



Policy Title:	Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, and Retaliation
Responsible Executives:	General Counsel and Vice President for Administration
Responsible Office:	Equity and Title IX Offices
Adopted by Authority of:	The Executive Committee and Board of Trustees
Original Adoption Date:	May 16, 2015
Revision Date, if applicable:	July 28, 2020; August 20, 2020 (Board Approval)

Policy Summary

This University of Redlands (“University”) policy applies to all faculty, staff, students, student employees, contractors, vendors, volunteers, and visitors to any University campus, facility, and/or property and to University-sponsored activities and events, whether or not on University premises.

This policy includes complaint procedures and processes for:

1. Title IX Sexual Harassment
2. Non-Title IX Equity Matters

This policy covers acts of discrimination, harassment, sexual harassment (quid pro quo harassment by a University employee, unwelcome conduct, sexual assault, and other forms of sexual misconduct), and retaliation. It outlines the process to report Title IX sexual harassment matters as well as non-Title IX equity matters. It includes information on making a report, supportive measures available, and the formal complaint process for both types of matters.

The University can only act to remedy and prevent specific acts of discrimination, harassment, or retaliation from reoccurring if it is made aware of such conduct. Additional information and resources are available at www.redlands.edu/titleixandequity.

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I. Policy Statements

These policy statements support the University's commitments to equality of opportunity and maintaining an academic environment and workplace that is free from unlawful discrimination, harassment, and retaliation. The University will take appropriate action to prevent, correct, and discipline behavior that is found to violate this policy. Each person to whom this policy applies shares a responsibility for upholding and enforcing this policy.

- A. No Discrimination.** The University prohibits and will not tolerate unlawful discrimination (as defined in Section II(A), below) on the basis of age, color, race, ethnicity, national origin, ancestry, sex, marital status, pregnancy, status as a complaining party of domestic violence, sexual orientation, gender, gender identity or expression, physical or mental disability, genetic information, religion/creed, citizenship status (except to comply with legal requirements for employment), military/veteran status, or any other characteristic protected by law.
- B. No Harassment.** The University prohibits and will not tolerate unlawful harassment (as defined in Section II(B), below) on the basis of the characteristics identified in Section I(A), above.
- C. No Retaliation.** The University prohibits and will not tolerate unlawful retaliation (as defined in Section II(G), below).
- D. Reporting Obligation.** With two exceptions, the University requires all University employees (faculty, staff, student employees, and administrators) to report any discrimination, harassment, or retaliation that they witness or have a reasonable basis to suspect. The reports should be made to the Director of Equity and Title IX Coordinator. **The Director of Equity and Title IX Coordinator is Erica Moorer and her office is on the first (garden level) floor of the Administration Building. Ms. Moorer also can be reached by email (Erica.Moorer@Redlands.edu) or by phone (909-748-8916).** This reporting obligation also applies to University contractors or volunteers who are responsible for the welfare of students. Students are *strongly encouraged* to report discrimination, harassment, or retaliation, even though they are not *required* to do so. Without robust student participation and engagement, the University's commitment is more difficult to fulfill. The two exceptions to the University employee obligation to report are when the following professionals learn of the alleged policy violations during consultations when there is an expectation of confidentiality: (1) chaplains who work in the Office of the University Chaplain, and (2) licensed counselors/psychologists who work in the University Counseling Center. Ordained faculty or staff are not confidential unless they are acting as University Chaplain. Professionals in these two organizational areas can maintain confidentiality and will only report if the person who seeks their assistance requests that a report be made or if the employee has a professional or legal obligation to do so. For minors (17 years old and younger), the University is required to notify local law enforcement, child protective services, and parents and guardians of any incident of

sexual abuse. Timely reporting of incidents involving a minor to local law enforcement is required. An employee’s failure to timely report sexual abuse involving a minor or any obvious discrimination, harassment, or retaliation may result in discipline, including and up to termination of employment.

- E. Employment Compliance.** The University complies with all applicable Federal and State laws and regulations that prohibit discrimination in employment because of a legally-protected characteristic. This includes but is not limited to Title VII of the Civil Rights Act of 1964 (“Title VII”), a Federal civil rights law dealing with employment. The University prohibits and will not tolerate unlawful employment discrimination.
- F. Title IX Compliance.** The University complies with Title IX of the Education Amendments of 1972 (“Title IX”), a Federal civil rights law. Title IX prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, prohibited sex discrimination includes, but is not limited to, sexual harassment and other forms of sexual misconduct. The University prohibits and will not tolerate sex discrimination in employment or educational programs and activities.

External inquiries or reports may be made to:

Office for Civil Rights (OCR): California	Office for Civil Rights (OCR): U.S. Department of Education
San Francisco Office U.S. Department of Education 50 Beale Street, Suite 7200 San Francisco, CA 94105-1813 Telephone: (415) 486-5555 Facsimile: (415) 486-5570 Email: OCR.SanFrancisco@ed.gov	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
Equal Employment Opportunity Commission (EEOC)	Department of Fair Employment and Housing (DFEH)
Los Angeles District Office Roybal Federal Building 255 East Temple Street, 4 th Floor Los Angeles, CA 90012 Telephone: (800) 669-4000 Facsimile: (213) 894-1118 Web: www.eeoc.gov	Los Angeles District Office 320 West 4 th Street, 10 th Floor Los Angeles, CA 90013 Telephone: (800) 884-1684 Email: contact.center@dfeh.ca.gov Web: www.dfeh.ca.gov

II. Definitions of Terms Referenced in Policy

The following definitions are intended to provide a better understanding of the meaning of certain terms as used within this policy:

- A. Discrimination.** “Discrimination” involves an adverse action or decision against, or harassing treatment of, a person or class of persons *because of*, or because of a perception of, a protected characteristic (identified in Section I(A), above) or because of perceived or actual affiliation/association with other individuals in a protected class. Adverse actions include, but are not limited to: denying raises, benefits, promotions, or leadership opportunities; demoting, disciplining, or terminating a person’s employment; interfering with the use of University facilities or services; denying access to an educational program; or instigating or permitting an environment that is unwelcoming or hostile. “Discrimination” under this policy does not include all unfair or inappropriate behavior, only those behaviors that take place because of a protected characteristic.
- B. Harassment.** “Harassment” involves behavior that affects a person because of a legally-protected characteristic and typically takes two forms: (1) *quid pro quo* harassment or (2) hostile environment harassment. “*Quid pro quo* harassment” takes place when a supervisor or other authority figure offers or hints that something (e.g., a raise, a promotion) can be obtained in return for a sexual favor or submitting to harassing behavior. “Hostile environment harassment” takes place when a person is subjected to severe or pervasive behavior, that is unwelcome, and which unreasonably interferes with that person’s ability to carry out their job functions or otherwise meet their responsibilities or creates an intimidating, hostile or offensive work environment. Unlawful harassment does not include stray, insensitive, or even offensive remarks or behaviors when such remarks or behaviors are neither severe nor pervasive. Harassing behaviors prohibited by this policy include, but are not limited to: severe or pervasive use of derogatory words, jokes, slurs, epithets, or statements; stereotyping activities; use of graffiti or other forms of pictorial or written messages of intimidation; threats about unwelcome physical contact; unwelcome physical contact; and stalking. This definition of “harassment” includes harassment on the basis of sex; for Title IX purposes, however, “Sexual Harassment” is defined below in Section II(C).

The following is a non-exhaustive set of behaviors that may constitute harassment:

- Unwelcome advances, propositions, or requests for sexual favors
- Unwelcome touching, patting, pinching, or brushing up against another’s body or clothing
- Showing/displaying suggestive, demeaning, or objectifying objects, pictures, or words (including on screens, whether or not intended to be seen by others)
- Suggestive, demeaning, or offensive jokes
- Unwelcome comments about an individual’s body, clothing, or protected characteristic that serve to demean, marginalize, or objectify the individual
- Threatened, insinuated, or actual violence whether general or specific in nature
- Other unwanted verbal, visual, or physical conduct of a sexual or sex-based nature may constitute sexual harassment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- Submission to or rejection of such conduct by an individual is used, threatened, or insinuated as the basis for an employment decision affecting that individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

C. Sexual Harassment. "Sexual Harassment," for Title IX purposes,¹ is defined as (a) *quid pro quo* harassment by a University employee, (b) any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access, and (c) any instance of sexual assault, dating violence, domestic violence, or stalking. Title IX Sexual Harassment must occur at a time when the Complainant is participating in, or attempting to participate in, an educational program or activity of the University and it must occur in the United States and either on University property or during University programs or activities. Harassment involving a University student or employee outside of these conditions may be dealt with pursuant to the University's general harassment prohibition.

- 1. Quid Pro Quo Harassment by a University Employee.** *Quid pro quo* harassment takes place when a person employed by the University offers something in exchange for a sexual favor. Examples of this type of harassment include, but are not limited to: a professor promising a better grade if a student goes out with the professor or a staff member suggesting they will not turn a student in for a violation of the Student Code of Conduct if the student exposes parts of their body or shares intimate photographs.
- 2. Unwelcome Conduct.** Unwelcome conduct that is prohibited by Title IX is not necessarily *any* conduct that *any* person finds to be unwelcome. First, the unwelcome conduct is assessed from the standpoint of a "reasonable person," not necessarily the specific person who experiences the conduct. Second, the unwelcome conduct must be severe and pervasive and objectively offensive. Third, the unwelcome conduct must serve to deny a person equal education access.

The following is a non-exhaustive set of behaviors that may constitute unwelcome conduct:

- Unwelcome advances, propositions, or requests for sexual favors
- Electronically recording, collecting, photographing or transmitting intimate or sexual utterances, acts, sounds, or images of another person
- Allowing third parties to observe sexual acts
- Distributing intimate or sexual information about another person
- Conduct that intentionally exposes a person's private body parts to others
- Showing/displaying suggestive, demeaning, or objectifying objects, pictures, or words (including on screens, whether or not intended to be seen by others)
- Suggestive, demeaning, or offensive jokes
- Unwelcome comments about an individual's body, clothing, or sexual choices

¹ The University is required to use the definitions in Section II(C) by Federal regulations implemented in 2020.

- Threatened or insinuated violence whether general or specific in nature

D. Sexual Assault. “Sexual Assault” is any rape, fondling, incest, or statutory rape.

- A. Rape.** A “rape” is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim.
- B. Fondling.** A “fondling” is defined as the touching of the private parts of another person for the purpose of sexual gratification, without the affirmative consent of the victim, including instances where the victim is incapable of giving consent because of the victim’s age or because of the victim’s temporary or permanent mental incapacity.
- C. Incest.** “Incest” is defined as sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- D. Statutory Rape.** “Statutory rape” is defined as sexual intercourse with a person who is under the statutory age of consent. In California, the statutory age of consent is 18. In California, there is no close-in-age exception.

E. Dating Violence. “Dating Violence” is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined by consideration of the totality of the circumstances including length and type of relationship and the frequency of interaction between the persons involved in the relationship.

F. Domestic Violence. “Domestic Violence” is abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. Under California law, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Domestic violence includes physical battery and bodily injury, as well as threats of injury.

G. Stalking. “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking conduct can include willfully, maliciously or repeatedly following or harassing a person, even if the accused does not intend harm.

H. Affirmative Consent. For “affirmative consent” to be present, the following characteristics must be met:

- Consent can be communicated by word or action
- Consent must be mutually understandable
- Consent must be informed, knowing, voluntary, and freely and actively given
- Consent must be obtained at each escalation in the level of sexual activity (e.g., consent to kissing is not consent to fondling; consent to fondling is not consent to intercourse)
- Consent cannot result from force, threat, intimidation, duress, manipulation, or coercion
- Consent cannot be given by minors, mentally disabled individuals, or individuals who are mentally or physically incapacitated (such as by alcohol or other drugs); see “Incapacitation” definition, below

- Consent to one form of sexual activity does not imply consent to other forms of sexual activity
- Consent at one time does not imply affirmative consent to another time (e.g., consent to intercourse last night is not consent to intercourse tonight)
- Consent can be withdrawn at any time before or during sexual activity by expressing in words or actions that an individual no longer wants the act(s) to continue. When consent is withdrawn, the other person must stop the act(s) immediately.

Because individuals may experience a particular interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity and throughout the duration of the activity.

I. Incapacitation. “Incapacitation” exists when an individual lacks the physical or mental ability to make informed, rational judgments (e.g., to understand the “who, what, when, where, why, or how” of their sexual interactions), and thus cannot give affirmative consent to sexual activity. Incapacitation may be temporary or permanent and may result from mental disability as well as states including, but not limited to: sleep, unconsciousness, disorientation, helplessness, blackouts, etc. Incapacitation may also occur in persons who appear to be functional or coherent but still may not be able to make rational decisions or give affirmative consent. The impact of consuming alcohol or drugs will vary from person to person and being intoxicated is not the same thing as being incapacitated (although intoxication can lead to incapacitation). Evaluating incapacitation due to the use of substances requires an assessment of each individual. Warning signs that a person may be approaching incapacitation may include, but are not limited to: slurred speech, lack of balance, loss of dexterity/coordination, decreased alertness/confusion, vomiting, combativeness, and emotional instability. If, under the circumstances, it was reasonable for a Respondent to rely on another person’s capacity to consent, and if affirmative consent is actually provided, there will not be a finding of incapacitation. Because incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution; when in doubt, assume the other person is incapacitated and therefore unable to give affirmative consent. Being intoxicated or impaired by drugs or alcohol is never an excuse, justification, or successful defense to an allegation of sexual harassment and does not diminish one’s responsibility to obtain affirmative consent.

J. Coercion. “Coercion” involves the application of an unreasonable amount of pressure on someone to say yes, in circumstances in which the person would not have said yes absent the unreasonable pressure. Coercion is evaluated based on the intensity, frequency, and duration of comments or actions. It exists when a sexual initiator engages in unreasonable or prolonged physical or emotional manipulation to persuade someone to do something sexual that they do not want to do.

K. Retaliation. “Retaliation” is adverse action taken against an individual because that individual has, in good faith: (1) personally complained of, or opposed, actual or perceived discrimination, harassment, or retaliation; (2) testified, assisted, or participated in an investigation, proceeding, hearing, or legal action involving a claim of discrimination,

harassment, or retaliation; or (3) exercised legal rights under a relevant statute, regulation, or policy that involves a protected characteristic. “Retaliation” also includes adverse actions or threats that are intended to, or would, dissuade a reasonable person from engaging in the above-protected activities.

- L. Complainant.** A “Complainant” is an individual who is alleged to have experienced the negative effects of prohibited conduct. A Complainant may or may not be the person who initially makes a report of prohibited conduct.
- M. Respondent.** A “Respondent” is an individual who is alleged to have engaged in conduct prohibited by this policy.
- N. Reporter.** A “Reporter” is an individual who makes a report of a violation (or potential violation) of this policy. A Reporter may or may not be a Complainant.
- O. Advisor.** An “Advisor” is any person chosen by a Complainant or Respondent to assist the party in navigating the procedures called for in this policy. Commonly, an Advisor is a professor or other University employee, a parent/relative, a friend, or an attorney). Any costs for an Advisor (e.g., an attorney’s fee or travel for a member of the family) are at the Complainant’s or Respondent’s own expense. Advisors do not directly participate in proceedings under this policy (except for conducting cross-examinations during hearings pursuant to Section III(C)(3)) but provide emotional support and behind-the-scenes guidance. An individual who has a conflict of interest cannot simultaneously serve as an Advisor. For example, a friend who is a witness in a matter cannot serve as an Advisor for that matter.

III. Complaint Procedures – Title IX Sexual Harassment

- A. Making a Report.** The University can only act to remedy and prevent specific acts of discrimination, harassment, or retaliation from reoccurring if it is made aware of such conduct. Reports also give the University the opportunity to ensure that appropriate care and resources are provided to the Complainant. For these reasons, the University requires its employees (excepting those professionals in the Office of the University Chaplain or the University Counseling Center) to report Sexual Harassment to the Title IX Coordinator. It is for these reasons as well that the University strongly encourages student reports. Reports should contain the name(s) of the reporter, the Complainant, and the Respondent, a concise statement of the prohibited conduct, a detailed statement of the facts supporting the report, and the names of any witness(es). A Complainant may make an anonymous report. It is helpful, but not required, for reports to be made in writing. No matter who is reporting, prompt reporting is crucial. The earlier the University knows about alleged Sexual Harassment, and the more the University knows about the alleged participants, the more effective the University’s investigation and response is likely to be. The University recognizes students may be hesitant to report incidents or participate in investigations due

to fear of being held responsible for violating the University Student Code of Conduct related to alcohol and/or drug use. For this reason, limited amnesty will be granted to students for non-substantial Code violations. In other words, the University wants students to report sexually harassing behavior without being worried about being disciplined for other minor misbehavior.

Please note: Some behaviors that violate the University's policy may also be criminal. A report to the University is not the same as a complaint to a law enforcement agency. The University can assist individuals in making contact with appropriate law enforcement agencies should there be a desire to file a criminal complaint. Individuals also are free to contact outside law enforcement agencies directly.

B. Supportive Measures. After a report is received, the Title IX Coordinator, or designee, may provide reasonable supportive measures if such measures can eliminate potentially hostile or offensive environments and protect Complainants or others in the University community. These supportive measures can be put in place even before a determination that the conduct in the report violates this University policy; accordingly, supportive measures are not to be viewed as a negative finding against any particular party. The Title IX Coordinator, or designee, will maintain communication with the parties to ensure that concerns about safety or emotional and physical wellbeing are being addressed. Depending on the circumstances, supportive measures could include measures from this non-exhaustive list:

- Access to counseling services and assistance in setting up the initial appointment
- Access to medical services
- Imposition of a University "No Contact Order"
- Rescheduling of exams and assignments
- Alternative course completion options
- Change of class or section, or ability to drop the course without penalty
- Change of work schedule or job assignment
- Change in student housing assignment
- Assistance in completing residence relocation
- Limiting an individual's access to University property, facilities, or activities
- Change of office space
- Interim suspension or leave
 - When a report of Sexual Harassment reveals a potential ongoing risk of harm to the safety of an individual or members of the campus community, the University may place a Respondent on interim suspension or leave. This means that, pending the outcome of the complaint, campus access may be limited or completely restricted. Suspension or leave will be an option only after an individualized safety and risk assessment is made and it will be structured (e.g., for a Respondent employee, paid vs. unpaid) as the University deems appropriate. When an interim suspension or leave is imposed, the University will provide written notice to the Respondent and

will make reasonable efforts to complete the investigation in an expedited manner.²

All individuals are encouraged to report failures of an individual to abide by the direction(s) put in place by a supportive measure. The University will take prompt and responsive action to enforce a previously implemented measure.

C. Formal Complaints. A formal complaint can be initiated by either the Complainant or the Title IX Coordinator. Typically, the Title IX Coordinator will not initiate a complaint unless that is what the Complainant wants to see happen; the Title IX Coordinator reserves the right, however, to initiate a formal complaint whenever it is deemed necessary to protect the health and safety of members of the University community. When a formal complaint is initiated, the following procedures will be followed:

- 1. Investigation.** The University will investigate when it receives a report of Sexual Harassment. When an investigation takes place, the University will attempt to complete it quickly, typically within 30-45 calendar days from the date the report is received. At the outset of the investigation, the Complainant and Respondent will receive written notice of the alleged violation of University policy. The investigation will include, whenever possible, an interview with the reporter, Complainant, Respondent, and any relevant witness(es). Written statements may be requested. Any other available evidence will also be sought. Parties can submit any evidence or witnesses they believe to be relevant to the investigation. The investigator will attempt to document the investigation as appropriate. While every effort will be made to be sensitive to the confidentiality concerns of all people who participate in the investigation, privacy cannot be guaranteed. During the investigation (and any following proceedings), any Complainant and any Respondent is entitled to an Advisor of their choice. Prior to completing the investigation, each party (and any Advisor) will have at least ten (10) calendar days to review relevant evidence and submit to the investigator any response to that evidence.
- 2. Investigation Report.** Within seven (7) calendar days of the conclusion of the investigation, the investigator(s) will issue a written report (the "Investigation Report") to the Title IX Coordinator. The Investigation Report will contain investigation findings but the Investigation Report does not reach a conclusion of whether a Respondent is, or is not, responsible for violating University policy and the Investigation Report does not contain sanctions. The Title IX Coordinator will send the Investigation Report to the parties (and any Advisor) and parties will have ten (10) calendar days to respond in writing to the Investigation Report. If any response is received from the parties, the investigator will have seven (7) calendar days to determine whether any revision to the

² An interim suspension or leave decision can be immediately appealed as follows: students may appeal to the University Dean of Student Affairs; faculty may appeal to the Provost; non-faculty employees may appeal to the Vice President for Administration.

Investigation Report is appropriate and then submit the final Investigation Report to the Title IX Coordinator.

- 3. Hearing and Decision.** After a final Investigation Report is submitted, the University will appoint a three-person Hearing Panel to consider the matter during a live hearing. Live hearings can take place “in person” or “virtually,” but all parties will have the same opportunity to participate. Until a hearing is completed, Respondents are assumed to not be responsible (a presumption of innocence) and the burden is on the Complainant and/or University to present enough evidence to persuade the Hearing Panel that the Respondent is responsible for violating University policy. The standard of evidence will be the “preponderance of evidence” standard; that is, is it more likely than not that the behaviors in question occurred and constituted a violation of the Policy. Advisors (but not the parties themselves) will be given an opportunity to cross-examine any witness in front of the Hearing Panel; if a party does not have an Advisor, the University will provide that party with an Advisor for the purpose of cross-examinations. The hearing will be recorded by audio or audio-visual recording. The Hearing Panel will issue a written decision within seven (7) calendar days of the Hearing. The Hearing Panel’s majority decision will be based on whether it is “more likely than not” that the University’s policy was violated. The written decision will include a summary of findings and will describe any consequences or corrective action to be taken, as well as any other recommendations. Consequences for a student who is found responsible for violating this policy may include educational sanctions and disciplinary action from a written reprimand up to and including suspension or expulsion/dismissal from the University. Consequences for an employee who is found responsible for violating this policy may include educational sanctions and disciplinary action from a written reprimand up to and including suspension or termination of University employment.
- 4. Appeal(s).** Both the Complainant and Respondent have a right to appeal a decision reached by a Hearing Panel. An appeal must be submitted, in writing to the Title IX Coordinator, within seven (7) calendar days from the date the person received the Hearing Panel’s written decision. Appeals are not for the purpose of having a second investigation or a second review of available facts. Proper bases for appeal are limited to: (1) new evidence that could affect the outcome of the matter if that new evidence was not previously available to, and not withheld by, the appealing party; (2) a procedural irregularity that affected the outcome; (3) an allegation that the Title IX Coordinator, an investigator, a University-supplied Advisor, or a member of the Hearing Panel, had a conflict of interest that affected the outcome of the matter; or (4) consideration of whether the Hearing Panel’s sanction(s) is substantially disproportionate to its findings. The written appeal must be submitted to the Title IX Coordinator who will forward the appeal to the appropriate University official selected to hear the appeal. The official considering the appeal has seven (7) calendar days to provide a written response to the appeal. All decisions of the University official who rules on the appeal are final.

- 5. Alternative Resolutions.** Whether or not a formal complaint is initiated, if both parties agree, voluntarily and in writing, the matter can be addressed through an alternative resolution process instead of a formal complaint process. Alternative resolutions do not include extensive investigation or a determination of the validity of a report. The goal through alternative resolution is to achieve a resolution that may be acceptable to both the Complainant and Respondent, and to counsel and educate one or more individuals. Typically, alternative resolution is done through mediation or restorative justice, but the specific method of alternative resolution will be agreed to by the parties. Until an alternative resolution is completed, either party may withdraw their agreement and institute, or reinstitute, the Formal Complaint process.

IV. Complaint Procedures – Non-Title IX Equity Matters

- A. Making a Report.** The University can only act to remedy and prevent specific acts of discrimination, harassment, or retaliation from reoccurring if it is made aware of such conduct. Reports also give the University the opportunity to ensure that appropriate care and resources are provided to the Complainant. For these reasons, the University requires its employees (excepting those professionals in the Office of the University Chaplain or the University Counseling Center) to report discrimination, harassment, and retaliation to the Director of Equity. It is for these reasons as well that the University strongly encourages student reports. Reports should contain the name(s) of the reporter, the Complainant, and the Respondent, a concise statement of the prohibited conduct, a detailed statement of the facts supporting the report, and the names of any witness(es). A Complainant may make an anonymous report. It is helpful, but not required, for reports to be made in writing. No matter who is reporting, prompt reporting is crucial. The earlier the University knows about alleged behavior that violates this policy, and the more the University knows about the alleged participants, the more effective the University’s investigation and response is likely to be. The University recognizes students may be hesitant to report incidents or participate in investigations due to fear of being held responsible for violating the University Student Code of Conduct related to alcohol and/or drug use. For this reason, limited amnesty will be granted to students for non-substantial Code violations.
- B. Supportive Measures.** After a report is received, the University will impose reasonable supportive measures if such measures can eliminate potentially hostile or offensive environments and protect Complainants or others in the University community. These supportive measures can be imposed even before a determination that the conduct in the report violates this University policy; accordingly, supportive measures are not to be viewed as a negative finding against any particular party. The Director of Equity, or designee, will maintain communication with the parties to ensure that concerns about safety or emotional and physical wellbeing are being addressed. Depending on the circumstances, supportive measures could include measures from this non-exhaustive list:
- Access to counseling services and assistance in setting up the initial appointment
 - Access to medical services
 - Imposition of a University “No Contact Order”

- Rescheduling of exams and assignments
- Alternative course completion options
- Change of class or section, or ability to drop the course without penalty
- Change of work schedule, job assignment, or reporting line
- Change in student housing assignment
- Assistance in completing residence relocation
- Limiting an individual's access to University property, facilities, or activities
- Change of office space
- Interim suspension or leave
 - When a report of discrimination, harassment, or retaliation reveals a potential ongoing risk of harm to the safety of an individual or members of the campus community, the University may place a Respondent on interim suspension or leave. This means that, pending the outcome of the complaint, campus access may be limited or completely restricted. Suspension or leave will be an option only after an individualized assessment is made and it will be structured (e.g., for a Respondent employee, paid vs. unpaid) as the University deems appropriate. When an interim suspension or leave is imposed,³ the University will make reasonable efforts to complete the investigation in an expedited manner.

All individuals are encouraged to report failures of an individual to abide by the restriction(s) imposed by a supportive measure. The University will take prompt and responsive action to enforce a previously implemented measure.

C. Formal Complaints. A formal complaint can be initiated by either the Complainant or the University. Typically, the University will not initiate a complaint unless that is what the Complainant wants to see happen; the University reserves the right, however, to initiate a formal complaint whenever it is deemed necessary to protect the health, safety, and positive work environment of members of the University community. When a formal complaint is initiated, the following procedures will be followed:

- 1. Investigation.** The University will investigate when it receives a report of discrimination, harassment, or retaliation. When an investigation takes place, the University will attempt to complete it quickly, typically within 30-45 calendar days from the date the report is received. At the outset of the investigation, the Complainant and Respondent will receive written notice of the alleged violation of University policy. The investigation will include, whenever possible, an interview with the reporter, Complainant, Respondent, and any relevant witness(es). Written statements may be requested. Any other available evidence will also be sought. Parties can submit any evidence or witnesses they believe to be relevant to the investigation. The investigator will attempt to document the investigation as

³ An interim suspension or leave decision can be immediately appealed as follows: students may appeal to the University Dean of Student Affairs; faculty may appeal to the Provost; non-faculty employees may appeal to the Vice President for Administration.

appropriate. While every effort will be made to be sensitive to the confidentiality concerns of all people who participate in the investigation, privacy cannot be guaranteed. During the investigation (and any following proceedings), any Complainant and any Respondent is entitled to an Advisor of their choice.

- 2. Investigation Report.** Within seven (7) calendar days of the conclusion of the investigation, the investigator(s) will issue a written report (the “Investigation Report”) to the Director of Equity. The Investigation Report will contain investigation findings but the Investigation Report will not contain a decision about what will, or will not, happen to the Respondent. The Investigation Report will be provided to the parties and parties will have ten (10) calendar days to respond in writing to the Investigation Report. If any response is received from the parties, the investigator will have seven (7) calendar days to determine whether any revision to the Investigation Report is appropriate and then submit the final Investigation Report to the Director of Equity.
- 3. Opportunity to be Heard and Decision.** After a final Investigation Report is submitted, the Director of Equity will give the Complainant and Respondent an opportunity to be heard. The opportunity to be heard may come through individual meetings or may come in the form of a live hearing. The exact method of how the parties will be heard will be determined by the Director of Equity in consultation with the parties. If there is no agreement among the parties, there will be a live hearing. Regardless of which method is chosen, both parties will have an equal opportunity to participate. The Director of Equity will assume a Respondent is not responsible (a presumption of innocence) for the alleged policy violation unless there is sufficient evidence to overcome that presumption. The burden is on the Complainant and/or University to present sufficient evidence to persuade the Director of Equity that the Respondent is responsible for violating University policy. The standard of evidence will be the “preponderance of evidence” standard; that is, is it more likely than not that the behaviors in question occurred and constituted a violation of the Policy? The Director of Equity will issue a written decision within seven (7) calendar after both parties have had an opportunity to be heard. The Director of Equity’s decision will be based on whether it is “more likely than not” that the University’s policy was violated. The written decision will include a summary of findings.
- 4. Consequences for Policy Violations.** If the Director of Equity finds that a Respondent is responsible for violating this policy, the matter will be referred to the relevant University official as indicated below, depending on the status of the Respondent. These officials, or their designees, will then determine the appropriate consequence/sanction for the policy violation and issue to the parties a written decision. Consequences for a student who is found responsible for violating this policy may include educational sanctions and disciplinary action from a written reprimand up to and including suspension or expulsion/dismissal from the University. Consequences for an employee who is found responsible for violating this policy may

include educational sanctions and disciplinary action up to and including suspension or termination of University employment.

- a. **For Students.** If the Respondent is a student, the University official who will determine the appropriate consequence/sanction will be the University Dean for Student Affairs, or designee.
- b. **For Faculty.**⁴ Consistent with the Faculty Handbook, if a Respondent is a member of the University faculty, the University official who will determine the appropriate consequence/sanction will be the respective dean of the college/school in which the faculty member holds a primary appointment, or designee.
- c. **For Staff and Administrators.** If the Respondent is a non-faculty employee, the University official who will determine the appropriate consequence/sanction will be the Vice President for Administration, or designee.
- d. **For Members of the President's Cabinet.** If the Respondent is a member of the President's Cabinet, the University official who will determine the appropriate consequence/sanction will be the President.
- e. **For the President.** If the Respondent is the President, the University official who will determine the appropriate consequence/sanction will be the Chair of the Board of Trustees.

5. **Appeal(s).** Both the Complainant and Respondent have a right to appeal any decision reached by the Director of Equity and any sanction imposed by the relevant University official. An appeal must be submitted, in writing, to the University official indicated below within seven (7) calendar days from either (a) the date the party received the Director of Equity's written decision, if the appeal follows a finding of no responsibility or (b) the date the party receives the written consequence/sanction, if the appeal follows a finding of responsibility. Appeals are not for the purpose of having a second investigation or a second review of available facts. Proper bases for appeal are limited to: (1) new evidence that could affect the outcome of the matter if that new evidence was not previously available to, and not withheld by, the appealing party; (2) a procedural irregularity that affected the outcome; (3) an allegation that the investigator or Director of Equity had a conflict of interest that affected the outcome of the matter; or (4) consideration of whether the imposed consequence/sanction(s) is substantially disproportionate to the findings. The official considering the appeal has seven (7) calendar days to provide a written response to the appeal. All decisions of the University official who rules on the appeal are final.

- a. **For Students.** If the Respondent is a student, the University official who will hear the appeal will be the Senior Diversity and Inclusion Officer, or designee.
- b. **For Faculty.** Consistent with the Faculty Handbook, if a Respondent is a member of the University faculty, the University official who will hear the appeal

⁴ In determining corrective action related to faculty, no faculty member's tenure can be revoked or contract abrogated without following the tenure revocation process outlined in the *Faculty Handbook*. However, this does not limit the use of other protective measures, such as paid administrative leave.

will be the Provost, or designee. The Provost, or designee, shall consult with the Senior Diversity and Inclusion Officer.

- c. **For Staff and Administrators.** If the Respondent is a non-faculty employee, the University official who will hear the appeal will be the Senior Diversity and Inclusion Officer, or designee.
- d. **For Members of the President's Cabinet.** If the Respondent is a member of the President's Cabinet, the University official who will hear the appeal will be the Chair of the Board of Trustees, or designee. The Chair of the Board of Trustees, or designee, should consider consulting with the Senior Diversity and Inclusion Officer.
- e. **For the President.** If the Respondent is the President, the entity that will hear the appeal will be the full Board of Trustees. The Board of Trustees should consider consulting with the Senior Diversity and Inclusion Officer.

D. Alternative Resolutions. Whether or not a formal complaint is initiated, if both parties agree, voluntarily and in writing, the matter can be addressed through an alternative resolution process instead of a formal complaint process. Alternative resolutions do not include extensive investigation or a determination of the validity of a report. The goal through alternative resolution is to achieve a resolution that may be acceptable to both the Complainant and Respondent, and to counsel and educate one or more individuals. Typically, alternative resolution is done through mediation or restorative justice, but the specific method of alternative resolution will be agreed to by the parties. Until an alternative resolution is completed, either party may withdraw their agreement and institute, or reinstitute, the Formal Complaint process.

V. Additional Issues

- A. **Divergence from Policy.** The University is committed to behaving in reasonable, responsible, and fair ways. Despite the University's efforts to draft a good policy, there are times when a divergence from the listed procedures may be necessary. For example, there may be times (e.g., school breaks, illness or accident, travel obligations, witness unavailability) when an individual who has a responsibility to act within a deadline cannot meet that obligation. There may be times when a listed individual should be recused or substituted because of a personal relationship or other conflict of interest. Or there may be unique circumstances that require an adjustment to the procedure outlined above. If and when a divergence to the policy is appropriate, the University will communicate with the Complainant and Respondent to inform them of the divergence and explain the reason(s) for it. If a party believes that any divergence is not fair or reasonable, that party should explain the reasons for that belief to the appropriate University official.
- B. **Conflicts of Interest.** When designating individuals to perform roles under the procedures identified in this policy, the University seeks to avoid any conflicts of interest and appoint neutral individuals. If any party becomes aware of a conflict of interest, or bias, of an individual who is participating in the procedures identified above, that party should inform

the appropriate University official. If there is an allegation that an involved University official has a conflict of interest or bias, the party should inform the University President's office.

- C. False Reporting.** Because the University takes reports of discrimination, harassment, and retaliation so seriously, false reports or reports made in bad faith will have serious consequences. Any person who makes a report (or offers testimony or information) that is later found to be intentionally false or made maliciously without regard for truth will be subject to disciplinary action, up to and including expulsion (if a student) or termination of employment (if an employee). This provision does not apply to reports made in good faith, even if the report is not substantiated through an investigation or decision.
- D. Alternate Procedures Superseded.** The Grievance Procedure in the *Personnel Policies and Procedures Manual* or the grievance policies in the *Faculty Handbook* are not applicable to matters addressing discrimination, harassment, or retaliation. Proceedings addressing claims under the Policy Prohibiting Discrimination, Harassment, and Retaliation will be handled by these procedures and not alternate University procedures except where proposed remedial actions might involve the loss of tenure or the termination of faculty employment.
- E. Recordkeeping.** All reports and results of proceedings dealing with sexual harassment under this policy must be reported, for compliance purposes, to the University's Title IX Coordinator. For any Respondent, the complete investigative file, including a copy of any decision and/or appeal decision, along with any record of consequences or corrective actions, shall be maintained by the University (typically in the appropriate academic department, Student Affairs office, Human Resources office, Director of Equity's office, or Title IX Coordinator's office) during that Respondent's employment or academic enrollment and for whatever period after employment/enrollment that the University deems appropriate.
- F. Relationship to Other Laws.** There may be times when activities under this policy confront matters about which there are additional legal responsibilities. For example, some records implicated in an investigation or proceedings under this policy might be protected by the Family Educational Rights and Policy Act ("FERPA"). The University will comply with all of its legal obligations, including but not limited to FERPA, which may entail redacting or not disclosing certain documents that might otherwise be shared. Title IX obligations also sometimes overlap with obligations under Title VII of the Civil Rights Act of 1964. Where obligations overlap, adjustments to specific details of how the policies and procedures may be made, but the University will work diligently to ensure that all legal obligations are met in a manner that is faithful to both the spirit and the letter of its legal requirements.
- G. Relationship to Principles of Academic Freedom and Freedom of Speech.** The success of the University depends on an environment that fosters vigorous thought and intellectual creativity – an atmosphere in which diverse ideas can be expressed and discussed. The

University seeks to provide a setting that respects the contributions of all individuals composing its community, encourages intellectual and personal development, and promotes the free exchange of ideas. This policy is not intended to regulate the content of speech, discussion, and debate in the classroom, on campus, or in any University forum reasonably related to academic activity or political, artistic, and visual arts expression. The University will protect academic freedom and artistic expression in administering this policy. However, using speech or expression to engage in discrimination or harassment is prohibited.

H. Relationship to Law Enforcement. The University has an independent obligation to investigate, stop, and remedy acts of discrimination, harassment, and retaliation. The University chooses to meet this independent obligation while still cooperating, when possible, with appropriate law enforcement officials and agencies. That cooperation will sometimes alter the University's typical timing or procedures, but **referrals to law enforcement do not stop the University's proceedings altogether**. Ultimately, the University desires that Complainants of discrimination, harassment, and retaliation – and the Respondents accused of engaging in those behaviors – receive fundamental fairness from the University in the course of the University's attempts to enforce its policy. Readers of this policy should be reminded that the definitions and standards used by the University may be different, and in some respects are different, than the standards and definitions used by law enforcement and the criminal justice system.