Formal Complaint under Process A means a document submitted or signed by the Complainant or signed by the Title IX Coordinator(s) alleging a Policy violation by a Respondent and requesting that the University investigate the allegation(s).

After the Initial Report, the Title IX Procedure for Sexual Harassment (Process A) will not move forward until a Formal Complaint is filed. A Formal Complaint can be filed in one of two ways:

- a) Complainant submits Formal Complaint.
 - i) A Complainant may complete and sign a Formal Complaint alleging Title IX Prohibited Conduct against a Respondent and requesting that the University investigate the allegation of Title IX Prohibited Conduct.
 - ii) A complaint may be filed directly with the Title IX Coordinator(s) in person, by mail, by electronic mail, or via the University Title IX website complaint form, and by using the contact information in the section immediately above. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature, or

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otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations.

iii) At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in one of the University's programs or activities.

b) Title IX Coordinator submits Formal Complaint. The Title IX Coordinator may complete and sign a Formal Complaint.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator(s) will contact the Complainant verify the status of the report.

A Complainant may request that the University not proceed with an Investigation or further resolution under this Procedure. A Complainant's wishes with respect to whether the University investigates will be respected unless the Title IX Coordinator determines that signing a Formal Complaint over the wishes of the Complainant is not clearly unreasonable in light of the known circumstances. In such a case, the Title IX Coordinator will inform the Complainant that due to various federal and state laws and/or in order to protect the safety of the campus community some circumstances require the University to move forward with an investigation, even if the Complainant requests otherwise.

8. Supportive Measures

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual misconduct, sexual harassment, or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and 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 or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator(s) promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator(s) works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. University will act to ensure as minimal academic or occupational impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to law enforcement
- Referral to the Employee Assistance Program

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- Referral to community-based service providers
- Referral for visa and immigration assistance
- Student financial aid counseling
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass or Be-On-the-Lookout (BOLO) order
- 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(s)

Violations of no contact orders will be referred to Campus Safety and the appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

The University can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator(s) and a recommendation shall be submitted to the Vice President for Student Affairs, using standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to appeal and request to meet with the Vice President for Student Affairs prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested *within three (3) business days of the action*, objections to the emergency removal will be deemed waived. The Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator(s) determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no secondary appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Vice President for Student Affairs for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Vice President for Student Affairs has sole discretion under this policy to implement or stay an emergency

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removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Vice President for Student Affairs, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics. For any action involving an employee who is a faculty member, the Vice President for Student Affairs shall consult with the Provost. For any staff employee, the Vice President for Student Affairs shall consult with Human Resources.

At the discretion of the Title IX Coordinator(s), alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

10. Promptness

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. The University will strive to resolve a complaint within 90 calendar days; however, in cases involving multiple complaints or other extenuating circumstances, such a timeframe may be impracticable. In such cases, the University shall document any delays beyond 90 days and provide notice to the Parties of the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Every effort is made by the University to preserve the privacy of reports.² The University will not share the identity of any student who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations,

² For the purpose of this policy, privacy and confidentiality 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 the assessment, investigation, and resolution of the report. 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 state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care (the University's Nurse Practitioner and Nursing Interns serving in the campus Health Center, mental health providers (licensed therapist and therapist trainees/associates serving in the campus Counseling Center), and ordained clergy (Campus Pastors serving in the Spiritual Formation Department). The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act.

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34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The University reserves the right to share the identity of the reporting individual, Complainant, or Respondent if they are non-student employees of the University, to necessary University officials, for the purpose of conducting any investigation, hearing, or grievance proceedings arising under these policies and procedures, and for employment screening procedures.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the FERPA.

In certain cases, the University may contact 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 first before doing so.

12. Jurisdiction of the University

This policy under Process A applies to the education program and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the University's community in order for its policies to apply.

This policy under Process A can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the University's educational program or which cause substantial interference with someone's work environment. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator(s) determines that the conduct affects a substantial University interest.

This policy, under Process B, applies to offenses not falling under Process A, and to the education program and activities of the University and the learning, working, and living environment of the University, which takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the University's community in order for its policies to apply.

This policy, under Process B, applies to offenses not falling under Process A, and the effects of off-campus misconduct that effectively deprive someone of access to the University's educational program, cause a hostile work environment, or which cause substantial interference with someone's work environment. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator(s) determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

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- a) 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;
- b) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator(s) will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

The Title IX Coordinator(s) may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator(s). 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 provide remedies may be more limited or impossible.

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

When notice/complaint is affected by a time delay, the University will, generally, apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

13. Sexual Harassment (Process A)

The Department of Education's Office for Civil Rights (ED-OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Sexual Assault is also prohibited and shall be addressed under this Process. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

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Other sexual misconduct or other discrimination on the basis of sex that does not fall within these specific definitions may still violate University policy and may be reported to the Title IX Office.

- a) The types of Sexual Harassment covered by this Title IX Procedure includes conduct on the basis of sex that satisfies one or more of the following categories:
 - i. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it denies a person equal educational access.
 1. Conduct is unwelcome if a person (1) did not request or invite it and (2) regarded the unrequested or uninvited conduct as undesirable or offensive. That a person welcomes some sexual contact does not necessarily mean that person welcomes other or all sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.
 2. Whether conduct is unwelcome is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making that determination: statements by any witnesses to the alleged incident; information about the relative credibility of the parties and witnesses; the detail and consistency of each person's account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have harassed others; information that the Complainant has been found to have made false allegations against others; information about the Complainant's reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.
 3. In addition, when a person is so impaired or incapacitated as to be incapable of requesting or inviting the conduct, conduct of a sexual nature is deemed unwelcome, provided that the Respondent knew or reasonably should have known of the person's impairment or incapacity. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness. A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment under this Policy
 4. **Gender-Based Harassment**
 - a. Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.
 - b. For example, persistent disparagement of a person based on a perceived lack of stereotypical masculinity or femininity or exclusion from an activity based on sexual orientation or gender identity also may violate this Policy.

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- i. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct, i.e. quid pro quo (hostile environment).
 1. A hostile environment can be created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.
 2. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment.
- b) Sexual Assault is the umbrella category including the offenses of sexual assault, stalking, and dating violence and domestic violence.

Sexual assault, includes:

- a) Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
 - i. A "sexual act" is specifically defined by federal regulations to include one or more of the following:
 - 1) Forcible Rape:
 - (a) Penetration,
 - (b) however slight,
 - (c) of the vagina or anus with any body part or object, or
 - (d) oral penetration by a sex organ of another person,
 - (e) without the consent of the Complainant.
 - 2) Forcible Sodomy:
 - (a) Oral or anal sexual intercourse with another person,
 - (b) forcibly,
 - (c) and/or against that person's will (non-consensually), or
 - (d) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - 3) Sexual Assault with an Object:
 - (a) The use of an object or instrument to penetrate,
 - (b) however slightly,
 - (c) the genital or anal opening of the body of another person,
 - (d) forcibly,
 - (e) and/or against that person's will (non-consensually),
 - (f) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
 - 4) Forcible Fondling:
 - (a) The touching of the private body parts of another person (buttocks, groin, breasts),
 - (b) for the purpose of sexual gratification,
 - (c) forcibly,

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(d) and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

b) Sex Offenses, Non-forcible:

- i. Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by California state law.
- ii. Statutory Rape:
 - 1) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor, For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age. (Penal Code section 261.5 – California Legislative Information)

c) Dating Violence:

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

d) Domestic Violence³:

- i. Violence
- ii. On the basis of sex
- iii. committed by a current or former spouse or intimate partner of the Complainant,
- iv. by a person with whom the Complainant shares a child in common, or
- v. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- vi. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
- vii. 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.

³ To categorize an incident as Domestic Violence, 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

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- e) Stalking:
 - i. engaging in a course of conduct⁴,
 - ii. on the basis of sex
 - iii. directed at a specific person, that would cause a reasonable person to fear for one's safety or the safety of others or suffer substantial emotional distress⁵.

In addition to the sexual misconduct violations above (sexual harassment, sexual assault, dating violence, domestic violence, and stalking), Process A will also cover additional sexual offenses addressed in the California Senate Bill 493 (CA SB 493). Please see Appendix G: California Senate Bill 493.

The University reserves the right to impose any level of sanction, ranging from a verbal counseling, reprimand, up to and including suspension or expulsion/termination, for any offense under this policy.

15. Force, Coercion, Consent, and Incapacitation⁶

As used in the offenses above, the following definitions and understandings apply:

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

Sexual activity that is forced is, by definition, non-consensual. Silence or the absence of resistance alone is not 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.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity.

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

⁴ 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.

⁵ Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

⁶ The definition of consent is positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely or voluntarily and have knowledge of the nature of the act or transaction involved.

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

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

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 incident occurred and any similar, previous patterns that may be evidenced.

16. Incapacitation

A person cannot consent if they are unable to understand what is happening, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

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

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. Other Sexual Misconduct (Process B)

In addition to the forms of sexual harassment described above, which are covered by Title IX, Sexual Harassment, the University additionally prohibits the following offenses as forms of discrimination on the basis of sex that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class. Such allegations may also be reported to the Title VII Officer or the Office of Human Resources and shall be addressed through Process B as delineated herein.

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- a) Invasion of sexual privacy.
- b) 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 infection
- c) Stealthing, is the practice of covertly removing or damaging a condom during sexual intercourse, when the other party has only consented to condom-protected sex. Such behavior may be regarded as sexual assault or rape and is a form of reproductive coercion.
- d) 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
- e) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- f) 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
- g) Knowingly soliciting a minor for sexual activity
- h) Creation, possession, or dissemination of child pornography
- i) Sexual advances, whether or not they involve physical touching
- j) Commenting about or inappropriately touching an individual's body
- k) Lewd or sexually suggestive comments, jokes, innuendoes, or gestures.

18. Other Civil Rights Offenses, not on the basis of sex

Other forms of discrimination as outlined below, shall be addressed through the Office of Human Resources, the Title VII office, or through the Student Code of Conduct. Such allegations shall be remedied through the University's Process B, as delineated herein. These forms of discrimination, include:

- a) Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- b) Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- c) Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- d) Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- e) Harassment that is severe, pervasive, or objectively offensive or intimidating, which alters the conditions of employment and results in an abusive or hostile working environment;
- f) Harassment based upon any of the protected Title VII characteristics that is severe, pervasive, or objectively offensive, which alters the conditions of employment and results in an abusive or hostile working environment;
- g) Any unlawful conduct which threatens or endangers the health or safety of any person;
- h) Bullying, defined as: repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally, that is not speech or conduct otherwise protected by the First Amendment.

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Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

19. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator(s) and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The University and any member of the University's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

20. Mandated Reporting

All members of the Title IX Team, Responsible Employees, or OWAs are expected to report actual or suspected unlawful discrimination or harassment on the basis of sex to appropriate officials immediately, though there are some limited exceptions.

Notice of allegations of Title IX Sexual Harassment, or other Sexual Misconduct, to the Title IX Coordinator(s), a Deputy Title IX Coordinator, or an official with authority to institute corrective measures on the University's behalf, triggers the University's response obligations under Title IX. At Vanguard, such officials include the Title IX Team, the President, Provost, Deans of Schools, Director of Athletics, Vice Presidents, and Vice Provosts of the University.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

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If a Complainant expects formal action in response to their allegations, reporting to any OWA can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator(s) (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the University for a Complainant or third-party (including parents/guardians when appropriate):

a) Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus therapists working in the Counseling Center
- On-campus health service providers employed in the University Health Center
- Employee Assistance Program (for employees)
- Campus Pastors employed by the Spiritual Formation Department
- Athletic Trainers, if they are licensed medical professionals or a working under the supervision of a health professional
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys retained by the Complainant

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger to self or others, or abuse of a minor, elder or individual with a disability, or when required to disclose by law or court order.

Campus counselors (for students) and the Employee Assistance Program (for employees) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

b) Anonymous Notice to OWAs

At the request of a Complainant, notice may be given by an OWA to the Title IX Coordinator(s) anonymously, without identification of the Complainant.

If a Complainant has requested that an OWA maintain the Complainant's anonymity, the OWA may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The OWA can consult with the Title IX Coordinator(s) on that assessment without revealing personally identifiable information.

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Anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared. An anonymous notice shall not amount to a formal complaint.

c) OWAs and Formal Notice/Complaints

All OWAs, with the exception of those who are designated as Confidential Resources, are mandated reporters for the purposes of Title IX and must promptly share with the Title IX Coordinator(s) all known details of a report made to them in the course of their employment.

Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of an OWA to report an incident of harassment or discrimination of which they become aware is a violation of the University policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when an OWA is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also an OWA unless the harasser does in fact report themselves.

Finally, it is important to clarify that an OWA who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

21. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator(s), who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator(s) has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator(s) may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator(s)' decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator(s) must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level

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of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

22. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

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

23. 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 policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

24. Amnesty for Complainants and Witnesses

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, student-Complainants or student-witnesses are hesitant to report to University officials or participate in grievance 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. Student-Respondents may hesitate to be forthcoming during the process for the same reasons.

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

To encourage reporting and participation in the process, the University maintains a policy of offering student-parties and student-witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

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Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

25. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act)

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) 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;
- c) VAWA-based crimes,⁷ which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

When the allegations described could be a crime under California law, Campus Security Authorities are also required by California law to notify the University’s Campus Safety Office.

Except in the event the person who is the subject of the potential criminal act is a minor, the name of this individual should not be released to the Campus Safety without the individual’s consent. All personally identifiable information is kept private, but statistical information must be shared with campus safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus safety, 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.

26. Preservation of Evidence

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders and are particularly time sensitive. The University will inform the Complainant of the importance of preserving evidence by taking the following actions:

- a) Seek forensic medical assistance at a hospital with a designated Sexual Assault Forensic Examiner, ideally within 120 hours of the incident (sooner is better).
- b) Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- c) Try not to urinate.

⁷ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

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- d) If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- e) If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
- f) Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator(s), the importance of taking these actions will be reiterated, if timely.

27. Overview of Procedure: Formal Complaint, Investigation, Informal Resolution, Hearing, and Appeal (Process A)

The University will act on any formal or informal notice/complaint of violation of this policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator(s)⁸ or any other OWA by applying these procedures.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If other policies are invoked, such as policies on protected class harassment or discrimination above, please see [Appendix E](#) for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator(s).

Unionized/other categorized 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.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks in coordination with the Vice President for Student Affairs, the Provost, and Human Resources as applicable.

28. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator(s) of an alleged violation of the Policy, the Title IX Coordinator(s) initiates a prompt initial assessment to determine the next steps the University needs to take.

The Title IX Coordinator(s) will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or

⁸ Anywhere this procedure indicates “Title IX Coordinator(s),” the University may substitute a trained designee.

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- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The University uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

29. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator(s)⁹ engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator(s) seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator(s) determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator(s) assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator(s) reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator(s) works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator(s) works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator(s) works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator(s) assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator(s) determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator(s) will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue based on the nature of the complaint.
 - If it does not, the Title IX Coordinator(s) determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which other policies may apply, and will refer the matter accordingly.

⁹ If circumstances require, the President or Title IX Coordinator(s) will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

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- Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit the University's authority to address a complaint with an appropriate process and remedies.

30. Violence Risk Assessment

In many cases, the Title IX Coordinator(s) may determine that a Violence Risk Assessment (VRA) should be conducted by the Title IX Co-Coordinator or Director/Assistant Director of Campus Safety as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator(s) should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer university about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning, Trespass order, or BOLO is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Student CARE team members. A VRA, at the discretion of Title IX Coordinator(s) should occur in collaboration with Campus Safety and on occasion the Director of the Student CARE team. Where a VRA is required by the Title IX Coordinator(s), a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

31. Dismissal (Mandatory and Discretionary)

The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

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- a) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- b) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- c) The conduct did not occur against a person in the United States; and/or
- 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 University¹⁰.

The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- a) A Complainant notifies the Title IX Coordinator(s) in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- b) The Respondent is no longer enrolled in or employed by the University; or
- c) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below.

32. Counterclaims

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator(s). When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

33. Right to an Advisor

The parties may each have an Advisor¹¹ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as

¹⁰ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

¹¹ This could include an attorney, advocate, or support person.

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long as the Advisor is eligible and available.¹²

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator(s). The decision to grant this request is at the sole discretion of the Title IX Coordinator(s) and will be granted equitably to all parties.

a) Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator(s) will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b) Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University cannot guarantee equal Advisory rights, 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 is not obligated to provide an attorney.

Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although the University prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

¹² "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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c) **Advisors in Hearings/University-Appointed Advisor**

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing but 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 other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

d) **Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The University cannot guarantee equal Advisory rights, 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 is not obligated to provide an attorney.

Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although the University prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

e) **Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and the University's policies and procedures.

f) **Advisor Violations of University Policy**

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

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, 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.

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Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator(s) will determine how to address the Advisor's non-compliance and future role.

g) **Sharing Information with the Advisor**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator(s) or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will/will not comply with that request at the discretion of the Title IX Coordinator(s).

h) **Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to 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 privacy expectations.

i) **Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings 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 attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

j) **Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator(s) if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and

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a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator(s) of the identity of their hearing Advisor at least two (2) business days before the hearing.

34. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

a) Informal Resolution

Informal Resolution can include three different approaches:

- i. When the Title IX Coordinator(s) can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- ii. When the student-parties (both respondent and complainants are students) agree to resolve the matter through an alternate resolution mechanism as including mediation, restorative practices, etc. usually before a formal investigation takes place, and at the discretion of the Title IX Coordinator(s) or their designees;
- iii. When the employee-parties (both respondent and complainants are employees) agree to resolve the matter through an alternate resolution mechanism as including mediation, restorative practices, etc. usually before a formal investigation takes place, though one may be conducted in the best interests of the University and at the discretion of the Title IX Coordinator(s) or their designees;
- iv. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator(s).

Once a formal complaint has been opened for investigation and before the determination regarding responsibility has been provided to the parties, a party may request informal resolution as an alternative to formal resolution of the complaint, but that disposition requires agreement of the Complainant and the Respondent and the approval of the assigned University Title IX Coordinator. The Title IX Coordinator may consult with the University Legal counsel. Informal resolution may not be used to resolve allegations that an employee sexually harassed a student.

If such a request is approved, the timeframes will be stayed, and the Program Coordinator will assign the informal resolution to an Investigator, or another University officer trained to facilitate an informal resolution process; who will take such steps as they deem appropriate to assist in reaching a resolution.

The Investigator, or other University officer facilitating the informal resolution process, will: (1) provide the parties with a written notice disclosing the allegations, the requirements of the informal resolution process including the

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circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigative or hearing process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and (2) obtain the parties' voluntary, written consent to the informal resolution process.

The parties will ordinarily have up to two weeks from receipt of the request to reach a written informal resolution, unless extended by written agreement of the Complainant and the Respondent with the approval the University Title IX Coordinator. If the parties cannot reach an informal resolution, then the investigation or hearing will resume, in accordance with the formal complaint procedures.

In no case in which the allegation involves conduct by an employee, either staff or faculty, upon a student Complainant, will Informal Resolution be permitted. Such allegations must proceed to Formal Resolution.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

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.

b) Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator(s) may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;

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- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator(s). The Title IX Coordinator(s) maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c) Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator(s) will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator(s) will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator(s) implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

d) Negotiated Resolution

The Title IX Coordinator(s), with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

35. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at: www.vanguard.edu/title-ix-team

a) Pool Member Roles

Members of the Pool are trained annually, and may serve in in the following roles, at the direction of the Title IX

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Coordinator(s), and in accordance with individual training/experience:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

b) Pool Member Appointment

The Title IX Coordinator(s), in consultation with the Program Coordinator and the Vice President for Student Affairs, appoints the Pool¹³, 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 cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary.

c) Pool Member Training

The Pool members receive annual training based upon their respective roles. This training includes, but is not limited to:

- The scope of the University's Title IX and Sexual Misconduct Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses

¹³ This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.

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- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are University employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: www.vanguard.edu/title-ix-training.

36. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator(s) or their designee(s) will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of 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 implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- 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 to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- 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 the party may request disability accommodations during the interview process,

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- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator(s) any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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 charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the permanent address(es) of the parties as indicated in University records, or emailed to the parties' University-issued email. Email is preferred. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

37. Resolution Timeline

The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator(s), who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

38. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator(s) appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

39. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator(s), 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(s) will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator(s) 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(s), concerns should be raised with the Vice President for Student Affairs.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, 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.

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The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

40. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

41. Delays in the Investigation Process and Interactions with Law Enforcement

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the University will implement supportive measures as deemed appropriate.

The University's 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.

42. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

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

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator(s)), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated

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- Assist the Title IX Coordinator(s) with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- 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 all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- 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 the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

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- The Investigator(s) shares the report with the Title IX Coordinator(s) and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

43. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, health concerns) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

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. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

44. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

45. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

46. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator(s) will refer the matter for a hearing.

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The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator(s) will select an appropriate Decision-maker(s) from the Pool depending on whether the Respondent is an employee or a student.

47. Hearing Decision-maker Composition

The University will designate a three-member panel from the Pool, at the discretion of the Title IX Coordinator(s) to form the Hearing Panel. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator(s).

The Decision-makers, i.e. the members appointed to the Hearing Panel, will not have had any previous involvement with the investigation. The Title IX Coordinator(s) may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator(s) may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

48. Evidentiary Considerations in the Hearing

Any evidence that the Decision-makers (Hearing Panel) determine is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-makers at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-makers render a determination by majority vote based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

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49. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator(s) or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The primary method of delivery shall be to University email.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-makers and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator(s) at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-makers on the basis of demonstrated bias. This must be raised with the Title IX Coordinator(s) at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-makers. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator(s) if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.¹⁴
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator(s) to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notice that parties cannot bring mobile phones/devices into the hearing, absent a compelling reason and upon request to the Chair.

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

¹⁴ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal).

50. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator(s) or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

51. Pre-Hearing Preparation

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator(s), will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-makers, i.e. the Hearing Panel, at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator(s) as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator(s) concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator(s) will give the Decision-makers a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator(s) as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

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52. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the 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 investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator(s), or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The Chair shall attach a summary of the pre-hearing meetings to the report.

53. Hearing Procedures

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation.

Participants at the hearing will include the Chair; the Hearing Panel; the hearing facilitator, if one has been appointed by the Title IX Coordinator(s); the Investigator(s) who conducted the investigation; the parties; Advisors to the parties; any called witnesses. The Hearing may include the Title IX Coordinator(s) and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-makers and the parties and the witnesses will then be excused.

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54. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator(s) may permit the investigation and/or hearings pertinent to each Respondent 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 with respect to each alleged policy violation.

55. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator(s) will review and decide the challenge.

The Chair or the hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator(s). The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

56. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-makers and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations. Neither the parties nor the Decision-makers should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

57. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-makers and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel or the Title IX Coordinator on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator(s), and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

58. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-makers may not rely on any prior statement made by that party or witness at the hearing including those contained in the investigation report in the ultimate determination of responsibility. The Decision-makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Statements can be relied upon when questions are posed by the Decision-makers, as distinguished from questions posed by Advisors through cross-examination.

The Decision-makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-makers may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If the University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

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59. Recording Hearings

Hearings (but not deliberations) are recorded by the University for purposes of review in the event of an appeal. The parties may not personally record the proceedings and no other unauthorized recordings are permitted.

The Decision-makers, the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator(s). No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator(s).

60. Deliberation, Decision-making, and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-makers may – at their discretion – consider the statements, but they are not binding.

The Decision-makers will review the statements and any pertinent conduct history provided by the Director of Student Conduct or the Vice President for Student Affairs and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator(s), detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator(s) within two (2) business days of the end of deliberations, unless the Title IX Coordinator(s) grants an extension. If an extension is granted, the Title IX Coordinator(s) will notify the parties.

61. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator(s) will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator(s) will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 10 business days of receiving the Decision-makers deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. 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 of the parties as indicated in official University records, or emailed to the parties' University-issued email or otherwise approved account. Email is preferred. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

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The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational systems, or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

62. Statement of the Rights of the Parties (see [Appendix C](#))

63. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- 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 is feasible, 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.

a) Student Sanctions

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Aside from expulsion, the following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status from the University for a period of between one and twelve quarters (that is, up to three academic years). Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at the University.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University sponsored events.
- *Withholding Diploma:* The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

b) Employee (faculty and staff) Sanctions/Responsive Actions

Beyond termination, other responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Letter in personnel file*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*

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- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Denying the opportunity for promotion*
- *Denying the opportunity to hold committee or community roles, such as serving as a Resident Fellow or Department Chair*
- *Public or private censure*
- *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.

64. Withdrawal or Resignation While Charges Pending

a) Students: Under this policy, if a student has an allegation pending for violation under Sexual Harassment and Sexual Misconduct or in regard to a related Equal Opportunity, Harassment, and Nondiscrimination, the University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of the University. A hold will be placed on their ability to be readmitted. They may also be barred from the University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the University unless and until all sanctions have been satisfied.

b. Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University and the records retained by the Title IX Coordinator(s) will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

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65. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator(s) within 3 business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker will Chair the appeal. No Appeal Decision-Maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a) Grounds for Appeal

Appeals are limited to the following grounds:

- i) Procedural irregularity that affected the outcome of the matter;
- ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- iii) The Title IX Coordinator(s), 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 affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Decision-Maker and the parties and their Advisors will be 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 Decision-Maker will notify the other party(ies) and their Advisors, the Title IX Coordinator(s), and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator(s), and, when appropriate, the Investigators and/or the original Decision-makers will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 3 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-makers, as necessary, who will submit their responses in 3 business days, which will be circulated for review and comment by all parties.

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Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than 5 business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

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 of the parties as indicated in official institutional records, or emailed to the parties. Email is preferred. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b) Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

The University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c) Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, 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.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-maker to substitute their judgment for that of the original Decision-makers merely because they disagree with the finding or sanctions.
- The Appeal Chair may consult with the Title IX Coordinator(s) on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator(s) or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

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- In rare cases where a procedural error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-makers cannot be appealed.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

66. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator(s) may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- 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 accommodations
- 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(s), certain long-term support or 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(s) will address any remedies owed to the Respondent to ensure no effective denial of educational access.

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

67. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-makers, including the Appeal Chair.

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

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University.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator(s).

68. Recordkeeping

The University will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant 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 train Title IX Coordinator(s)s, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

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

69. Disabilities Accommodations in the Resolution Process

The 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 assigned Title IX Coordinator, who will review the request and, in consultation with the person requesting the accommodation and Human Resources and/or the Director of Disability Services to determine which accommodations are appropriate and necessary for full participation in the process.

70. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator(s). The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator(s) may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator(s) may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective 14 August 2020.

**ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL
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HISTORY

(v7): Revisions to policy include minor housekeeping to TIX Coordinator and Deputies due to personnel changes, alignment to further clarify language, and inclusion of S.B. 483 law that is effective January 1, 2022.

(v6): Revisions to policy align with California Penal Code section 261.5 definition of unlawful sexual intercourse between minor and adult; and change in Title IX Coordinator due to employee separation from university.

(v5): Revisions to this policy addresses misconduct related to Civil Rights violations, and ADA/504 Coordinator, or harassment or retaliation actions related to a person's status in a protected class. The revisions are comprehensive of federal and state law. Policy has been expanded to reflect those civil rights violations or complaints of harassment or retaliation related to a person's protected class, other than sex, shall be addressed through Process B. It also formally appoints a Title VII Coordinator/Officer; (3) permits disclosure of reports or complaints related to an employee Complainant or Respondent to ensure increased accountability of employees and strengthen employee screening practices; and (4) clarified the ability to proceed to informal or alternate resolution proceedings in Process B. Revisions were reviewed and approved by the Board of Trustees on Wednesday, February 24, 2021 (SL2021-01) for immediate implementation; and that the Institutional Manual be updated accordingly and all Students and University Personnel be informed immediately of the policy revisions.

(v4): Revisions to this policy adhere to changes in federal law, which requires compliance no later than August 14, 2020, for all education programs or activities that receive federal funds. On May 6, 2020, the Department of Education released sweeping regulations directing schools to implement procedures to redress Title IX based reports of sexual harassment and sexual assault. The policy as drafted is comprehensive of federal and state law. See briefing memo provided to the Board of Trustees for more information. These mandated revisions were reviewed and approved by the Executive Committee of the Board on Friday, August 14, 2020 for immediate implementation; and that the Institutional Manual be updated accordingly and all Students and University Personnel be informed immediately of the policy revisions.

(v3): This policy and procedure revision was approved by the Board of Trustees on October 19, 2016 with implementation to take place in August 2017. NOTE: Policy was reviewed in August 2017 and minor revisions in language made for compliance with best practices.

(v2): Minor revisions made to language under POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS so that it is consistent with language in other organizational policies. Revision approved by the President's Cabinet on July 23, 2015.

(v1): This policy and procedure was approved by the Board of Trustees on March 27, 2015 (via electronic vote) with implementation to take place immediately upon approval.

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APPENDIX A: POLICY EXAMPLES

Examples of possible Sexual Harassment include:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised, or a bad grade is threatened.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.

Example of Stalking:

- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

Examples of possible Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes

The logo for Vanguard University, featuring a circular emblem with the text "VANGUARD UNIVERSITY" around the perimeter and a central shield-like design.

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her by the wrist over to the bed, lays her down, undresses, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

Examples of Retaliation:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes his approval for her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

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APPENDIX B: INFORMAL RESOLUTION (IR)

In the case where a Complainant reports a case of discrimination or harassment that falls outside of the University and/or Title IX Office or in the case where a Complainant files a report falling within the jurisdiction of the University and/or Title IX office under Process A but elects informal resolution as permissible in accordance with this Policy. As such, informal resolution may be requested when:

1. A response based on supportive measures; and/or
2. A response based on a Respondent accepting responsibility; and/or
3. A response based on alternative resolution, which could include various approaches and facilitation of dialogue.

Informal resolution in some instances may be limited, including the following situations:

1. IR can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
2. Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
3. The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator(s) and in line with the requirements for IR laid out in the Title IX regulations.
4. Any party can end IR early-, mid-, or late-process for any reason or no reason.
5. IR can be attempted before and in lieu of formal resolution as a diversion-based resolution (although a formal complaint must be filed if you are within Section 106.30, per OCR).
6. Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
7. IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
8. Alternate Resolution approaches to IR must be facilitated by the University or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the informal resolution process will be deemed to have failed.
9. Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.

If IR fails, a formal resolution can take place thereafter. No evidence elicited within the “safe space” of the IR facilitation is later admissible in the formal resolution unless all parties consent.

IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties, that are enforceable by the University. These can be part of the accord/agreement. The parties may consent to adhering to a Non-Disclosure agreement.

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APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith the University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have the University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by the University officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by the University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by the University law enforcement and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; student financial aid; or other services, both on campus and in the community.
- The right to a University-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

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- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
 - Relocating an on-campus student's housing to a different on-campus location
 - Assistance from University staff in completing the relocation
 - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - Transportation accommodations
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and a pro-rated refund
 - Exam, paper, and/or assignment rescheduling or adjustment
 - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

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- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinator(s), and Decision-maker(s) who have received all required relevant annual training.
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence; to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

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APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A **Violence Risk Assessment (VRA)** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat. The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or Student Care Team members.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of **risk factors** that escalate the potential for violence;
2. a determination of **stabilizing influences** that reduce the risk of violence;
3. a contextual **analysis of violence risk** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of **intervention and management** approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator(s) will initiate the violence risk assessment process through Campus Safety and on occasion, in conjunction with the Student Care Team and local law enforcement.

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APPENDIX E: PROCESS B

- Process B is applicable when the Title IX Coordinator(s) determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.
- The University can substitute any alternative process instead of Process B, if desired.
- VAWA Section 304 requirements apply to Process B or any alternative process for reports that fall under VAWA.
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, the 2001 Revised Guidance, etc.) may also be applicable to Process B.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON THE BASIS OF OTHER SEXUAL MISCONDUCT, EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

The University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, violations of the ADA or Rehabilitation Act, Harassment and Nondiscrimination that is received by the Title IX Coordinator(s)¹⁵ or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described herein apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

VIOLATION OF LAW AND UNIVERSITY DISCIPLINE

The University reserves the right to review actions taken by civil authorities regarding any student or student organization. University disciplinary proceedings may be instituted against a student charged with violation of law and may, at the sole discretion of the University, be carried out prior to, concurrently, or following civil or criminal proceedings. Violations occurring during non-enrolled periods may be considered by the University in determining whether a student will be eligible to continue his/her enrollment in the University and if so, under what conditions.

In adherence to state and federal law, Process B shall follow the same process as designated in Process A, para. 30, and 32-70; except paras. 46-55 and paras. 57-59, and shall be at the discretion of the assigned Coordinator to permit informal or alternate resolution as authorized herein, effective August 14, 2020.

Process B

Under Process B, when an investigation is deemed appropriate and/or necessary, the investigator will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable

¹⁵ All references herein to a Title IX Coordinator(s) also include a designee of the Title IX Coordinator(s).

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conclusions based on the evidence collected. The standard of evidence shall be a preponderance of the evidence. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant information. Confidentiality will be maintained throughout the investigation to the extent possible consistent with adequate investigation practices; however, the information may be disclosed to University official with a legitimate need for disclosure or for any legitimate University purpose.

After the investigation is complete, the assigned Title IX Coordinator or Title VII Officer, as applicable, shall recommend how the University shall resolve the matter in terms of eliminating discrimination/harassment in the workplace and ensuring compliance with this policy. The Title IX Coordinator or Title VII Officer, as applicable, shall fairly assess the investigation, make determinations as to its findings, and provide recommendations as the Decision-Maker.

Further, when the Respondent is a faculty member and a determination is made that there has been a violation of this policy, the Provost, in consultation with the respective Dean shall consider the findings and recommendations of the assigned Title IX Coordinator/Title VII Officer shall take necessary steps to ensure compliance with this policy and determine what disciplinary action, if any, shall be imposed in accordance with the Faculty Handbook. If at the end of the investigation misconduct is found, appropriate remedial measures shall be taken.

When the Respondent is a staff member, the employee who is found to have violated this policy will be subject to corrective action. Corrective action could include required subject matter courses/development, letter(s) of reprimand, and disciplinary action up to and including termination of employment.

Process B and Informal Resolution (IR)

Once a formal complaint has been opened for investigation and before the determination regarding responsibility has been provided to the parties, a party may request informal or alternate resolution as an alternative to formal resolution of the complaint, but that disposition requires agreement of the Complainant and the Respondent and the approval of the assigned University Title IX Coordinator or Title VII Officer. The assigned Title IX Coordinator/Title VII Officer may consult with the University Legal counsel. Informal resolution may not be used to resolve allegations that an employee sexually harassed a student.

If such a request is approved, the timeframes will be stayed, and the Program Coordinator will assign the informal resolution to an Investigator, or another University officer trained to facilitate an informal resolution process; who will take such steps as they deem appropriate to assist in reaching a resolution.

The Investigator, or other University officer facilitating the informal resolution process, will: (1) provide the parties with a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigative or hearing process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and (2) obtain the parties' voluntary, written consent to the informal resolution process; (3) advise the parties that the Coordinator may act at his or discretion to expand the scope of the charges, investigation, or process in order to permit the University to address other relevant or related

TITLE IX AND SEXUAL MISCONDUCT POLICY FOR ALL STUDENTS AND UNIVERSITY PERSONNELThe logo of Vanguard University, featuring a circular emblem with the text "VANGUARD UNIVERSITY" around the perimeter and a central shield with a cross and other symbols.

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notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. Further, the Coordinator may act at his or her discretion to address related or relevant notices or complains of a substantial University interest. A substantial University interest includes:

- a. 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;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the University.

The parties will ordinarily have up to two weeks from receipt of the request to reach a written informal resolution, unless extended by written agreement of the Complainant and the Respondent with the approval the University Title IX Coordinator. If the parties cannot reach an informal resolution, then the investigation or hearing will resume, in accordance with the formal complaint procedures.

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APPENDIX F: POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

All Vanguard University Faculty, Staff and Volunteers are expected to perform their responsibilities in a manner that is consistent with the mission and values of the University. Vanguard University recognizes that its Employees may develop personal relationships in the course of their employment. That said, consensual romantic relationships can lead to conflicts of interest and become potentially exploitative when they involve colleagues in the workplace or those teaching or in mentoring relationships. In an effort to prevent favoritism, morale problems, disputes or misunderstandings, potential sexual harassment claims, and to remain true and consistent with the University's Mission and Values, romantic relationships are not permitted between University Faculty, Administration, Staff, or volunteers (regardless of their level position at the university) and current traditional undergraduate students; or between supervisors and their direct reports or those with whom they have actual or perceived control or organizational influence due to their leadership role. NOTE: In cases where a student in the School for Graduate and Professional Students (SGPS) program is dating a staff or faculty member, that staff or faculty member cannot be in a position of authority or control over that student, i.e. cannot teach them in the classroom, or supervise them should they have a part-time job on campus.

Romantic relationships may include but are not limited to a pattern of exclusivity between two individuals, physical touching that implies romantic intention or desire, actual physical intimacy, or written communication or other action that implies or directly shows a sign of romantic interest. Relationships between University Faculty and students and, Staff and students should be transparent and only a friendship or mentoring relationship.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to Human Resources for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

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APPENDIX G: CALIFORNIA SENATE BILL 493 INTERIM POLICY

California has taken steps to demonstrate its commitment to the ideal “that all persons, regardless of their sex, should enjoy freedom from discrimination of any kind in the educational institutions of the state.” (CA [Senate Bill 493](#), 2020). Seeking to moderate the effects of some of the provisions of the 2020 federal Title IX regulations, SB 493 was signed by Governor Gavin Newsom on September 29, 2020, and takes effect on January 1, 2022. The law applies to all higher education institutions in California that receive state funding. SB 493 also significantly represents the intent of the California legislature to overrule a set of cases decided by California Courts of Appeal which interpreted the state Administrative Procedure Act (APA) to require broad due process protections for California college and university hearings. SB 493 pulls back on those due process protections, reversing a court trend going back to 2015.

The new law is one of a handful of state laws enacted after the 2020 Title IX regulations and echoes and intentionally overlaps with familiar federal requirements under Title IX and/or VAWA § 304. For example, the law requires that each institution:

- disseminate a notice of nondiscrimination to each employee, volunteer, and individual or entity contracted with the institution
- designate at least one employee of the institution to coordinate efforts to comply with the law,
- adopt rules and procedures to prevent sexual harassment
- adopt and publish on its website grievance procedures providing for the prompt and equitable resolution of sexual harassment complaints
- publish on the institution's website the name, title, and contact information for the Title IX
- Coordinator or other employee designated to coordinate the institution's efforts and any individual official with the authority to investigate complaints or to institute corrective measures

Under existing California law, as amended by SB 493:

- 1) Sexual Harassment defined as:
 - a) Unwelcome sexual advances, or
 - b) Requests for sexual favors, or
 - c) Other verbal, visual, or physical conduct of a sexual nature,
 - d) Made by someone from in the work or educational setting,
 - e) Under any of the following conditions:
 - i) submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
 - ii) submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
 - iii) the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
 - iv) submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities, available at or through the educational institution.

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2) Sexual Violence defined as:

- a) Physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include both of the following:
 - i) Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.
 - ii) Sexual battery means the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent. Sexual exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:
 1. The prostituting of another person.
 2. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.
 3. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
 4. The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the image or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
 5. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

3) Consent defined as:

An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

4) Notice

Regardless of whether or not a complaint has been filed under the institution's grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject to the university's policies at the time, the university shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the university determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects.

The university shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The university may rebut this presumption of knowledge if it shows all of the following:

- a) The university provides training and requires all nonconfidential responsible employees to report sexual harassment.

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- b) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.
 - c) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.
 - d) The university shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the university's policies.
- 5) Jurisdiction
 The university shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the university's policies that occur in connection with any educational activity or other program of the university, as well as incidents that 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.
- 6) Responsible Employee is defined as:
 An employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. All Vanguard University employees are considered responsible employees, which includes but is not limited to, those individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the university may attach to the position:
- Title IX Coordinator or other coordinator designated to comply with and carry out the university's responsibilities under this policy.
 - Residential advisors or assistants (RA's), while performing the duties of the employment by the university.
 - Housing directors, coordinators, or deans.
 - Commuter advisors or assistants (CA's), while performing the duties of the employment by the university.
 - Student life directors, coordinators, or deans.
 - Athletic directors, coordinators, or deans.
 - Coaches of any student athletic or academic team or activity.
 - Faculty and adjunct faculty, teachers, instructors, or lecturers.
 - Graduate student instructors, while performing the duties of employment by the university.
 - Laboratory directors, coordinators, or principal investigators.
 - Internship or externship directors or coordinators.
 - Study abroad program directors or coordinators.

Responsible employee does not include those individuals described in Section 20. Mandated Reporting, subsection a. Confidential Resources. An individual described as a Confidential Resources as outlined in this policy shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources. This information can be found on the University's [Title IX webpage](#) and in the online [Resources for Survivors](#) brochure.

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7) Confidentiality

If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the university shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant. The university shall generally grant the request. In determining whether to disclose a complainant's identity or proceed to an investigation over the objection of the complainant, the university may consider whether any of the following apply:

- a) There are multiple or prior reports of sexual misconduct against the respondent.
- b) The respondent reportedly used a weapon, physical restraints, or engaged in battery.
- c) The respondent is a faculty or staff member with oversight of students.
- d) There is a power imbalance between the complainant and respondent.
- e) The complainant believes that the complainant will be less safe if the complainant's name is disclosed, or an investigation is conducted.
- f) The university is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant's cooperation.

If the university determines that it can honor the student's request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The university shall also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant shall be notified that the steps the university will take to respond to the complaint will be limited by the request for confidentiality.

If the university determines that it must disclose the complainant's identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The university shall also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the university inform the respondent that the student asked the university not to investigate or seek discipline, the university shall honor this request.

8) Grievance Procedures

Under SB 493 the university is obligated to implement grievance procedures that contain procedural elements beyond those required by the Title IX federal regulations as outlined in the policy above. In some cases, these requirements can be synthesized to be consistent with Title IX regulations and, thus may be in addition to the Title IX Grievance Procedures outlined in the policy above. In other cases, the grievance procedures required under SB 493 may present a legal conflict with Title IX federal regulations. In which case, the university is obligated to adhere to the higher standard and abide by the federal regulation requirement. In these cases, the university will attempt to meet the SB 493 requirement up until the point in which it conflicts with the Title IX requirement.

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Outlined below are SB 493 requirements that are in addition to the Title IX requirements. Therefore, the Title IX requirement would be met, and the SB 493 requirement will be met. Specifically, a grievance process must:

- An investigator or hearing officer are generally prohibited from considering the past sexual history of a complainant or respondent.
- An investigator or hearing officer cannot consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless, the consideration is directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.
- An investigator or hearing officer cannot consider the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and the respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations.
 - It is important to note that in circumstances where an investigator or hearing officer determines that evidence regarding a dating relationship or prior or subsequent consensual sexual activity between a complainant and respondent to be relevant, the fact that the complainant and respondent engaged in other consensual sexual activity with one another remains insufficient, by itself, to establish that the behavior in question was consensual.

9) Hearing Requirements

Title IX requires that live hearings provide an opportunity for advisors to cross examine the other party and any witnesses. In contrast, SB 493 bans cross-examination by a party or their advisor. Thus, in cases that only meet sexual offenses as defined under SB493, the university will allow the Hearing Officer to conduct questioning.

Additional requirements that expand beyond Title IX include:

- Allowing for parties to submit written questions to the hearing officer in advance of the hearing. At the hearing, the other party will have an opportunity to object, in written form only, to the questions posed. Neither the hearing officer nor the institution must respond to objections, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing.
- Both parties are restricted from introducing evidence, including witness testimony, at the hearing that was available but not identified during the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, the new evidence offered at the hearing.

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APPENDIX H: STATISTICS ON THE PREVALENCE OF SEXUAL HARASSMENT AND SEXUAL ASSAULT IN THE EDUCATION SETTING

Vanguard University provides training to the Grievance Process Pool on the following statistics¹⁶:

- a) Sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.
- b) Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62 percent of women and 61 percent of men experience sexual harassment. The Association of American Universities (AAU) survey of students shows that more than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.
- c) Historically marginalized and underrepresented groups are more likely to experience sexual harassment than their peers. Research from GLSEN and the Centers for Disease Control and Prevention show that more than one-half of LGBTQ students 13 to 21 years of age, inclusive, are sexually harassed at school. An AAU survey indicates that nearly one in four transgender and gender-nonconforming students are sexually assaulted during college. According to a National Women's Law Center (NWLC) report, students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.
- d) Sexual harassment occurs both on campus and in off-campus spaces associated with school. Nationwide, nearly 9 in 10 college students live off campus and 41 percent of college sexual assaults involve off-campus parties. Research by the Rape, Abuse & Incest National Network indicates that only 8 percent of all sexual assaults occur on school property.
- e) Survivors generally underreport instances of sexual harassment and assault. The NWLC reports that only 12 percent of college survivors report sexual assault to their schools or the police.
- f) Research published in the Journal of College Student Retention: Research, Theory & Practice demonstrates that 34 percent of sexual harassment and violence survivors drop out of college.

¹⁶ These statistics are included in CA Educ. Code, Section 66281.8.