

**University of California
Hastings College of the Law**

**GENDER-BASED HARASSMENT,
DISCRIMINATION AND
SEXUAL MISCONDUCT POLICY**

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POLICY ON SEX/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT

INTRODUCTION

Members of the College community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

The College uses preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation) or clear and convincing standard (i.e. highly probable), depending on the sanction. To sustain a charged violation, the College bears the burden of proof by a preponderance of the evidence, except a violation giving rise to a sanction of Dismissal/Termination must be supported by clear and convincing evidence.

In campus resolution proceedings, the College may consider all evidence that it deems appropriate, and is not bound by formal rules of evidence. Neither party is required to participate in a Title IX proceeding, and an inference may not be drawn from the silence of the respondent. The College never assumes a responding party is in violation of College policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

Reporting Discrimination

TITLE IX COORDINATOR

The College's Title IX Coordinator oversees compliance with all aspects of the Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy (hereinafter Policy.) The Coordinator reports directly to the Chancellor & Dean. Questions about this Policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to sex discrimination or harassment may do so by reporting the concern to the College Title IX Coordinator. Inquiries about and reports regarding this policy and procedure may be made internally to:

Andrea Bing, Title IX Coordinator
200 McAllister Street, Room 552
San Francisco, CA 94102
(415) 565-4733
TitleIXCoordinator@uchastings.edu

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 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

U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530
By e-mail to: education@usdoj.gov
By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)
By facsimile at (202) 514-8337

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>

Reports of discrimination, harassment and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the College's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator at 415-565-4733 or TitleIXCoordinator@uchastings.edu;
- 2) Report online, using the reporting form posted on [MyHastings](#) and/or
- 3) Employees can also make reports to managers and Human Resources.

All reports are acted upon promptly while every effort is made by the College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the College are designated as mandated reporters and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below. In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Chancellor & Dean [Chancellor@uchastings.edu or (415) 565-4700.]

Jurisdiction

This policy applies to behaviors that take place on the campus, at College-sponsored events¹ and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial College interest. A substantial College interest is defined to include:

- 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 where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- d) Any situation that is detrimental to the educational interests of the College.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the College's control (e.g. not on College networks, websites or between College email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment. Remedies for such conduct will be provided, but protected speech cannot be legally subjected to discipline. Off-campus discriminatory or harassing speech by employees may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

¹ College-sponsored events include: Clinic fieldwork, Exchange programs sponsored by the College, and events sponsored by College organizations.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be affirmative, conscious, voluntary, and clear consent prior to and during sexual activity².

Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Previous consent does not imply consent to sexual activity in the future. Silence or passivity -- without actions demonstrating permission -- cannot be assumed to show consent. Consent, once given, can be withdrawn at any time. There must be a clear indication that consent is being withdrawn.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.³

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as professor and student, supervisor and employee). These relationships may be less

² Definition of consent is below on page 11.

³ For further guidance on coercion v. seduction: An unwelcome advance that results in a welcome encounter is seduction. An unwelcome advance that results in an unwelcome encounter is coercive. Often, the question revolves around how to determine after the fact if the encounter was unwelcome, and that will largely depend on what the contextual evidence shows. Must consider the totality of the circumstances of the alleged coercion (consider all four factors together):

- *Frequency*: Asking to have sex 3 times in 30 minutes vs. 30 times in 30 minutes. The frequency of coercion can be enhanced easily via technology.
- *Intensity*: A person talking themselves up ("I'm the best there ever was") is obnoxious, not coercive. When the person turns on you and starts to attack your character, values and morals, there is a difference in intensity ("Do you want to be the last virgin on earth? No one will find out, I won't tell anyone...").
- *Isolation*: Making advances at a crowded bar is going to be less coercive than when the advances occur when two people are alone in someone's living room.
- *Duration*: Making advances for 30 minutes vs. making advances for 3 hours.

consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when each party has consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships are encouraged to bring those relationships to the attention of their supervisor or the Title IX Coordinator⁴.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act.

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Give thought to sharing your intimate content, pictures, images and videos with others, even those you may trust. If you do choose to share, clarify your expectations as to how or if those images may be used, shared or disseminated.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct. Below, you will find suggestions to avoid committing a non-consensual sexual act:

⁴ When a consensual relationship gives rise to *quid pro quo* harassment allegations, those allegations are to be resolved in accord with the College’s policies on Title IX.

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Do not share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

DEFINITIONS:

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

SEXUAL HARASSMENT

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.⁵

⁵ Purpose or intent is not an element of sexual harassment.

Anyone experiencing sexual harassment in any University of California Hastings College of the Law program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive, such that it:
 - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational, employment, or other programs and services of the College, and social and/or residential programs, and
 - creates an environment that a reasonable person would find to be intimidating or offensive

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.⁶

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list that student

⁶ These offenses are referenced and incorporated within sexual harassment, but also broken-out as stand-alone offenses, below. They are both, and will be charged accordingly.

created, even when asked to stop, causing one recipient to avoid the sender on campus and in the Tower apartments in which they both live.

- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- by a person⁷ upon another person,
- that is without consent and/or by force⁸.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, mouth or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.
- May be clothed or unclothed.

⁷ Or with an object

⁸ The use of force is not "worse" than the subjective experience of violation of someone who has sex without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct charge, but charges under the code for the additional assaultive behavior.

NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- by a person⁹ upon another person,
- that is without consent and/or by force¹⁰.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

SEXUAL EXPLOITATION

Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person without their knowledge and consent;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation

ADDITIONAL APPLICABLE DEFINITIONS:

Consent:

Consent is affirmative, conscious, voluntary, and revocable.

- Consent is affirmative. Consent to sexual activity is informed and requires of each person an affirmative, unambiguous, and conscious agreement to engage in mutually agreed-upon sexual activity.
- Consent is conscious. Consent cannot be given when a person is incapacitated. A person cannot consent if that person is unconscious or coming in and out of consciousness. A person cannot

⁹ Or with an object

¹⁰ Id.

consent if that person is under the threat of violence, bodily injury or other forms of coercion. A person cannot consent if that person's understanding of the act is affected by a physical or mental impairment. (See definition below on Incapacitation.)

- Consent is voluntary. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not alone constitute consent.
- Consent is revocable. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. Once consent is withdrawn, the sexual activity must stop immediately. Consent to some form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity on one occasion is not consent to engage in sexual activity on another occasion. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct). A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent
- The Respondent's belief that the Complainant consented shall not provide a valid defense unless the belief was actual and reasonable, considering all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief shall not provide a valid defense where:
 1. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
 2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented;
or
 3. The Respondent knew or a reasonable person should have known that the complainant was unable to consent because the Complainant was incapacitated, in that the Complainant was:
 - a. Asleep or unconscious;
 - b. Unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; or
 - c. Unable to communicate due to a mental or physical condition.

Incapacitation:

Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

- Being under the legal age counts as incapacitation and the inability to give consent.
- Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
- Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, medication, or blackout.¹¹
- The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
- This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>].

Force:

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

- Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

¹¹ Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always. (see e.g.: Mundt & Wetherill – 2012; NIH 2004)

- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
- This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
- For reference to the pertinent state statutes on sex offenses, please see CA Codes on page 47.

Examples¹²

1. 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 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being “a prude.” Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had 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. **Bill is responsible for violating the College’s policy prohibiting Non-Consensual Sexual Contact. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a 3L in law school. Beth is a 1L. Jiang comes to Beth’s Tower apartment 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, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, 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. Is this a policy violation? **Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear**

¹² OCR recommends incorporation of examples into policy as an educational and preventive tool. Some campuses may prefer to break these out into separate documents or resources.

as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.

3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the College expects.**

OTHER MISCONDUCT OFFENSES:

(WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Bullying, defined as
 - a. Repeated and/or severe
 - b. Aggressive behavior
 - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
 - d. That is not speech or conduct otherwise protected by the 1st Amendment.

5. Relationship Violence¹³;

a. Relationship Violence is:

i. physical violence toward the Complainant or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative), or

ii. intentional or reckless physical or non-physical conduct that would put a reasonable person in the Complainant's position in fear of physical violence toward themselves or another person with whom the Complainant has a close relationship (e.g., a current or former spouse or intimate partner, a child or other relative),

that is by a person who is or has been in a spousal, romantic or intimate relationship with the Complainant, or a person with whom the Complainant shares a child in common, and that is part of a pattern of abusive behavior by the person toward the Complainant.

b. Physical violence is physical conduct that intentionally or recklessly threatens the health and safety of the recipient of the behavior, including assault.

c. Patterns of abusive behavior may consist of or include non-physical tactics (e.g., threats, isolation, property destruction, abuse of pets, economic control, displaying weapons, degradation, or exploitation of a power imbalance).

d. The nature of the relationship between the Complainant and Respondent is determined by the length and type of relationship, and the frequency of interaction between them. Relationship violence includes both "dating violence" and "domestic violence."

e. Conduct by a party in defense of self or another does not constitute Relationship Violence under this Policy. If either party asserts that they acted in defense of self or another, the Title IX Officer will use all available, relevant evidence to evaluate the assertion, including reasonableness of the defensive actions and which party is the predominant aggressor.

6. Stalking¹⁴

a. Stalking:

i. A course of conduct¹⁵

ii. Directed at a specific person

iii. On the basis of actual or perceived membership in a protected class

iv. That is unwelcome, AND

v. Would cause a reasonable¹⁶ person to feel fear for their safety or the safety of others, or to suffer substantial emotional distress¹⁷

¹³ The state legal definitions of domestic violence and dating violence can be found at [Cal Pen Code § 1300](#) (2016)

¹⁴ See [Cal Pen Code § 646.9](#) (2008) and [Cal Civ Code § 1708.7](#) (2014) on Stalking.

¹⁵ Course of conduct is defined as two or more acts. It includes: following, monitoring, observing, surveilling, threatening, communicating, or interfering with property, etc.

b. Examples of Stalking:

1. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk security that they are there to see the resident. Upon a call to the resident, the student informs security that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
2. A student working as a teaching assistant received flowers and gifts delivered to their apartment. After learning the gifts were from another student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude in the teaching assistant'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 necessary to make you have the feelings for me that I have for you." When the TA did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together."
7. Any other College policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Protected activity includes report or disclosure of Prohibited Conduct under this Policy and/or participation in the investigation, reporting, remedial, or disciplinary process provided for in this Policy. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of College policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. University of California Hastings College of the Law is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. Retaliation includes threats, intimidation, reprisals, and/or adverse employment or educational actions.

¹⁶ Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

¹⁷ Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of Retaliation:

- Student A files an allegation against a professor for sexual harassment; the professor subsequently cuts the student's internship hours through the Clinic the professor supervises without a legitimate justification.
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

CONFIDENTIALITY, PRIVACY AND REPORTING POLICY

Confidentiality and Reporting of Offenses Under This Policy

All College employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to the Title IX Coordinator, though there are some limited exceptions. 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 – meaning they are not required to report actual or suspected discrimination or harassment to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at the University of California Hastings College of the Law:

Confidential Reporting

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

- On-campus licensed professional counselors and staff
- On-campus health service providers and staff
- On-campus Victim CARE Advocates
- Off-campus:
 - Licensed professional counselors
 - Local rape crisis counselors
 - Domestic violence resources,

- Local or state assistance agencies,
- Clergy/Chaplains

All of the above employees will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. Victims Advocates are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit annual anonymous, aggregate statistical information for Clery Act purposes unless they believe it would be harmful to a specific client or patient.

Formal Reporting Options

All University of California Hastings College of the Law employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator. Employees must share all details of the reports they receive, including the identity of the reporting party. Generally, climate surveys, classroom writing assignments, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees. Remedial actions may result without formal College action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, the College will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the College to honor that request, the College will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by the University of California Hastings College of the Law officials when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Title IX Coordinator, Academic Dean or Associate Academic Dean, and the UCSF Police Department. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy. [Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted on [MyHastings](#). Note that these anonymous reports may prompt a need for the institution to investigate.]

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Andrea Bing

Title IX Coordinator

200 McAllister Street, Room 552

San Francisco, CA 94102

(415) 565-4733

TitleIXCoordinator@uchastings.edu

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, 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. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that College administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim'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 danger.

Additional Policy Provisions

a. Attempted violations

In most circumstances, University of California Hastings College of the Law will treat attempts to commit any of the violations listed in the *Gender-Based Harassment, Discrimination and Sexual Misconduct Policy* as if those attempts had been completed.

b. False Reports

The College will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

c. Amnesty for Victims and Witnesses

The University of California Hastings College of the Law community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as drug use at the time of the incident. It is in the best interests of this community that reporting parties choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, University of California Hastings College of the Law pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been using drugs might hesitate to help take a sexual misconduct victim to the Campus Police). The College pursues a policy of amnesty for students who offer help to others in need.

RESOLUTION PROCESS FOR ALLEGATIONS OF SEXUAL HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF SEX OR GENDER-BASED DISCRIMINATION

University of California Hastings College of the Law will act on any formal or informal allegation or notice of violation on the Gender-Based Harassment, Discrimination and Sexual Misconduct Policy (hereinafter “Sexual Misconduct Policy”) that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of sexual harassment, discrimination, or misconduct on the basis of protected class involving students, staff or faculty members. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). 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.

Overview

Upon notice to the Title IX Coordinator, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the Sexual Misconduct Policy has been violated. If so, the University of California Hastings College of the Law will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether the Sexual Misconduct Policy has been violated. If the investigation and resolution process concludes that a policy violation occurred, the College will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

Reporting Misconduct

Any member of the community, guest or visitor who believes that the Sexual Misconduct Policy has been violated should contact the Title IX Coordinator. In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the Chancellor & Dean [Chancellor@uchastings.edu or (415) 565-4700.]

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. Any member of the community, including visitors, may contact UCSF Police to make a report. These individuals will in turn notify the Title IX Coordinator. The College website also includes a [reporting form](#) which may serve to initiate the resolution process.

All employees receiving reports of a potential violation of the Sexual Misconduct Policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the College's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, University of California Hastings College of the Law will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

Preliminary Inquiry

Following receipt of notice or a report of misconduct, the Title IX Coordinator¹⁸ engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 2-5 business days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the College reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the College determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct a formal investigation to commence and the allegation will be resolved through one of three processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when all parties agree to conflict resolution,
- Informal/alternative Resolution – typically for less serious offenses, use of alternative resolutions that do not include permanent record sanctions, or
- Formal Resolution – a resolution of contested allegations.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Coordinator. Conflict Resolution may only occur if selected by all parties. The parties can elect for Informal Resolution, but Informal Resolution may also apply if the responding party accepts responsibility for all alleged violations of policy. If either party or both parties select Formal Resolution, or the Title IX Coordinator determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

If conflict resolution or alternative resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

¹⁸ If circumstances require, the Chancellor & Dean or Title IX Coordinator may designate another person to oversee the process below.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation.¹⁹ The College aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator.

3. Interim Remedies/Actions

Interim Measures: Services, accommodations, or other measures put in temporarily after the Title IX Officer receives a report of Prohibited Conduct. The Title IX Coordinator may provide interim measures intended to address the short-term effects of harassment, discrimination and/or retaliation, in order to assist or protect the Complainant, the Respondent, or the College community. Interim measures may remain in place until the final outcome of an Alternative Resolution, Formal Investigation, or subsequent disciplinary or appeal process; change or terminate depending on the parties; evolving needs, as assessed by the Title IX Coordinator; or become permanent as part of the resolution of a report. These remedies may include, but are not limited to:

- Referral to counseling and health services
- Education to the community
- Altering the housing situation of the reporting party, subject to availability
- Altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

Remedial Measures: Services, accommodations, or other measures put in place as a result of a Resolution Process (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).

Supportive Measures: Services, accommodations or other measures put in place to support an individual who reports experiencing Prohibited Conduct but whose report does not result in a

¹⁹ 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 College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Resolution Process (i.e., Alternative Resolution, Formal Investigation, or Other Inquiry).

University of California Hastings College of the Law may interim suspend a student, employee or organization pending the completion of investigation and procedures, particularly when in the judgment of the Title IX Coordinator the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the option to meet with the Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to on-campus housing and/or the University of California Hastings College of the Law campus/facilities/events. As determined by the Title IX Coordinator, this restriction can include classes and/or all other College activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures. An interim suspension will not equate to a finding of violation of policy, and as such, will not be recorded on any student or employment files other than confidential Title IX files.

Investigation

Once the decision is made to commence a formal investigation, the Title IX Coordinator will investigate or procure the services of an investigator. Investigations are completed expeditiously, normally within ten (10) business days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The College may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The College will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. College action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same

incident have been filed or that charges have been dismissed or reduced.

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

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
 - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations [charges] on the basis of the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of an advisor/advocate of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written 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;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest potential witnesses to be interviewed.
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide the parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;

- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Investigator recommends to the Title IX Coordinator a finding, presented in a written report; In the case where the Title Coordinator has conducted the investigation, the Title IX Coordinator will make a recommendation in a written report;
- The Title IX Coordinator finalizes and presents the findings and recommendation to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and responding party's decision on the finding, without undue delay.

At any point during the investigation, if it is determined there is no reasonable cause to believe that College policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the College's investigation and resolution process. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), or e-mail if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other resolution process proceedings.

Advisors

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor,

family member, attorney or any other supporter a party chooses to advise them who is available and eligible and does not have a conflict of interest. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. The parties may choose their advisor from a list of those who have been trained, choose a non-trained advisor, if preferred, or proceed without an advisor.

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 their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The College 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 College is not obligated to provide one. Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing officer. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the College an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated,

may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The College expects that the parties will wish to share documentation related to the allegations with their advisors. The College provides a consent form that authorizes such sharing. The parties must complete this form before the College is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College 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 College's privacy expectations.

University of California Hastings College of the Law expects an advisor to adjust their schedule to allow them to attend meetings when scheduled. The College does not typically change scheduled meetings to accommodate an advisor's inability to attend. The College will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout. Where a party is an employee who is a member of a union and entitled to a union representative in the process, that employee may be accompanied by the union representative as their advisor or may choose an advisor in addition to their union representative. In such cases, the other party may have two advisors as well.

The parties must advise the investigators of the identity of their advisor at least one (1) day 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 must provide timely notice to investigators if they change advisors at any time.

Conflict Resolution and Informal Resolution

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with University of California Hastings College of the Law policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors/advocates.

a. Conflict Resolution

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal process to resolve conflicts. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator or mediator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. Mediation will not be used in cases of sexual violence. It is not necessary to pursue conflict resolution first in order to pursue Informal or Formal Resolution, and either party participating in Conflict Resolution can stop that process at any time and request a shift to either Informal or Formal Resolution.

b. Informal Resolution

Informal Resolution [or Alternative Resolution] can be pursued for any behavior that falls within the policy on Gender-Based Harassment, Discrimination and Sexual Misconduct at any time during the process. This option may be used when:

- A responding party admits responsibility for all or part of the alleged policy violations at any point in the process;
- When the investigation reaches a finding that the parties accept;
- When all parties elect to resolve the allegation using the Informal Resolution process and the Title IX Coordinator assents;
- When the Title IX Coordinator implements the results of an investigation for an at-will employee.

In Informal Resolution, the investigator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the Sexual Misconduct Policy. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the parties. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

For informal resolutions, the investigator(s) will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

Typically, within ten (10) days of the close of an investigation that determines that a responding party is in violation of policy, the Title IX Coordinator or the investigator(s) or both will meet with the responding party to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations. If the responding party admits responsibility, in whole or in part, the Title IX Coordinator will render a determination that the individual is in violation of University of California Hastings College of the Law policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations.

If the responding party admits to the violation(s), the Title IX Coordinator, in consultation as appropriate, will determine an appropriate sanction or responsive action. If the sanction/responsive action is accepted by both the reporting party and responding party, the Title IX Coordinator will implement the finding and sanction, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct. No appeal is permitted.

If the responding party admits to the violation(s), but either party rejects the sanction/responsive action, a formal hearing will be held on the sanction/responsive action only, according to the Formal Resolution procedures below.

If alleged misconduct is resolved at this stage, the Title IX Coordinator will inform the parties of the final determination within five (5) days of the resolution, without significant time delay between notifications. 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 College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and any appeals options that are available.

At any point during the Informal Resolution process, including at its conclusion, either party may request that the matter be referred to the Formal Resolution Process.

c. Formal Resolution:

For all contested allegations that are not resolved through either Conflict Resolution or Informal Resolution, the Title IX Coordinator will initiate a formal hearing within ten (10) days of the conclusion of the investigation, barring unusual circumstances.

Formal Hearing Procedures

a. Hearing

The Title IX Coordinator will hold a formal hearing²⁰, which will include one or more relevant Senior Administrators (depending on whether the responding party is a faculty member, employee, or a student.) In cases with student respondents, the Associate Academic Dean or designee (or Academic Dean or designee, if appropriate) will be the hearing officer for formal hearings. For faculty respondents, the Academic Dean or designee would adjudicate. For non-union employees, a Senior Administrator would adjudicate. For union employees, hearing officer designated would be based on the applicable MOU. In cases where the Title IX Coordinator deems it appropriate, an outside hearing officer may be brought in to fill any of these roles.

²⁰ A hearing *does not* always mean a panel. It only means a panel when specifically required in other policies, such as the Faculty Rules & Procedures.

b. Notice of Hearing

At least five (5) days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, the Title IX Coordinator will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter 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. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the hearing officer may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor [advocate] of their choosing at the hearing (See Section 6: “Advisors” above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of spring term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the sixty (60) day goal for resolution.

c. Hearing Procedures

Hearing will usually be convened within ten (10) days of the completion of the investigation, and will be conducted in private. The primary hearing officer has the authority to hear all collateral misconduct, meaning that person hears all allegations of discrimination, harassment and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though collateral allegations. Accordingly, investigations should be conducted with as wide a scope as necessary.

d. Pre-Hearing

The hearing officer will exchange the names of witnesses who will be participating in the hearing, all pertinent documentary evidence and the investigation report between the parties at least two (2) days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used

between the parties. If alternative attendance or questioning mechanisms are desired, such as the reporting party not wanting to be in the same room as the responding party for the hearing (screens, Skype, questions directed through the hearing officer, etc.), the parties should request them from the Title IX Coordinator at least two (2) days prior to the hearing. In the case of documented disabilities for which accommodations in the process are necessary, University of California Hastings College of the Law will make reasonable accommodations for the parties when requested in advance.

Investigator Presents the Report

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the hearing officer. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the hearing officer. The findings of the investigation are not binding on the hearing officer, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine sanctions/responsive actions. Once the investigator(s) present their report and are questioned, the hearing officer will permit the parties to provide relevant information in turn and permit questioning of and by the parties. The hearing officer will then permit all present witnesses to provide relevant information and the hearing officer and the parties will each be allowed to ask questions of the witnesses. Questions are usually directed to the parties and witnesses through the hearing officer at the discretion of the hearing officer.

Evidence Presented at the Hearing

Formal rules of evidence do not apply. Any evidence that the hearing officer believes is relevant and credible may be considered, including history and pattern evidence. The hearing officer will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence, and may disregard evidence lacking in credibility or that is improperly prejudicial. The hearing officer will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the hearing officer determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the hearing officer with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

There will be no observers in the hearing. The hearing officer may allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the hearing officer or the parties involved, and then be excused. The hearing officer does not hear from

character witnesses.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Coordinator may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with College policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors [advocates].

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The hearing officer(s), the parties, and appropriate administrative officers of the College will be allowed to listen to the recording in a location determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Alternative Testimony Options

For sexual misconduct reports, and other reports of a sensitive nature, the reporting party will be offered alternative testimony options, such as placing a privacy screen in the hearing room, or testifying outside the physical presence of the responding party, such as by Skype or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

e. Deliberation and Decisions

The hearing officer will make determination(s) on a preponderance of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation) or clear and convincing standard (i.e. highly probable.) To sustain a charged violation, the College bears the burden of proof by a preponderance of the evidence, except a violation giving rise to a sanction of Dismissal/Termination must be supported by clear and convincing evidence.

If a responding party or organization is found responsible by the hearing officer, the hearing officer will recommend appropriate sanctions.

The hearing officer will prepare a written report and deliver it to the parties and Title IX Coordinator,

detailing the finding, the information cited by the hearing officer in support of the finding and any information the hearing officer excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Title IX Coordinator grants an extension.

The Title IX Coordinator will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within five (5) business days of the hearing, without significant time delay between notifications. 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 College records; or emailed to the parties' College-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law. The notice will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization and any appeals options that are available.

f. Sanctions

The hearing officer assigned to the resolution will decide sanctions or responsive actions appropriate to the policy violation. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing officer
- 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 reporting party and the community

g. Student Sanctions

The following are the usual sanctions/responsive actions that may be imposed upon students singly or in combination:

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any University of California Hastings College of the Law policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Censure:* A written reprimand for violation of this Policy.
- *Exclusion from activities:* Excluding the student from participating in designated classes or activities for a specified period.
- *Interim suspension:* When there is reasonable cause to believe an interim suspension is in the best interest of the College before final action on an alleged violation, exclusion from classes or from other designated activities or from designated areas of the campus.
- *Suspension:* Terminating student status for a specified period. Suspension may include exclusion from designated areas of the campus.
- *Dismissal:* Permanently terminating student status.
- *Withholding Diploma:* The College 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.
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

A sanction may be noted on a student's official College transcript, if so ordered by the official or body imposing the sanction. When a sanction is noted on a student's transcript, the College will report that sanction to a state bar to which the student has applied for admission and to any state bar the student has previously been certified for admission. A disciplinary sanction, whether or not noted on the student's transcript, will be reported to any licensing authority making an inquiry.

In lieu of a sanction, a student may be warned that a future violation of this Code will be cause for disciplinary action. A warning is not a disciplinary sanction and will not be reported to a licensing authority, unless the student is subsequently sanctioned for a violation of this Code.

A student may not be excused from compliance with the Academic Regulations because of a sanction imposed. In imposing a sanction, the impact of this rule on the student shall be considered.

The imposition of a sanction or warning may be conditioned on the student completing an act such as an apology, reflection, a restorative act, a work assignment, service to the College, or similar action.

These conditions shall be set forth in writing. If the student does not complete these conditions, an additional sanction may be imposed by the Academic Dean.

h. Faculty/Employee Sanctions

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

- *Warning*: A formal statement that the behavior was unacceptable and a warning that further infractions of any University of California Hastings College of the Law policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

i. Withdrawal or Resignation While Charges Pending

Students: Should a student decide to withdraw and/or not participate in the process while an allegation is pending for a violation of the Gender-Based Harassment, Discrimination, and Sexual Misconduct Policy, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University of California Hastings College of the Law unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any College responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

j. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the written finding of the hearing. Any party may appeal the findings and/or sanctions only under the grounds described, below:

Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.²¹
- The sanctions imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the responding party.

An appeal request submitted to the Title IX Coordinator will be given to the Chancellor & Dean²² who will review the appeal request(s). When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies), who may file a response within five (5) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within five (5) days. Any response or appeal request will be shared with each party.

The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the Chancellor & Dean finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Chancellor & Dean are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. It is not intended to be a substitution

²¹ This is subject to the limitation on unwilling witnesses. If witnesses would not come forward in the original investigation, they cannot be considered as “new evidence” for appeal.

²² Under limited circumstances, it may be necessary for the Chancellor & Dean to appoint a replacement. If the Chancellor & Dean is a party, the Academic Dean or designee will oversee the appeal.

of judgment because of a disagreement over findings and/or sanctions.

- Appeals granted based on new evidence should normally be remanded to the Title IX Coordinator or investigators for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, heard by the Chancellor & Dean.
- Sanctions imposed as the result of the Formal or Informal Resolution processes are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
 - For students: Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the Chancellor & Dean or designee, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within seven (7) days from hearing of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- 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).
- All parties will be informed in writing within seven (7) days of the outcome of the Appeal, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original hearing (as in cases of bias), the Title IX Coordinator may recommend a new hearing with a hearing panel. The results of a remand to a hearing panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

k. Long-Term Remedies/Actions

Following the conclusion of the resolution process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the community

- Permanently altering the housing situation of the responding party
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

I. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University of California Hastings College of the Law and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

m. Records

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely.

8. Additional Information

Relevant Codes

CALIFORNIA CODES

Consent

- [Cal Pen Code §266a](#) (2014)

Rights of Sexual Assault Victims:

- [Cal Pen Code §680.2](#) (2018)

Stalking:

- [Cal Pen Code § 646.9](#) (2008)
- [Cal Civ Code § 1708.7](#) (2014)

Dating Violence/Domestic Violence:

- [Cal Pen Code § 1300](#) (2016)

Revision

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary policy or procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

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

This policy and procedure was implemented in December, 2018.

QUESTIONS AND ANSWERS:

(Note: This is not part of the policy, but will be attached as an Appendix)

Here are some of the most commonly asked questions regarding the College's sexual misconduct policy and procedures.

Does information about a report remain private?

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the College's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The College will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the College, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain College administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the College, Dean of Students, Director of Security). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the College and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities]. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

Will the responding party know my identity?

Yes, if the College determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the

identity of the reporting party. If there is a hearing, the College does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

Do I have to name the responding party?

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution's ability to respond comprehensively.

What do I do if I am accused of sexual misconduct?

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor [or advocate]; anyone may serve as your advisor [or advocate]. You may also contact the Title IX Coordinator, who can explain the College's procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

Will I (as a victim) have to pay for counseling/or medical care?

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. Student Health Service and the Title IX Coordinator can provide you with a list of free counseling and medical care services.

What about legal advice?

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the District Attorney's [Prosecutor's] office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding. Both the responding party and the reporting party may also use an attorney as their advisor [or advocate] during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors [or advocates] in the process. A Victims' Rights Attorney is available for some services in San Francisco; contact Elisha at Elisha@roclinic.org or 415-864-1790.

How is a report of sexual misconduct decided?

The College investigates allegations of sex/gender based harassment, discrimination or misconduct to determine whether there is evidence to indicate a policy violation is “more likely than not.” This standard, called the preponderance of the evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

What about changing residence hall rooms?

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator or deputy to determine if it can be honored.

Other assistance and modifications available to you might include:

- Assistance from College support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim’s person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room, before washing yourself or your clothing. San Francisco General Hospital has a Rape Treatment Center that is open 24/7.

They have a forensic specialist who is available to respond within 30 minutes of a client's arrival in the emergency department. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it.

For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, if you want.

It is a survivor's choice whether to report a sexual assault. Reporting can be done at any time and does not need to be done immediately. It's best to report immediately to help preserve evidence. Remember, even if you do choose to go to the police, you have the right to: - Stop participating in an investigation at any point; - Have a victim advocate and one other support person with you at all interviews.

Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs?

No. The seriousness of sexual misconduct is a major concern and the College does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct. The College provides amnesty from any consequences for minor policy violations that occur during or come to light as the result of a victim's report of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the

reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

What should I do if I am uncertain about what happened?

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Title IX Coordinator (not confidential) or counseling center [victim advocate's office] (confidential).