

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

SEXUAL MISCONDUCT POLICY

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POLICY ON SEXUAL MISCONDUCT

I. STATEMENT OF NON-DISCRIMINATION

The University of California Hastings College of the Law prohibits discrimination against any person on the basis of race, color, national origin, religion, age, sex, gender, sexual orientation, gender expression, gender identity, gender transition status, sex- or gender-stereotyping, pregnancy, physical or mental disability, medical condition (e.g., cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, citizenship, or service in the uniformed services, including protected veterans. This Policy is intended to be consistent with applicable state and federal laws and the law school's policies.

Every person at UC Hastings has the right to pursue an academic or professional career in an atmosphere that is safe and free from prohibited acts of discrimination, harassment, or violence, including sexual abuse, rape, sexual assault, domestic violence, intimate-partner violence, stalking, sexual coercion, or other forms of sexual violence. Bigotry, harassment, or intimidation is particularly insidious when directed at a member or group of the Hastings community on the basis of actual or perceived race, color, national origin, religion, age, sex, gender, sexual orientation, gender expression, gender identity, gender transition status, sex- or gender-stereotyping, pregnancy, physical or mental disability, medical condition (e.g., cancer-related or genetic characteristics), genetic information (including family medical history), ancestry, marital status, citizenship, or service in the uniformed services, including protected veterans, or any combination of these or related factors; and, to the degree it constitutes prohibited bias activity, such conduct will also not be tolerated. UC Hastings complies with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, as amended, Section 504 of the Rehabilitation Act of 1973, and Title VII of the Civil Rights Act of 1964, as well as applicable state and local laws. The UC Hastings nondiscrimination policy covers admissions to, access to and treatment in Hastings-sponsored programs and activities.

II. OVERVIEW

Members of the College community, guests and visitors have the right to be free from all forms of sexual harassment and misconduct, examples of which can include acts of sexual violence, relationship 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. The Sexual Misconduct Policy (or "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 respondent 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 relevant, and is not bound by formal rules of evidence. Neither party is required to participate in a sexual misconduct proceeding, and an inference may not be drawn from the silence of the respondent. The College never assumes a respondent 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.

III. TERMINOLOGY AND KEY WORDS

Advisor – A person the complainant or respondent selects who may attend all meetings with the party. An advisor may be anyone the party chooses (e.g., friend, family member, or an attorney).

CARE Advocate – The College staff member who oversees the Center for Advocacy, Resources and Education (CARE) and who provides free, confidential support to any UC Hastings student who has been impacted by sexual misconduct or interpersonal violence.

Complainant - any individual who is reported to be the victim of sexual harassment, whether or not they have filed a complaint.

Respondent - any individual who is reported to be the perpetrator of sexual harassment, whether or not a complaint has been filed.

Complaint – a written statement submitted by an individual in order to initiate the College’s grievance process alleging that another individual or individuals engaged in sexual misconduct against them. A complaint is not required in order for an individual to request and receive supportive measures related to an allegation of sexual misconduct.

Party – the complainant or respondent, as those terms are described herein.

Supportive Measures – are non-disciplinary, non-punitive services provided to a complainant or respondent before or after the filing of a complaint or where no complaint has been filed. They are designed to restore or preserve equal access to the College’s education programs and activities without unreasonably burdening the other party. They include measures designed to protect the safety of all parties and the College’s educational environment and to deter sexual misconduct.

IV. Reporting, Confidentiality, and Privacy

Overview of Confidentiality and Reporting of Offenses Under This Policy

All College employees (faculty, staff, administrators, and student employees) other than designated recipients of confidential reporting described below are expected to immediately report actual or suspected discrimination or harassment to the Title IX Coordinator. In order for a person who may have experienced sexual misconduct to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. Some resources may maintain confidentiality – meaning they are not required to report actual or suspected sexual misconduct to appropriate College officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless the person initiating the conversation has requested information to be shared. Other resources exist for community members to report crimes and policy violations, and these resources will take action when an incident is reported to them. The following describes some reporting options available to members of the University of California Hastings College of the Law community:

A. How to Report

Anyone wishing to make a report relating to sexual misconduct may do so by reporting the concern to the College Title IX Coordinator, an administrator, or any faculty or staff member. All employees of the College are considered “responsible employees” (except confidential resources, as described below), and will share reports with the Title IX Coordinator, who may contact the person making the report in order to offer support resources and share information about filing a complaint. Inquiries about this Policy and related procedures may be made to the Title IX Coordinator. If a person is unsure about whether or not a situation falls within this Policy, they are encouraged to speak with the Title IX Coordinator, who can explain what conduct the Policy covers.

There is no time limitation on the filing of allegations. However, if the respondent is no longer subject to the College’s jurisdiction, the ability to investigate, respond and provide remedies may be more limited, and the College reserves the right to decline to investigate in such a situation.

- 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. 4) Reports may be made to any administrator, faculty or staff member, “responsible employees,” who will promptly share the information with the Title IX Coordinator.

The College makes every effort to preserve the privacy of individuals making reports. Reports may also be anonymous. Anonymous reports will be reviewed to determine if remedies can be provided, although the College's ability to respond may be limited. Confidentiality and mandated reporting are 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].

TITLE IX COORDINATOR

The College's Title IX Coordinator oversees compliance with all aspects of the Sexual Harassment and Misconduct Policy (hereinafter Policy). Questions about this Policy should be directed to the Title IX Coordinator.

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

OFFICE FOR CIVIL RIGHTS

Individuals experiencing harassment or discrimination also 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>

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/>

B. Confidential Reporting

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

- On-campus CARE Advocate
- Licensed professional counselors
- Professional health service providers
- Rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains

1. Confidential Resources and CARE

Confidential resources are staff members who do not have an obligation to report incidents of sexual misconduct to the Title IX Coordinator. Therefore, students can disclose instances of sexual misconduct to these staff members and receive confidential support, whether or not they want to report what happened. At UC Hastings, the only confidential resource is the CARE Advocate.

CARE:

The Center for Advocacy, Resources and Education (CARE) provides free and confidential support to any student who has been directly or indirectly impacted by sexual violence or harassment. Students can contact the CARE Advocate to receive emotional support, assistance in connecting to medical and legal resources, academic accommodations, information about the Title IX or criminal reporting processes, and more. Students can also contact CARE for assistance in filing an anonymous report with Title IX. The CARE Advocate will not share information without the student's permission. Contact: care@uchastings.edu

Please see a list of contact information for confidential resources starting on page 45.

Confidential resources will maintain confidentiality except in extreme cases of immediate threat or danger, or abuse of a minor. The CARE Advocate is 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.

2. Confidentiality and Formal Reporting

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the complainant may make such a request to the Title IX Coordinator, 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 need to proceed with an investigation and therefore be unable to comply with a request for confidentiality. In cases where the complainant requests confidentiality and the circumstances allow the College to comply with that request, the College will offer supportive measures to the complainant and the community, but will not otherwise pursue formal action. A complainant has the right, and can expect, to have reports taken seriously by College officials when reported, and to have those incidents addressed as described in this Policy.

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: the 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 respondent, if a complaint is filed. The circle of people with this knowledge will be kept as tight as possible to preserve a complainant's rights and privacy. Additionally, anonymous reports can be made using the online reporting form posted on [MyHastings](#). Note that these anonymous reports may prompt a need for the institution to respond, although any response may be limited due to the report's anonymity.

C. 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 under the Clery Act. Personally identifiable information is not disclosed in such reports, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (such as on-campus or in the surrounding area, but without addresses) 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. Campus Security Authorities 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.

D. Federal Timely Warning Reporting Obligations

Reporters 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 reporter's or complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

V. Responsible Employees

UC Hastings employees who are deemed "responsible employees" are mandatory reporters under this Policy, and are therefore required to promptly report allegations of sexual violence, discrimination, sexual harassment, and sexual misconduct to the College's 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]. All employees receiving reports of a potential violation of the Sexual Misconduct Policy, except those employees authorized to discuss sexual misconduct confidentially, must promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident.

Who is a Responsible Employee?

At UC Hastings, "responsible employees" include, but are not limited to: administrators, faculty members (including adjunct faculty), staff members, student employees (e.g. research and teaching assistants) when they learn of allegations while acting in their employee capacity, and UCSF Police and Security Guards. Attorneys working at or for the law school are also considered responsible employees and must report incidents to the Title IX Coordinator.

What must a responsible employee report?

Any information that you receive (even "rumors"), that this Policy may have been violated should be reported to the Title IX Coordinator. That means that if anyone shares information with you about possible sex- or gender-based discrimination or harassment or sexual misconduct, you should immediately report it to the Title IX Coordinator.

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.

What happens after I report to the Title IX Coordinator?

The Title IX Coordinator can answer any process questions you or the complainant may have, but will explain that, due to confidentiality, you as the responsible employee will not continue to receive updates on action taken. After notification, the Title IX Coordinator will reach out to any potential complainants in order to offer them support services and resources and information about filing a complaint, if that is the person's wish.

What should I do if someone comes to me with information that a member of the community has been a victim of sexual violence, discrimination, harassment, or other misconduct?

- First, thank the person for coming forward and sharing their concerns or experiences. If it is a personal experience, acknowledge how difficult it is to share that with someone else.
- Early in the conversation, you should let the other person know that, as a responsible employee, you are required to notify the Title IX Coordinator and therefore, cannot maintain complete confidentiality.
- Let them know that the Title IX Coordinator is there so the College can provide support services. The Title IX Coordinator can also answer questions and provide further resources, including about filing a complaint. People are welcome to speak with the Title IX Coordinator about general matters without divulging specific concerns.
- If the person wants to talk with someone who can maintain complete confidentiality, direct them to the CARE Advocate, a confidential campus resource for students, or to a medical or mental health professional.

Do I need to report an incident to the police?

- Under your obligations as a responsible employee under Title IX and the Sexual Misconduct Policy, the answer is no. You are required to report the information to the Title IX Coordinator. Otherwise, you should maintain the confidentiality of the parties involved. There are two (2) exceptions to this rule:
 - If you are given information that someone is in danger or needs help immediately. In this case, you should call UCSF Police Department or urge the person with the concern to do so.
 - Cases involving minors: Employees are required to report cases involving child abuse or neglect if, in a professional capacity or within the scope of employment, they have knowledge of or have observed a child whom they know or reasonably suspect has been the victim of child abuse or neglect. This should be reported to police or to the California Department of Social Services. The California County Emergency Response Child Abuse Reporting number for San Francisco County is (415) 558-2650 or (800) 856-5553.

VI. JURISDICTION

This Policy applies to behaviors that take place in any program or activity of UC Hastings College of the Law. This encompasses any location, event or circumstance over which the College exercises substantial control over both the respondent and the context in which the alleged misconduct occurred, whether on or off campus, including in any building owned or controlled by a recognized student organization. This jurisdiction includes occurrences at College-sponsored events such as clinic fieldwork, exchange programs sponsored by the College, and events sponsored by College organizations, if the College exercises substantial control over the respondent and the context.

This Policy also applies to other actions off-campus and online when the Title IX Coordinator determines that the conduct affects a substantial College interest. A substantial College interest is defined to include:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
 - a. Any situation where it appears that the respondent may present a danger or threat to the health or safety of self or others;
 - b. 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
 - c. Any situation that is detrimental to the educational interests of the College, including a situation that creates a hostile environment on campus for a student or employee. (The definition of a hostile environment is explained below.)

2. 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) are subject to this Policy when those online behaviors can be shown to cause a substantial disruption to a complainant's access to education, such as by creating a hostile environment. Otherwise, such communications are considered speech protected by the First 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 when such speech is made in an employee's official or work-related capacity or where such speech contributes to a hostile environment at the College for a student or employee.

A. A Note on Title IX Dismissals

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681-1688, is a federal law that prohibits discrimination on the basis of sex by education institutions that receive federal funding. UC Hastings is a recipient of federal funds and is subject to Title IX. Regulations promulgated under Title IX at 34 C.F.R. Part 106 require the College to provide grievance procedures for students or employees who have experienced certain types of sexual misconduct in certain circumstances defined by part (a) of the jurisdiction section above.¹

At the same time, as the federal government has recognized, an educational institution may maintain a code of conduct that addresses behaviors that go beyond what is covered by the Title IX regulations. That is the case with this Policy. UC Hastings has identified behaviors that are unacceptable in its community, as is its right, and will sanction such behaviors under this Policy.

The Title IX regulations require that the College dismiss a complaint under Title IX if the College determines that the complaint does not fall within the jurisdiction or types of conduct set forth in those regulations, even if the College is still going to investigate the complaint under any broader conduct requirements it has set forth in its policies. Thus, in certain cases, the College may notify parties that a complaint is being dismissed under Title IX, but that investigation and resolution of the complaint will continue under this Policy.

If the Title IX Coordinator, at the same time that they are issuing a Title IX dismissal, or at any point during an investigation that follows such a dismissal, determines that there is no reasonable cause to

¹ The definition of sexual harassment which will be applied under these circumstances as defined by Title IX at 34 C.F.R. Part 106 means conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- 3) One of the following Clery Act/VAWA Offenses:
 - "Sexual assault": The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
 - "dating violence": violence committed by a person—
 - a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.
 - "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

believe that this Policy has been violated, she will also dismiss the allegation in its entirety. In such a case, the complainant may request that the Title IX Coordinator make an extraordinary determination to re-open the investigation. This decision whether to grant such a request lies in the sole discretion of the Title IX Coordinator.

B. Inappropriate Conduct That Falls Outside of This Policy

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

VII. 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 does not constitute consent to any other form of sexual activity. Previous consent does not constitute 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.

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. Alcohol or other drug use can place the capacity to consent in question. 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. Under this Policy, "No" always means "No," but "Yes" may not mean "Yes," particularly under circumstances of coercion or incapacity. Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

A. Relationships with Inherent Power Dynamics

The Faculty Rules prohibit sexual or romantic relationships between faculty and students. The one exception is if such a relationship predates adoption of the amendment in the Faculty Rules (November 2019) or the student's admission to the College, in which case the relationship must have been disclosed to the Academic Dean immediately upon adoption of the amendment in the Faculty

² Definition of consent is below on page 16.

Rules or be disclosed to the Academic Dean upon the student's admission, so that the Academic Dean may take appropriate action to ensure that the faculty member has no professional responsibility with regard to the student. As used here, the term "professional responsibility" includes but is not limited to teaching, grading, mentoring, advising on or evaluating research or other academic activity, participating in decisions regarding funding or other resources, clinical supervision, and recommending for employment, fellowships or awards.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as supervisor and employee, TA and student in class). These relationships may be less 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. For the personal protection of members of this community, relationships in which power differentials are inherent (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, even where they are not prohibited. 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 Coordinator. Furthermore, a consensual relationship can give rise to quid pro quo harassment, which is a violation of this Policy. (Quid pro quo harassment is discussed below.)

B. Tips for Healthy Sexual Relationships

- Before, during and after a sexual encounter, you owe respect to your potential partner. These suggestions may help ensure you have positive and consensual sexual encounters, and following them will reduce your risk for being accused of sexual misconduct: Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- If your partner does not wish to "go further" than you, you should respect their 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. If you feel like you cannot read them, it is possible that your partner may no longer want to continue the encounter. 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, race, financial position, or physical presence. Don't abuse that power.
- Never share intimate content, pictures, images and videos that are shared with you.
- Understand that consent to some form of sexual behavior does not constitute consent to any other form of sexual behavior.
- Silence, passivity, or non-responsiveness is not an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

VIII. DEFINITIONS:

SEXUAL MISCONDUCT OFFENSES INCLUDE:

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

A. Sexual Harassment

Anyone experiencing sexual harassment in any University of California Hastings College of the Law program is encouraged to report it immediately. Remedies, support services, education and/or training will be provided in response. Sexual harassment is unwelcome, sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Sexual harassment may be disciplined if it is found to take one of the forms below. Hostile Environment Harassment is:

- unwelcome, sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct that is
 - sufficiently severe, 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.

Sexual Harassment includes: 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; or to condition a benefit on submitting to sexual advances.

Some examples of possible sexual harassment include:

- A professor insists that a student have sex with them 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 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, probing 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.

B. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- any sexual contact (as defined below)
- however slight,
- by a person³ upon another person,
- that is without consent and/or by force.⁴

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 that is reasonably perceived as sexual.
- May be clothed or unclothed.

C. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse⁵ is:

- any sexual intercourse
- however slight,
- by a person⁶ upon another person,
- that is without consent and/or by force⁷.

Intercourse includes:

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

³ This includes a person touching another person with an object

⁴ 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.

⁵ Included in this definition is reproductive coercion, i.e., birth control sabotage. Examples may include when someone: hides, withholds, or destroys a sexual partner’s birth control pills; replaces or tampers with a sexual partner’s birth control pills without the partner’s knowledge or consent; breaks or pokes holes in a condom on purpose; removes a condom during sex without telling their sexual partner; refuses to withdraw during sex, even if they previously agreed to do so; pulls out a sexual partner’s vaginal contraceptive ring; or tears off a sexual partner’s contraceptive patch.

⁶ This includes a person touching another person with an object.

⁷ See supra, n.4.

D. Sexual Exploitation

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

- Invasion of sexual privacy, including non-consensual digital, video or audio recording of nudity or sexual activity;
- Prostituting another person;
- 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;

IX. ADDITIONAL APPLICABLE DEFINITIONS:

A. 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 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 mean 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 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.

1. 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.⁸
- The question of what the respondent should have known is objectively based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of complainant.
- 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 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/>].

2. Physical Force

Physical force is the use of physical violence and/or imposing on someone physically to gain sexual access. The use of physical force in order to engage in a sexual encounter negates consent.

3. Coercion

Coercion is verbal or psychological pressure to engage in sexual activity. This may include threats, intimidation (implied threats), or attempts to overcome free will or resistance.

In evaluating an allegation of coercion, the College will consider the totality of the circumstances, looking at the following factors together:

- Frequency: How many times sex was requested. This includes sexual advances through the use of technology.
- Intensity: The creation of psychological pressure, through means such as attacks on a complainant's character, values and morals. (For example: "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 unrequited advances for 10 minutes vs. making advances for one hour.
- Power imbalance: The use of one's power or position to convince another person to have sex.

⁸ 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).

NOTE: There is no requirement for a party to physically resist the sexual advance or request for sexual activity to be nonconsensual, but physical resistance is a clear demonstration of non-consent. The absence of force is not demonstrated by the absence of resistance. Furthermore, sexual activity that is forced is by definition non-consensual, but non-forced sexual activity may also be non-consensual.

- 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 44.

Examples of Nonconsensual Encounters

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 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, but he is slurring his words. 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 may be a violation of the Non-Consensual Sexual Intercourse Policy. Some of the factors that will be considered are whether Kevin should have known that John was incapacitated and therefore unable to consent. Even if John seemed to consent by saying "yes" and initiating sexual activity, there was evidence that Kevin was aware that John had consumed a large amount of alcohol, was slurring, and Kevin thought John was physically ill, and that he passed out during sex. Kevin will likely be held responsible for violating the College's policy prohibiting Non-Consensual Sexual Intercourse. When someone is intoxicated to the point that they are slurring, throwing up, and vomiting, they lack the capacity to give knowing consent.
4. Sara and Michael have been dating since the first week of Law School. One evening during their 2L year, Michael is cramming late for an exam. Sara comes over to his apartment to bring him study snacks and begins undressing herself and leading Michael over to his bed. Michael tells Sara that he is not in the mood to have sex and needs to get back to studying. Sara ignores his comments and begins to try to take his clothes off. Michael again rejects her advances and tells her how important the exam is and that he still has a lot of studying to do. Sara tells Michael that she is "not taking no for an answer" and becomes upset when Michael redirects the conversation to talk about his stress over the test. Finally, not wanting to upset Sara further, he agrees to have sex with her. It is likely that campus decision-makers would find that Sara coerced Michael into the sexual encounter and is therefore responsible for violating the College's policy prohibiting Non-Consensual Sexual Contact. Sara and Michael's prior relationship does not negate the need to get consent for every future sexual encounter, and the College would not consider their prior relationship proof that Michael consented in this encounter.

OTHER MISCONDUCT OFFENSES:

(Will Fall Under This Policy When Sex or Gender-Based)

B. Relationship Violence⁹

1. Relationship Violence is:

- a. 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
- b. 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),
- c. 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.

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

3. 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).

4. 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.”

5. 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.

⁹ The state legal definitions of domestic violence and dating violence can be found at [Cal Pen Code § 1300](#) (2016).

C. Stalking¹⁰¹¹

1. Stalking:

- a. A course of conduct¹²
- b. Directed at a specific person
- c. When sex or gender based
- d. That is unwelcome, and
- e. Would cause a reasonable¹³ person to feel fear for their safety or the safety of others, or to suffer substantial emotional distress¹⁴

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 receives a message on Instagram from a classmate asking if they would like to go on a date. The student declines the offer. Over the next few weeks, the student receives a dozen messages on Instagram, Facebook and via their personal email address from the same classmate, each containing a list of reasons why this classmate thinks the student should change their mind. When the student does not respond, the classmate begins commenting on pictures the student has posted on social media, occasionally making profane comments about the way they look.
3. 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, they thanked the student and stated that it was not necessary and they would appreciate the gift deliveries to stop. The student then started leaving notes of love and gratitude in the TA'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."

¹⁰ See Cal Pen Code § 646.9 (2008) and Cal Civ Code § 1708.7 (2014) on Stalking.

¹¹ Stalking not based on a protected class would may still be a violation of the Student Code of Conduct.

¹² Course of conduct is defined as two or more acts. It includes following, monitoring, observing, surveilling, threatening, communicating, or interfering with property, etc.

¹³ Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

¹⁴ Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

D. 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 (or refusal to participate) in the investigation, reporting, remedial, or disciplinary process provided for in this Policy. Retaliation against an individual for an allegation, for supporting a 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, coercion, discrimination, and/or adverse employment or educational actions, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.

Examples of Retaliation:

1. 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.
2. 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."
3. A student from Organization A participates in a sexual misconduct hearing against the respondent – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

X. 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 this 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

Sometimes, people 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, the College pursues a policy of offering complainants 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.

XI. RESOLUTION PROCESS FOR ALLEGATIONS OF SEXUAL MISCONDUCT

A. Introduction and Overview

University of California Hastings College of the Law will act on any allegation or notice of violation of the Sexual Misconduct Policy that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee. The supportive services and procedures will depend on whether or not a formal, written complaint is submitted to the Title IX Coordinator.

The procedures described below apply to all allegations of conduct covered by this policy. 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). 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.

Upon notice to the Title IX Coordinator of a possible violation of this Policy, the Title IX Coordinator will contact the complainant, discuss the availability of supportive measures, consider the complainant's wishes and provide such measures as are appropriate. The Title IX Coordinator will also explain to the complainant various resolution options, including the process for requesting a facilitated resolution or, alternatively, filing a complaint.

If the complainant files a complaint, or if the Title IX Coordinator files a complaint with respect to an incident, this resolution process requires an investigation of the incident. The investigation begins with a prompt preliminary inquiry to determine if the allegations, if true, would meet the definition of sexual harassment or the jurisdictional requirements stated above. If the allegations would meet the requirements, the Title IX Coordinator will initiate a full investigation that is confidential, thorough, reliable, impartial, prompt and fair. The investigation and the subsequent adjudication determine whether the Sexual Misconduct Policy has been violated. If the investigation and adjudication

conclude that a policy violation occurred, the College will promptly implement effective remedies designed to end the harassment, prevent its recurrence and address its effects, as appropriate.

B. Supportive Measures

Supportive measures are non-disciplinary, non-punitive services provided to a complainant or respondent before or after the filing of a complaint or where no complaint has been filed. They are designed to restore or preserve equal access to the College's education programs and activities without unreasonably burdening the other party. They include measures designed to protect the safety of all parties and the College's educational environment and to deter sexual misconduct. The Title IX Coordinator may provide supportive 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. Supportive 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 a 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.

Similar measures may be put in place as a result of a Resolution Process (e.g., Alternative Resolution, Formal Investigation).

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 physical safety or health of any member(s) of the campus community is immediately threatened by the presence on-campus of the respondent 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 notice of the suspension and 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 respondent. 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.

The College will maintain as confidential any supportive measures to the extent feasible while allowing the College to effectively implement those measures and properly implement this Policy.

C. 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. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them. The parties may choose advisors from inside or outside the campus community.

A party 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 an attorney to the other party. To engage an advisor, respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

- Equal Rights Advocates (<https://www.equalrights.org>), which provides free legal advice and resources to student survivors of sexual violence and harassment.
- 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 complainant or the respondent during any meeting or proceeding, except for questioning witnesses during a hearing, as set forth below, and may not speak on behalf of

the advisee to the investigators or hearing officer. The parties must 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 talk in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This discussion 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 third 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 required to use 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.

During a hearing, advisors are responsible for questioning parties and witnesses. The hearing officer may request advisors present their questions in advance for a determination of relevancy, although each party's advisor may still ask follow-up questions¹⁵ during the hearing, subject to the determination of relevancy. Only relevant questions may be asked. After asking a question and before a party or witness answers, the hearing officer will determine if the question is relevant and explain any decision to exclude a question as not relevant.

Questions must be asked in a respectful manner. If an advisor is acting in a manner that is disruptive to the process or asking questions in an aggressive or abusive manner, the hearing officer may request the advisor to ask the questions again in a respectful manner and, after a warning, may remove the advisor. If a party does not have an advisor for a hearing, either because one has not been selected or because the advisor has been removed for failing to act in a respectful manner, the College will appoint an advisor to the party without fee for the purpose of conducting questioning during the hearing.

D. Facilitated Resolution

A complainant who does not wish to file a complaint may request a facilitated resolution. Facilitated resolution is a voluntary, remedies-based resolution process that balances support and accountability without formal disciplinary action. It must be agreed to by the complainant as well as the respondent and approved by the Title IX Coordinator.

If facilitated resolution is desired by the parties and approved by the Title IX Coordinator, then the report does not proceed to investigation.

The College recognizes that it is important to take into account the needs of students, some of whom may prefer not to go through an investigative resolution. Facilitated resolution is a voluntary, remedies-based, structured interaction between or among affected parties that balances support and accountability without formal disciplinary action against a respondent. Facilitated resolution is generally designed to allow a Respondent to acknowledge harm and accept responsibility for repairing harm (to the extent possible) experienced by the complainant and/or the College community. Facilitated resolution is designed to eliminate any prohibited conduct, prevent its recurrence, and remedy its effects in a manner that meets the needs of the parties while maintaining the safety of the campus community.

¹⁵ Additionally, any change to the language of the question from what was previously submitted and determined relevant by the hearing officer will be subject to a relevancy determination after it is asked.

The Title IX Coordinator reviews the matter to the extent necessary to confirm that it is of the type that would be appropriate for a facilitated resolution process and that use of a facilitated resolution process was without pressure or compulsion from others. The facilitated resolution options available under this Policy recognize:

- The goal of facilitated resolution is to address the Prohibited Conduct, identify ways that individuals and/or the community have been harmed, and develop a resolution agreement to address the harm and prevent future Prohibited Conduct;
- Participation is voluntary and both a complainant and a respondent, as well as any other participating individuals, must consent in writing to participation in facilitated resolution;
- The written consent will inform the complainant and the respondent that either can request to end facilitated resolution at any time and pursue an investigative resolution. The written consent will also inform parties that information gathered and utilized in facilitated resolution by and between the parties cannot be used in any other College process, including investigative resolution, unless agreed to by all involved;
- The College will not pressure or compel a complainant to engage in mediation, to directly confront the respondent, or to participate in any particular form of facilitated resolution;
- Prohibited Conduct affects complainants, respondents, witnesses, friends, community members, family members, and others;
- Complainants, respondents, and other participants in facilitated resolution often benefit when resolution processes and outcomes are tailored to meet their unique needs and interests;
- Complainants and other participants in facilitated resolution may find it useful to meet with a respondent who acknowledges the substance of the underlying events and who acknowledges that complainants have reported experiencing harm as a result;
- Structured interactions between participants can facilitate long-term healing and reduce recidivism; and
- Participants in facilitated resolution processes must be protected from secondary victimization and other potential harms, including the pressure to proceed through facilitated resolution instead of investigative resolution.

Measures that may be agreed to as a result of the resolution process may include:

- Alcohol education classes;
- Regular meetings with an appropriate College individual or resource;
- Permanent extension of a no contact order;

- Restriction from participation in specific organizations;
- Restriction from participation in particular events;
- Completion of an educational plan with regular meetings with appropriate staff or faculty member; and
- Counseling sessions.

E. Complaint-based process

a. Introduction

A complainant may file a complaint with the Title IX Coordinator, which will trigger an investigation by the College and, possibly, a hearing and determination of responsibility against the respondent with appropriate sanctions. (As discussed above, a complaint is not needed to pursue facilitated resolution options or to receive supportive measures.) Complaints should be signed and on the UC Hastings complaint form. A complaint may also be submitted electronically to the Title IX Coordinator (such as by e-mail or through an electronic portal), so long as an electronic signature or other identifying information is included which confirms the complainant's identity. (As discussed above, in limited circumstances the Title IX Coordinator may file a complaint.)

1. Preliminary Inquiry

Following the filing of a complaint, the Title IX Coordinator¹⁶ engages in a preliminary inquiry to determine if the complaint alleges conduct within the jurisdiction of this policy and that, if true, would constitute a violation of this policy. Where the conduct alleged would not constitute a violation under the Title IX regulations, 34 C.F.R. Part 106, the Title IX Coordinator will also evaluate whether there is reasonable cause to believe this policy may have been violated. The Title IX Coordinator will dismiss a complaint that does not satisfy these preliminary inquiry standards. The preliminary inquiry typically takes up to five (5) business days.

In the absence of a complaint from a complainant (such as when a complainant requests no investigation or the complainant is unknown), the Title IX Coordinator will evaluate whether or not to file a complaint. In such circumstances, the Title IX Coordinator will consider the wishes of the complainant, the safety of the college community,¹⁷ and ability to gather evidence.

Where a complaint is not dismissed at the preliminary inquiry phase, the Title IX Coordinator will direct a full investigation to commence, as discussed further below.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification

¹⁶ If circumstances require, the Chancellor & Dean or Title IX Coordinator may designate another person to oversee the process below.

¹⁷ Some of the factors affecting safety may include: violence, threat, pattern, predation and/or weapon.

of the investigation to the parties at an appropriate time during the investigation.¹⁸ The College aims to complete all investigations normally within two to four months.

2. Investigations

Unless a complaint is dismissed after the preliminary inquiry, the Title IX Coordinator will investigate or procure the services of an investigator. Investigations are completed expeditiously, normally within two to four months, though some investigations take less or more time, 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 (usually one to four 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 investigator may take the following steps, if not already completed (not necessarily in order):

- Determine the identity and contact information of the complainant, if unknown;
- Identify all policies allegedly violated;
- If needed, assist the Title IX Coordinator with an immediate preliminary inquiry to determine if there is reasonable cause to believe the respondent has violated policy.
- 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 parties;
- 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 regular updates to the complainant throughout the investigation, and to the respondent, as appropriate;
- 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;

¹⁸ 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.

- Prior to the conclusion of the investigation, provide the complainant and the respondent 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 the opportunity to inspect and review any evidence obtained in the investigation that is directly related to the allegations raised in the complaint and allow the parties to submit a written response within ten or more days; the investigator will consider any responses from the parties prior to completing an investigation report. This evidence will be available at any hearing such that either party may refer to it.;
- Create an investigation report that fairly summarizes relevant evidence and provides the investigator's determination of relevant issues and, at least 10 days prior to any hearing or other time of determination of responsibility, send to each party and the party's advisor, if any, such report for their review and written response.
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline.

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 or cooperate during an investigation will not be permitted to offer evidence or testimony during any subsequent hearing. 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.

3. Evidence

Formal rules of evidence do not apply during the investigation or hearing. Any evidence that the investigator or hearing officer believes is relevant may be considered, including history and pattern evidence, except as set forth below. The investigator may exclude evidence not directly related to the allegation from the evidence report proffered to the parties for inspection and review. The hearing officer will address any evidentiary concerns prior to and/or during the hearing and will exclude evidence the hearing officer determines to be irrelevant. The hearing officer will determine all questions of procedure and evidence.

Questions and evidence not considered to be relevant include those about: (1) any party's medical, psychological, and similar records;¹⁹ (2) legally privileged information; and (3) for findings and final determinations, party or witness statements not subjected to cross-examination at a live hearing. While previous conduct violations by the respondent are not generally admissible as information about the present allegation, the investigator may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

F. Alternative Resolution²⁰

Alternative Resolution can be pursued for any behavior that falls within the policy on Sexual Misconduct at any time during the process after a complaint has been filed²¹.

This option may be used when:

- A respondent 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 alternative resolution, the Title IX Coordinator or designee has the authority to address all collateral misconduct, meaning that they hear all allegations of sexual harassment and misconduct, or retaliation, but also may address any additional alleged policy violations that have occurred in concert with the harassment, misconduct, 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.

Typically, within ten (10) days of the close of an investigation, the parties are given the opportunity to request alternative resolution instead of proceeding to a hearing. The parties may both agree to participate in alternative resolution, or the respondent may choose to admit responsibility for all or

¹⁹ Records of this type may only be used with the voluntary, written consent of the party.

²⁰ References to alternative resolution have the same meaning as "informal resolution" under Title IX.

²¹ Alternative resolution may not be used in cases of allegations of sexual harassment by an employee against a student.

part of the alleged policy violations, which would also allow the respondent to request alternative resolution. If the respondent 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 only on remaining disputed violations, if any.

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

If the respondent 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) business 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 alternative resolution process, including at its conclusion, either party may request that the matter be referred to the formal resolution process (e.g., investigation or a hearing).

Hearing-Based Resolution:²²

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

²² Procedures set forth herein apply to student and staff respondents. Procedures for faculty respondents are set forth in the Faculty Rules.

G. Hearing Procedures

1. Hearing Officer Selection

The Title IX Coordinator will initiate a hearing. In cases with employee or student respondents, the Title IX Coordinator will select a trained hearing officer. For faculty respondents, please refer to the Faculty Rules and Procedures.

2. Notice of Hearing

At least ten (10) business 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. 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 must have the assistance of an advisor at the hearing (See Section XI.C.: “Advisors” above page 26).

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 six (6) month goal for resolution.

3. Hearing Timing and Subjects

The hearing will be convened as soon as possible, usually within twenty (20) days after a decision to pursue a formal hearing. The hearing officer has the authority to hear all collateral misconduct, meaning that person hears all allegations of conduct violating this Policy, but also may hear any additional alleged violations of other College policies when the incidents arise out of the same set of facts. Accordingly, investigations should be conducted with as wide a scope as necessary.

4. Witnesses and questioning

The parties may propose witnesses who were interviewed or provided written statements during the investigation to appear at the hearing, or any witness consented to by all parties; and the hearing officer will approve any witness who can provide relevant testimony, unless the witness's proffered testimony is not disputed by either party. The hearing officer will provide the parties with the names of witnesses who will be participating in the hearing at least two (2) days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first during the investigation (or have proffered a written statement that is acceptable to the investigator).

5. Questioning of Parties and Witnesses

Questioning of parties and witnesses will be conducted by the parties' advisors. Only relevant questions may be answered, and all parties and witnesses being questioned will be instructed to only answer relevant questions. The hearing officer will decide what questions are relevant, subject to the evidence limitations stated above at page 32. The hearing officer may request advisors to present their questions in advance for a determination of relevancy, although each party's advisor may still ask follow-up questions²³ during the hearing, subject to the determination of relevancy. Questions may not be asked in a manner that is aggressive or abusive of any party or witness (for more information see Advisor section on page 26).

If a party or witness does not submit to questioning at the live hearing, despite the request of a party, the hearing officer may not rely on any statement of that party or witness in reaching a determination regarding responsibility; but the hearing officer will not draw an inference regarding responsibility based solely on any person's absence from a hearing or refusal to answer questions during a hearing.

If alternative attendance or questioning mechanisms are desired, such as the complainant not wanting to be in the same room as the respondent for the hearing (screens, Skype, questions directed through the hearing officer), the parties should request them from the Title IX Coordinator at least two (2) business 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.

²³ Additionally, any change to the language of the question from what was previously submitted and determined relevant by the hearing officer will be subject to a relevancy determination after it is asked.

6. Other Hearing Procedures

Evidence that may be introduced and considered is discussed above on page 32.

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. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

Proceedings are private and the College will maintain the confidentiality of all persons participating. All persons present at any time during the hearing are requested to respect the privacy of the proceedings. The parties and witnesses have the discretion to share their own experiences if they so choose, and should discuss doing so with their advisors. Any restriction on the right to discuss allegations under investigation may constitute retaliation, as discussed above.

Hearings (except for deliberations) are recorded or transcribed 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 inspect and review the audio recording or transcript 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.

7. Alternative Testimony Options

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

8. 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 respondent committed each alleged violation), except a violation giving rise to a sanction of Dismissal/Termination must be supported by clear and convincing evidence (i.e.

whether it is highly probable that the respondent committed each alleged violation). To sustain a charged violation, the College bears the burden of proof by a preponderance of the evidence.

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

The hearing officer will prepare a written report which shall include the following information:

1. Identification of the allegations;
2. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;²⁴
4. Conclusions regarding the application this Policy and any other applicable conduct policies to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and
6. The College's procedures and permissible bases for the complainant and respondent to appeal.

The hearing officer will deliver the final report to the Title IX Coordinator within two (2) weeks of the end of deliberations, unless the Title IX Coordinator grants an extension. The Title IX Coordinator will convey the report to the parties within the next two (2) business days, without significant time delay between notifications. The report 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 delivered in-person, notice will be presumptively delivered.

H. Sanctions

Sanctioning process:

Parties have 7 days after the determination of responsibility to submit a statement of requested sanctions.

The appropriate College official (Assistant Dean of Students for students, Director of Human Resources for staff, entity stated in Faculty Rules for faculty) will decide sanctions or responsive actions appropriate to the policy violation. Factors considered when determining a sanction/responsive action may include:

²⁴ Where dismissal is a possible sanction, the report should also include an indication of whether the findings were determined by preponderance of the evidence or clear and convincing evidence.

- 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 complainant and the community
- Restoring access to the education program

1. 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.
- **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.

2. 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.

3. 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 Sexual Misconduct Policy, the process may 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 or may reasonably be satisfied upon the student's return. 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.

I. Appeals

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within five (5) business 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 a dismissal of a formal Title IX complaint or a determination of responsibility, but appeals are limited to the following grounds:

- A procedural error or omission occurred that affected the outcome of the hearing (e.g. substantiated bias, conflict of interest, material deviation from established procedures,).
- To consider new evidence, reasonably unknown or unavailable during the original hearing or investigation, that could affect the original finding or sanction. A summary of this new evidence and its potential impact must be included.²⁵
- The sanctions imposed fall outside the range of sanctions the College has designated for this offense and the cumulative record of the respondent.

An appeal request submitted to the Title IX Coordinator will be given to the Chancellor & Dean²⁶ who will consider and decide the appeal request. 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 seven (7) 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 seven (7) 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:

²⁵ 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.

²⁶ Under limited circumstances, it may be necessary for the Chancellor & Dean to appoint a replacement. If the Chancellor & Dean is a party, the Chair of the Board of Directors or designee will oversee the appeal.

- 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 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. The Chancellor & Dean in his or her discretion may remand and/or decide other appeals. The Chancellor & Dean and/or Title IX Coordinator shall set timelines for process following remand.
- 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 Chancellor & Dean or designee will render a written decision on the appeal to all parties typically within fourteen (14) days from receipt of full documentation or hearing of the appeal, if any, whichever occurs later.
- 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 (that is, a hearing de novo on one or more of the allegations in the complaint). The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.
- All parties will be informed in writing 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.
- In cases where the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

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

When the harm is potentially still ongoing and community-based, the Title IX Coordinator may implement the following:

- Education to the community
- Climate surveys
- Policy modification

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the respondent 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.

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

All 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.

XII. Records

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

XIII. Additional Information

A. 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)

B. 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. Procedures in effect at the time of the complaint will apply to resolution of incidents, regardless of when the incident occurred. Definitions 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 was implemented in December 2018 and updated August 2020.

XIV. Supportive Resources for Students Impacted by Sexual Violence and Sexual Harassment

A. Hastings Support Resources

CARE Advocate: The Center for Advocacy, Resources and Education (CARE) provides free, confidential support to any UC Hastings student who has been impacted by interpersonal violence such as sexual assault, dating/intimate partner violence, sexual harassment or stalking.

Contact

Phone: 415-565-4699

Email: Care@uchastings.edu

Carbon Health: Carbon Health is a comprehensive healthcare option available to all UC Hastings students. Carbon Health provides short-term individual counseling and therapy (maximum of eight sessions per year), which is goal-focused cognitive behavioral therapy. If you require additional behavioral health services, Carbon Health will refer you to a specialist for long-term care. Any visits with doctors or behavioral health professionals are confidential. For more information, please visit: carbonhealth.com/student-health/uc-hastings.

Title IX Coordinator: The Title IX Coordinator manages neutral investigations of allegations of sexual assault, dating violence, stalking and sexual harassment and is available to explain and discuss resources and investigative processes.

Contact

Phone: 415.565.4733

Email: titleixcoordinator@uchastings.edu

B. Community Support

San Francisco Women Against Rape (SFWAR): SFWAR provides a 24-hour crisis hotline (Counselors are trained in areas such as sexual harassment, incest, child sexual assault, same-sex sexual assault, domestic violence, ritual abuse, suicide prevention, male survivors and stalking), counseling & support groups, legal advocacy, medical accompaniment & advocacy, and case management. SFWAR can provide confidential counseling and advocacy services.

Contact

Phone: 415.647.RAPE

Email: www.sfwar.org

Trans Lifeline: Trans Lifeline is a grassroots hotline and microgrants organization offering direct emotional and financial support to trans people in crisis - for the trans community, by the trans community. The Hotline was, and still is, the only service in the country in which all operators are transgender.

Contact

Phone: 877.565.8860

Website: <https://www.translifeline.org>

ENOUGH Pro Bono Legal Service:

A program through Equal Rights Advocates that provides student survivors of sexual violence and sexual harassment with free legal advice and services.

Contact

Website: <https://www.equalrights.org>

Trauma Recovery Center (TRC): Trauma-informed, evidence-based mental health services; individual and group psychotherapy; help with practical needs.

Contact

Phone: 415.437.3000

Website: www.traumarecoverycenter.org

Cooperative Restraining Order Clinic (CROC): Elisha Jussen-Cooke is a Victims' Rights Attorney at CROC in San Francisco. To protect the rights of domestic violence, sexual assault and stalking survivors, Elisha represents clients in civil, criminal and Title IX administrative proceedings. Her work includes providing information and advice to victims about criminal proceedings and their rights as victims of crime, as well as direct representation of these victims in criminal matters. On San Francisco campuses, Elisha educates and advises survivors about their rights under Title IX and represents clients in administrative proceedings. She also helps sexual assault and stalking survivors obtain Civil Harassment Orders, as well as representing domestic violence victims in restraining order hearings. Elisha's services are confidential.

Contact

Phone: 415.864.1790

Email: Elisha@roclinic.org

W.O.M.A.N. Inc., Domestic Violence Services: The hotline provides live, secure, anonymous crisis support for victims of sexual violence, their friends, and families.

Contact

Phone: 415.864.4722

Email: www.womaninc.org

C. National Support Resources

RAINN National Sexual Assault Online Hotline: The hotline provides live, secure, anonymous crisis support for victims of sexual violence, their friends, and families.

Contact:

Phone: 1.800.656.4673

Webiste: rainn.org/get-help/national-sexual-assault-online-hotline

The StrongHearts Native Helpline for domestic/sexual violence is available 7am-10pm CT, confidential, and specifically for Native communities

Contact

Phone: 1-844-762-8483.

National Suicide Prevention Hotline: The National Suicide Prevention Lifeline is a national network of local crisis centers that provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week.

Contact:

Phone: 1.800.273.8255

Email: <https://suicidepreventionlifeline.org/>