



# Charles R. Drew University of Medicine and Science

"A Private University with a Public Mission"

## Interim Title IX Sexual Harassment Grievance Procedures

**Issuing Officer:** Executive Vice President Academic Affairs and Provost and Vice President of Administration and Infrastructure

**Responsible Office:** Office of Compliance, EEO and Title IX

**Effective Date:** August 14, 2020

**Revised Date/ Review Date:** July 2020

**Supersedes:** CDU Policy 405 Sexual Harassment and Sexual Misconduct Investigation and Adjudication Policy (dated June 4, 2019)

### I. PURPOSE:

Charles R. Drew University of Medicine and Science strives for a diverse and inclusive campus community that maintains an environment free from unlawful discrimination and harassment on the basis of one's sex or gender in its programs and activities. The University prohibits such conduct and will take steps to address and eliminate its occurrence.

This Title IX Sexual Harassment Grievance Procedure (Procedure) outlines the University's grievance process regarding allegations of sexual harassment as defined in the University's *Sex/Gender Discrimination and Sexual Harassment Policy CDU Policy* (Policy). It explains the procedures for reporting, investigating and adjudicating reports of sexual harassment which includes sexual assault, domestic or dating violence, stalking or other conduct prohibited by *Policy* in compliance with Title IX of the Education Amendment Act of 1972 and its implementing regulations noticed on May 6, 2020.

In support of this Procedure, the University will continue awareness of sexual harassment and sexual assault prevention, encourage reporting, provide supportive measures, respond promptly to reports of sexual misconduct, and provide a fair and equitable process for resolving the reports that includes accountability for those found in violation of Policy.

The University prohibits retaliation under these Procedures. No individual is subject to retaliation for making a report, participating in or cooperating with any process related to

this policy. Additionally, an individual shall not be subject to retaliation for their declination to make, cooperate or participate in any process under these Procedures. The University may find that retaliation occurred in violation of *Policy* and these Procedures even if the underlying complaint is not sustained

## **II. APPLICABILITY AND JURISDICTION**

All students, trainees, staff, faculty and third parties participating in a University program and activity in the United States are subject to this policy. Title IX prohibits sexual harassment that impedes a person's access to education programs and activities. This includes quid pro quo harassment that a reasonable person would find severe, pervasive and objectively offensive, and sexual assault, domestic violence, dating violence or stalking (collectively referred to as Prohibited Conduct). The Prohibited Conduct must have occurred in a University program or activity, and against a person in the United States for purposes of Title IX jurisdiction. A University program or activity includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and context of the Prohibited Conduct.

The Title IX regulations are federal mandates which supersede the rights and obligations in existing faculty or employee handbooks, University catalogs, or agreements.

## **III. REPORT OF ALLEGED VIOLATION**

### **A. Reportable Conduct**

Conduct constituting sexual harassment and subject to this Procedure is identified below. Sex discrimination or other sexual misconduct, not covered by Policy and this Procedure may still violate a University policy or applicable Code of Conduct and should be reported to the Title IX Coordinator for referral to the applicable University process.

#### **1. Title IX Sexual Harassment**

- a. An employee conditions aid, benefits, or service on an individual's participation in unwelcome sexual conduct (quid pro quo).  
Or
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectionably offensive that it effectively denies a person equal access to the recipient's education program or activity.

#### **2. Sexual Assault**

- a. Rape - Vaginal or anal penetration, no matter how slight with any body part or oral penetration by a sex organ of another person without consent of the Complainant.
- b. Sodomy - Oral or anal sexual intercourse with another person (1) by force, and/or against the individual's will or (2) in non-forcible instances

when the Complainant is mentally or physically incapacitated, or lacks capacity to give consent.

- c. Fondling - touching the private body parts (e.g. breasts, buttocks, groin) of another person for sexual gratification (1) forcibly against their will or (2) non-forcibly in instances when the Complainant is mentally or physically incapacitated or lacks capacity to give consent.
- d. Sexual Assault with an Object- To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

### 3. Other Sexual Misconduct

- a. Sex with a minor - Non forcible sexual intercourse with a person who is under eighteen (18) years old, the age of consent under California law.

### 4. Domestic Violence

Domestic Violence is violence occurring within the following relationships:

- a. Relating to a spouse or former spouse
- b. By a cohabitant or former cohabitant
- c. By someone with whom the Complainant has a child in common
- d. By someone similarly situated to a spouse of the Complainant under the domestic or family laws of California
- e. By any other person against a Complainant who is protected from that person's acts under the domestic or family violence laws of California

Violence includes acts that intentionally, or recklessly cause harm or injury to the Complainant or places the Complainant or someone with a close relationship to Complainant in reasonable fear of their bodily harm or other injury. The parties must be in a current or past intimate relationship to constitute domestic violence.

### 5. Dating Violence

Dating Violence is perpetrated by a person who is or has been in a romantic or intimate relationship with the Complainant that intentionally, or recklessly causes harm or injury to the Complainant or another person with whom the Complainant has a close relationship or places the Complainant or another who has a close relationship with the Complainant, in reasonable fear of their of bodily harm or other injury.

A dating relationship will be determined based on Complainant's statement and considering the duration of the relationship, the type of relationship, and how frequently the parties in the relationship interacted.

6. Stalking - is a repeated course of conduct directed at a specific person that would cause a reasonable person to fear for their personal safety or the safety of others or suffer substantial emotional distress.

Stalking as a repeated course of conduct means two or more acts by an individual who directly, indirectly, or by third party, (by example) follows, monitors, observes, surveils, threatens or communicates to or about a person or interferes with their property by any action, means, methods or device.

## **B. Where to Report Prohibited Conduct**

### **1. Title IX Coordinator**

The Title IX Coordinator is responsible for receiving any report or complaint of sexual harassment. The Title IX Coordinator will coordinate the University's response thereto, including any written notifications, investigations and hearings required by this Procedure. A report of Prohibited Conduct can be made by any person (whether or not the reporting individual was subjected to the alleged conduct). Reports can be made at any time of the day (24/7) by email or telephone, or by mail or in person to the office of the Title IX Coordinator.

Title IX Coordinator  
Cobb Room 242  
1731 East 120<sup>th</sup> Street  
Los Angeles, CA 90059  
(323) 357-3684  
[titleix@cdrewu.edu](mailto:titleix@cdrewu.edu)

The Title IX Coordinator may delegate responsibility under these procedures to a designated Deputy Title IX Coordinator. The Title IX Coordinator may also refer a report when appropriate to another office or individual if the subject conduct is not within the scope of Policy and this Procedure.

### **2. Law Enforcement**

Any person in immediate danger or threat of harm should call 911. If the Prohibited Conduct is also a crime under California law, the person allegedly subjected to the conduct is encouraged, but not required to call law enforcement at 911 or (in non-emergency) circumstances, their local

station in the area where the alleged Prohibited Conduct occurred.<sup>1</sup> Below is contact information for local law enforcement near campus.

**Los Angeles County Sheriff's Department Century Station**

11703 Alameda Street  
Lynwood, CA 90262  
(310) 568-4800

**Los Angeles Police Department Southeast Police Station**

145 West 108<sup>th</sup> Street  
Los Angeles, CA 90061  
(213) 972-7810

Individuals making a report of sexual violence to law enforcement are encouraged to preserve clothing and other evidence related to the alleged crime. Also document witnesses, pertinent locations and contacts to provide when reporting a crime. University personnel are available to assist in contacting local law enforcement if requested.

For Incidents occurring on campus, reports can be made to:  
CDU Campus Safety Office during business hours at (323) 563-4918.  
After Hours Number: (323) 326-4859 (After 5 pm and weekends)

3. University Official  
Notice of allegations regarding Prohibited Conduct to the Provost, Vice Presidents, or Deans of the University initiate the University's obligation to respond under these Procedures.

**C. Confidential Resources**

A confidential resource is someone to whom an individual can speak to for emotional support and counseling. An individual can speak about the Prohibited Conduct and the confidential resource is not required to disclose such reports to the University. (Except when by law or licensure they are required to make a report such as suspected sexual abuse of a minor).

For students, and trainees the University's Health and Wellness unit is a confidential resource at [counseling@cdrewu.edu](mailto:counseling@cdrewu.edu) or (323) 357-3426 (See also <https://www.cdrewu.edu/students/studenthealthandwellness>).

The counseling professional, at an individual's expressed request and consent, may report or discuss allegations of sex discrimination and sexual harassment with the Title IX Coordinator.

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<sup>11</sup> The Title IX Coordinator or Campus Safety Office can assist with determining if conduct also constitutes a crime.

Confidential Resources are available to employees through the University's Employee Assistance Program/Benefits. That resource is available at <https://www.mhn.com/members.html> (888) 327-0010.

#### **D. Making a Report**

Any person can make a report of Prohibited Conduct whether or not they were the person actually subjected to such conduct (the Complainant). This means that persons who witness, or others with knowledge may report Prohibited Conduct under applicable Policy and this Procedure. Notice of the Prohibited Conduct initiates the University's response under this Procedure.

### **IV. Response to Report and Formal Complaints**

#### **A. Initial Response**

When the University receives a report of Prohibited Conduct, the Title IX Coordinator will contact the Complainant and inform them of the Title IX process. This outreach occurs irrespective of whether the Complainant was the individual who made the report.

The initial response will include:

##### **1. Supportive Measures**

The Title IX Coordinator will inform the Complainant:

- a. Supportive measures are available whether or not a formal complaint is filed;
- b. Confidential resources availability;
- c. How to file a formal complaint;
- d. The right but not obligation to file with law enforcement when the Prohibited Conduct is also a crime. This includes the preservation of evidence as discussed above, as well as the availability of restraining, protective and no contact orders which the University will enforce.

If the allegations as reported do not fall within Title IX as Prohibited Conduct, the matter may be referred to another University process such as a student or employee Code of Conduct or applicable policy. The student or employee will still be offered supportive measures even if referred.

Supportive measures include counseling and/or other action that may be reasonable and appropriate including modifications to class schedules, campus security escorts or other actions to ensure the individual maintains access the University's education programs and activities. Supportive measures are subject to individual assessments, and there is no blanket applicability for all cases.

The confidentiality of supportive measures will be kept to the extent that confidentiality does not impair their implementation.

## 2. Emergency Removals and Administrative Leave

### a. Emergency removal

Title IX regulations allow for removal of a Respondent who poses an immediate threat to the physical health or safety of any individual pursuant to the reported Title IX allegations. A removal decision will be assessed on an individual, case specific basis by the Title IX Coordinator in consultation with a threat assessment team or others as appropriate.

If a decision to remove is made, the Respondent will be notified and have an opportunity to oppose and challenge the determination immediately after the Title IX removal by presenting a written objection within twenty-four (24) hours after removal to the designated official empowered to reverse the decision. This Official will notify Respondent of the decision on their objection within 24 hours.

### b. Administrative leave

University may place a non-student employee Respondent on an administrative upon notice of alleged Prohibited Conduct for the duration of the pending resolution of the matter in alignment with normal protocol for investigatory leaves.

## 3. Privacy and Confidentiality

The University does not make unnecessary disclosures of Title IX matters. In assessing and acting on a report of Prohibited Conduct, the University will determine how to proceed in consideration of any governing principles of privacy or confidentiality.

### a. Privacy

Privacy has legal and practical implications. The University will keep information private and disclose only to University employees with a need to know in order to facilitate or assist in the Title IX process. All individuals involved in the University's response to Title IX such as the Coordinator, resource persons, investigator and Hearing Officer have training regarding privacy and safeguarding private information in compliance with state and federal law such as the Federal Educational Rights and Privacy Act (FERPA) and those provisions of law and University policy that protect the privacy of employee records.

### b. Confidentiality

Confidentiality is a legal protection. It generally safeguards the relationship between individuals such as attorney-client, doctor-patient

and spousal communications. Confidentiality also applies to the provision of services or consultation by a mental health provider, or clergy subject to certain legal exceptions. The University maintains confidentiality to the extent possible but is not guaranteed. The University must comply with state and federal laws. Title IX reports made to Confidential Resources, other than reports of child abuse, are excepted, and not subject to a legal disclosure.<sup>2</sup>

Generally, information shared to carry out an investigation or adjudication is not subject to blanket privacy or confidentiality protections. Notwithstanding, the University takes privacy and confidentiality of sensitive matters seriously, and discloses only information necessary to carry out its Title IX responsibilities and/or protect the health and safety of the campus community from discriminatory, harassing or violent conduct.

#### 4. Anonymous Reports

This Procedure requires the responding party have written notice of the Complainant's identity, so requests by the Complainant to remain anonymous or anonymous reports received through the Campus Alert Line may prompt a limited University response.

#### 5. False Information

Knowingly making false statements or knowingly providing false information at any phase of these proceedings constitutes misconduct and is subject to adjudication under the applicable Code of Conduct for students and employees.

#### 6. Training

Any individual responsible for coordinating, advising, investigating, or deciding a matter under these Procedures must receive training to carry out their roles impartially and competently.

### **B. Formal Complaints**

#### Notifications and Timelines

The University will endeavor to complete this Title IX Procedure within 120 days from the filing of a Formal Complaint. The 120 day timeframe is based on the requirements of each phase in this Procedure. A degree of flexibility is required for unforeseen circumstances or reasonable delays that require the extension of an

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<sup>2</sup> A confidential resource is also a Mandated Reporter and required to disclose suspected child abuse such as sexual assault against a minor child (under age 18).



applicable timeline. At all times the University will ensure that timelines do not compromise an equitable and thorough process.

All timelines for notifications, submissions or other actions under this Procedure will be counted using calendar days. If any deadline falls on a weekend or holiday, the deadline will extend to the next business day.

Extensions of any timelines in this Procedure may be granted when it is reasonable and for good cause. Extensions are submitted to and coordinated by the Title IX Coordinator. The request for extension must be in writing and provide the reason for the request. The Title IX Coordinator, or designee will strive to reply timely to such request in writing, preferably within two (2) days or receipt unless the timelines require a more immediate response.

If the parties engage in an informal resolution process, the timelines are suspended while that process is pending.

After receiving an initial report and the Title IX Coordinator's outreach to the Complainant, the Procedure moves forward once a formal complaint is filed per governing regulations. A formal complaint can be initiated by the Complainant, or in some instances the Title IX Coordinator.

#### 1. Formal Complaints by Complainant

A Formal Complaint is a written document submitted and signed by the Complainant alleging Respondent engaged in Prohibited Conduct and requesting an investigation and process.

The Complainant must be participating in, or attempting to participate in a University education program or activity at the time the formal complaint is filed.

The Formal Complaint is considered filed when it is received by the Title IX Coordinator. The filing of a Formal Complaint prompts the Procedure herein.

#### 2. Title IX Coordinator Formal Complaints

The Title IX Coordinator can also submit a Formal Complaint but is not considered the Complainant nor a party in the proceedings. The formal complaint must identify the Complainant and the details of the allegations made against a Respondent.

##### a. Community Considerations

A Title IX Coordinator may pursue any obligations under state or federal law to protect the safety of campus members, and proceed with an investigation in instances where the Complainant does not want to

pursue the matter and/or requests otherwise. In making such a determination, the University will consider (1) whether the Respondent poses a danger to Complainant or campus community, (2) if there have been multiple reports of Prohibited Conduct against Respondent, (3) Respondent's status and position of authority over students or staff, or others (4) the seriousness of the matter and whether violence, including weapons was alleged.

b. Complaint Consideration

When practical, the University may consolidate formal complaints by, against, or between any Complainant(s) or Respondent(s), where the allegations of sexual harassment arise out of the same facts or circumstances.

Additionally, if the University determines that non-Title IX conduct is within the scope of allegations as well as Prohibited Conduct covered by Title IX, and arise from the same facts or circumstances, the matter may be resolved collectively under this Title IX Procedure.

### C. Notice of a Formal Complaint

1. Notice - Upon determination by the Title IX Coordinator that a *Notice of Formal Complaint* should be issued, the investigative process is triggered. The Coordinator shall strive to make such determination within five (5) days after receipt of the report.

*The Notice of Formal Complaint* will provide written notice to the (known) parties, that a formal complaint has been filed. The Notice of Formal Complaint shall include:

- i. The identity of the person making the allegation (Complainant) and the person accused of perpetrating the alleged misconduct (Respondent);
- ii. A description of the conduct that allegedly violates the Policy, including the place, time and location of the alleged violation(s);
- iii. The provisions of Policy that were allegedly violated;
- iv. Notice of the Procedures including its informal resolution process;
- v. The standard of proof, which is a preponderance of evidence;
- vi. The presumption that the Respondent is not culpable for any Policy violation until a determination based on the evidence, is made at the conclusion of the grievance process;

- vii. The right of both Complainant and Respondent to an Advisor of their choice that may, but does not have to be an Attorney;
- viii. An explanation of the investigative process, that includes the right to provide information, witnesses and documents (collectively referred to as evidence);
- ix. The parties have a right to review the evidence gathered in the investigation and provide a response thereto prior to the conclusion of the investigation according to applicable timelines. The investigator must consider any response provided by the party prior to preparing any investigative report;
- x. An explanation that the investigation will be memorialized in a report with accompanying recommendations where appropriate;
- xi. The supportive measures available to both Complainant(s) and Respondent(s);
- xii. Prohibition against retaliation for one's report, participation or cooperation with any process under this Procedure.

If additional allegations, not in the initial Notice of Formal Complaint are determined necessary in the course of an investigation, the (known) parties will receive written notice of the additional allegations.

#### **D. Dismissal of a Formal Complaint-**

##### **1. Mandatory Dismissal**

Formal complaints will be dismissed if the conduct alleged in a formal complaint would not constitute Prohibited Conduct even if proven, did not occur in a University program or activity or occurred against a person outside of the United States as required by *Policy*. However, the University is not precluded from pursuing addressing any alleged misconduct that is dismissed under Title IX but is covered by another University policy or code of conduct.

##### **2. Discretionary Dismissal**

Dismissals may also occur during the investigation or hearing when (1) a Complainant provides written notice to the Title IX Coordinator of their desire to withdraw the complaint or any allegations therein, (2) the Respondent is no longer enrolled or employed by the recipient (3) or the specific circumstances prevent the University from sufficiently investigating the matter to make a determination regarding culpability.

The parties shall receive simultaneous written notice of any dismissal and the reason for it.

### 3. Right to Appeal Dismissal of Formal Complaint

Each party has the right to appeal a dismissal. The appeal must be in writing and submitted by a date determined by the Title IX Coordinator, but generally five (5) days from receipt of the Notice of Dismissal. The Appeal will be decided by an Official not directly involved in the pending proceeding. The basis for an appeal is limited to the following grounds:

- a. Procedural irregularity- was there a procedural irregularity that impacted the outcome.
- b. New evidence - is there new evidence that was not reasonably available that would affect the outcome of the decision.
- c. Bias or conflict of interest by the Title IX Coordinator or investigator that affected the decision to dismiss.

Upon receipt, the appeal will be provided to the other party. Each party has the right to respond to the other's appeal. The party's will be provided a response date, but generally three (3) days from the date the appeal was shared with the other party. The appealing party will be provided with the other party's response, but no other responses will be allowed. The Title IX Coordinator may, but is not required to submit a response to each appeal regarding procedural irregularities. The parties will receive the Title IX Coordinator's response to the appeal but a further response is not permitted.

The Title IX Coordinator will appoint an Appeals Officer to make a determination on the appeal. The Officer will decide whether the asserted grounds for appeal have been proven. The appeal notice, statements of the parties and information from the Title IX Coordinator will be considered.

The appeal officer may:

- a. Uphold the dismissal;
- b. Overturn the dismissal;
- c. Return the matter to the Title IX Coordinator to determine if the new evidence affects the dismissal and provide the results of this review to the appeal officer

The Appeal Officer will have five (5) days from receipt of the appeal to provide a written decision that provides:

- a. A statement of the grounds identified on appeal;
- b. A summary of the information considered by the appeal officer; and

- c. The decision of the appeal officer and its rationale.

## **E. Informal Resolution Process**

After a formal complaint has been filed, the parties can attempt to resolve the complaint at any time before a determination of responsibility. An informal resolution may take the form of a mediation or other resolution process that does not involve an investigation and hearing. Informal Resolutions will be conducted by an individual trained in dispute and conflict resolution.

Informal resolutions must include:

1. **Written Notice** - Prior to an informal process, the Complainant and Respondent must have written notice of the (1) allegations (2) the requirements and circumstances of the informal resolution, including those that prevent the parties from resuming a formal complaint arising from the same allegations if informal resolution is reached, unless prior to agreeing to a resolution, the party withdraws from the informal resolution process and resumes the grievance process.
2. **Impact of Participation** - The parties shall be notified of the consequences of participating in the informal process including records that will be maintained or could be shared.
3. **Mutual Agreement** - Each party must submit voluntary written consent to the informal process.

Agreement or participation in an informal resolution cannot (1) be a conditioned on prospective or continued employment or admission, or (2) the waiver of the right to an investigation or hearing under this Procedure.

Informal resolutions shall not be an option when a student is alleging sexual harassment against an employee or any reports of sexual violence.

## **V. Investigation**

An investigation will proceed as to any allegations not dismissed or otherwise resolved pursuant to this Procedure. The purpose of the investigative process is to gather information regarding the allegations, provide the parties and witnesses an opportunity to present such information and allow the parties to review and comment on the evidence gathered. The University maintains the burden of gathering evidence.

## **A. Role of Advisors in Procedures**

### **1. Pre-Hearing**

Upon Notice of the Formal Complaint, the Complainant or Respondent may choose to have a trained Advisor to support them throughout this Procedure. The Advisor does not speak or act on behalf of the Complainant or Respondent except as provided for their role in live hearings. Only one Advisor shall accompany a party to any meeting with a Title IX Coordinator or investigator, including a virtual or telephonic meeting.

An Advisor may be an attorney, but that designation does not alter their role or designated participation in this Procedure, which is the same as a non-attorney. An Advisor's failure to adhere to the designated role may result in exclusion from the current and any future proceedings at the University under this Procedure.

### **2. Hearing**

When a matter proceeds and is subject to a live hearing, an Advisor, not a party, is allowed to conduct cross-examinations. If a Complainant or Respondent did not previously have an Advisor, the University must ensure one is provided for the party at hearing at the University's expense. However, the Advisor's role is to represent the interest of the party they are supporting and not the University's. Their roles are limited to the pending formal complaint and/or adjudication and the University is not responsible for providing or reimbursing the cost for an Advisor for any external proceedings or litigation that may be pursued in any matter, including Title IX.

The University does not reimburse any party for an attorney or advisor the party directly retains for services.

## **B. Investigation Process**

Investigations will be conducted under the supervision of the Title IX Coordinator. A good faith effort will be made to complete an investigation in thirty (30) days however, circumstances may warrant an extension of this time frame which the parties will be notified of.

An investigation will include:

1. An opportunity to meet with the investigator to review and discuss the allegations, present or identify documents or other evidence, and identify witnesses and to suggest questions to pose to the other party or witnesses. The parties have a right to have their Advisor present at any investigatory meeting including interviews and review of evidence.

The parties and advisors will receive written notice of the date, location, time and purpose of any meeting, they are invited or expected to attend at least five (5) days prior to such meeting.

2. The investigator shall meet with the parties and witnesses separately and as necessary, to conduct a thorough and fair investigation.
3. The investigator may collect evidence independent of what is provided by the parties.
4. The investigator will evaluate all the evidence and determine what evidence is relevant based on the allegations, statements, and documents available.
  - a. Generally, direct observations of a witness have more weight than personal opinion or conjecture
  - b. Past conduct may be relevant to establish pattern, lack of mistake, intent or motive.

Credibility assessments shall include; the detail, consistency and plausibility of a person's account; the absence of corroborating evidence when it should logically exist; information that the respondent has been found to have committed Prohibited Conduct previously; information that Complainant has been found to provide false allegations against others; information about the parties' behavior or comments after the alleged incident, including reports to others.

### **C. Expert Witness**

An expert witness may be permitted (1) if specialized or expert knowledge or skill is required to understand technical or forensic evidence (2) an understanding of the technical or forensic information is necessary to make a determination (3) allowing an expert witness is the most efficient way to gather the information related to the technical or forensic evidence.

If allowed, either party or the Title IX Coordinator may retain an expert. If an expert witness is retained by a party, it is at their own expense, without reimbursement from the University. An expert must be identified during the investigation phase to allow the investigator an opportunity to interview the individual. An expert witness must be prepared to appear at hearing and be subject to cross-examination.

The designated Hearing Officer shall resolve the question of whether an expert witness is permitted in the pending matter.

### **D. Medical Records**

The University shall generally have the responsibility to gather evidence sufficient to make a finding regarding responsibility. However, the University will need the written consent of any party to access, consider, disclose or otherwise use a

party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting or assisting in the capacity of providing treatment to the party. The party's consent must be voluntary and in writing.

### **E. Sexual History**

By example, Complainant's sexual history or sexual predisposition is not relevant unless the evidence is offered to prove that someone other than the Respondent is responsible for the conduct alleged by the Complainant. Evidence and questions of specific incidents of Complainant's prior sexual behavior with respect to the Respondent is permissible if offered to prove consent.

### **F. Engagement with Law Enforcement**

When an external law enforcement agency is conducting a separate investigation, the University investigator should coordinate their investigative efforts with law enforcement. Coordination with the external agency may require the extension of certain time lines set forth in the policy.

### **G. Evidentiary Review and Response**

The parties and their Advisors, have the right to inspect and review evidence gathered in the investigation that is directly related to the allegations in the formal complaint (Investigation File). This includes any inculpatory or exculpatory evidence whether from a party or other source so each party can provide a meaningful response to the evidence prior to the conclusion of the investigation. A copy of the evidence will be provided to the party and their Advisor in electronic format, or by hard copy if an electronic transmission is not feasible. The parties have ten (10) days from delivery to review and provide a written response to the evidence. The investigator must consider the response prior to the completion of any investigative report.

### **H. Investigative report**

After the investigator has received the parties' response to the evidence, the Investigator will complete the Investigation Report which will fairly summarize the relevant evidence and send the report to each party and their Advisor with at least ten (10) days for the parties to review the and respond. The investigator will memorialize in a report:

1. A statement of the allegations.
2. Statements from the Complainant and Respondent pertaining to those allegations.



3. A summary of the evidence including witness statements and documents, including the parties' written responses to the evidence, if any.
4. An explanation as to why any proffered evidence was not considered or a witness not interviewed.

The investigator shall not make factual findings or ultimate findings as to whether the Respondent has or does not have culpability for any allegation in violation of University Policy.

## **I. Investigation File**

The Title IX Coordinator will maintain the investigation report and investigation file that includes all of the evidence gathered during the course of the investigation, including the inculpatory and exculpatory evidence and the final report. The investigative file shall be available to all parties. The file may be redacted of personally identifying information such as home addresses, phone numbers or other personal information.

The Title IX Coordinator will make a good faith effort to issue Notice of Hearing within ten (10) days after receipt of the parties' response to the investigative report.

## **VI. Hearings**

Upon conclusion of the investigation process, a live hearing shall be conducted for any matter that has not been dismissed or informally resolved.

A Notice of Hearing shall be issued to identify the alleged violations of University policy and the appointment of a Hearing Officer. Within seven (7) days after the *Notice of Hearing* is issued, the Hearing Officer shall confer with the parties and promptly set a date for the hearing.

- A. Hearing Officer or Panel** - The University will designate a Hearing Officer or panel of Officers. If a panel is selected, a presiding Officer shall be designated among them. Each party will have an opportunity to voice their objection to the appointment of a Hearing Officer or panel member on a rational and legitimate basis, such as the credible assertion of bias or conflict of interest. Such objection and its basis must be in writing and submitted to the Title IX Office within three (3) days after receipt of the *Notice of Hearing* who shall provide notice of the objection to all other parties, without response, unless otherwise requested or noticed. An official designated by the University, who is not directly participating in the hearing process shall determine the merits of such challenge, and issue a final written decision on the challenge no more than (3) three days after receipt of the objection.

The Hearing Officer(s) controls the hearing process and makes determinations regarding culpability/responsibility for Prohibited Conduct as alleged. The Hearing Officer(s) make all determinations regarding the relevance and exclusion of evidence, including witness testimony. The (presiding) Hearing Officer is charged with maintaining civility and order during the proceedings.

## **B. Role of Advisors**

If a party does not have an Advisor at the hearing, they must be provided one of their selection, without charge or fee for cross-examination. The Advisor may or may not be an attorney. The Title IX Coordinator will ensure that each party has an Advisor, if one is not selected by a party prior to any hearing. The Hearing Officer shall not permit questioning unless such Advisor is present. Each party is entitled to have their Advisor present throughout the hearing unless otherwise directed by the Hearing Officer.

## **C. Examinations, Documents and Relevance**

Each party, through their Advisor, is entitled to cross-examine the other party and any witnesses on questions of relevant facts, follow-up questions, including those challenging credibility. Parties are not permitted to question each other or any witness. Cross-examinations must be relevant, direct, verbal and in real time. The role of the Advisor to question parties and witnesses shall apply notwithstanding any other restrictions placed on the advisor's participation.

The Hearing Officer shall determine if a question is relevant prior to any party or witnesses' response. The presiding Hearing Officer must explain any decision to exclude a question as not relevant.

Generally, documents that have not been submitted during the investigation and considered as part of the investigative process and concluding report, may not be presented prior to or during the live hearing. As an exception, the Hearing Officer(s) may consider new evidence that was not reasonable available during the investigation and the presiding Hearing Officer determines such evidence to be highly relevant to a true and fair determination of the allegation's merits.

## **D. Rape Shield Protections for Complainant**

Questions and evidence about the Complainant's sexual history or sexual predisposition is not relevant unless the evidence is offered to prove that someone other than the Respondent is responsible for the conduct alleged by the Complainant. Evidence and questions of specific incidents of Complainant's prior sexual behavior with respect to the Respondent is a permissible if offered to prove consent.

## **E. Non-Participation in Hearings**

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Officer cannot rely on any statement of the party or witness in making a determination of culpability. Neither can the Hearing Officer draw an adverse nor

other inference regarding responsibility based solely on a party or witnesses' absence from the hearing or failure to participate in the hearing. No individual is subject to retaliation for not participating in the hearing.

#### **F. Separation of Parties**

At the University's discretion or at the request of any party, the live hearing may occur virtually with technology capable of simultaneous video and audio transmission of the party or witnesses responding to questions. At the request of a party, the University will provide for the hearing to occur with the parties located separate rooms with technology enabled to allow for the decision maker and parties to have simultaneous audio and visual transmission of the party or witness answering questions.

#### **G. Hearing Transcript**

An audio, audiovisual, or transcript of the proceeding must be maintained and made available for any party to review. The Title IX Officer shall arrange the time and place for such review in consultation with the requesting party.

#### **H. Fundamental Fairness and Presumption of Non-Culpability**

All grievance procedures shall be conducted equitably and impartially for all parties. There is a presumption that the Respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.

#### **I. The Investigator**

The Investigator will be present at the hearing to answer any questions from the Hearing Officer about the investigation. The parties may give the Hearing Officer written questions to ask the investigator. The Hearing Officer will determine the relevancy of the questions and decline to ask them on such grounds.

#### **J. Determinations by the Hearing Officer**

The Hearing Officer shall evaluate all relevant evidence objectively, including inculpatory and exculpatory evidence. Determinations of credibility will not be based on a person's status as either a Complainant, Respondent or witness. Credibility assessments shall include; the detail, consistency and plausibility of a person's account; the absence of corroborating evidence when it should logically exist; information that the respondent has previously been found to have committed Prohibited Conduct; information that Complainant has been found to

provide false allegations against others; information about the parties' behavior or comments after the alleged incident, including making reports to others.

The Hearing Officer will issue to each party simultaneously, a written determination within fourteen (14) days of the conclusion of the hearing unless an extension of time is necessary under reasonable circumstances.

The written determination must include:

1. The allegations potentially constituting Prohibited Conduct;
2. The procedural steps from receipt of the formal complaint through the determination of responsibility. This includes any notifications to the parties of interviews, methods for gathering evidence and hearings held;
3. Findings of Fact;
4. Any conclusions whether Prohibited Conduct occurred applying definitions under the Policy and this Procedure;
5. A statement and rationale for the outcome of each allegation, including any determination of responsibility;
6. A statement and rationale of any disciplinary sanctions;
7. An explanation of, and rationale for any remedies intended to restore or preserve the Complainant's access to an educational programs and activities if applicable;
8. The Appeal Process.

The Title IX Coordinator is responsible for implementing any reasonable accommodations, supportive measures and remedies, including any continuing supportive measures or accommodations.

The Title IX Coordinator will determine on a case by case basis, whether any sanction or remedy goes into immediate effect or is paused pending an appeal, or any combination thereof.

The Hearing Decision is final:

- a. If no appeal is filed, the decision is final on the date any right to appeal expires; or

- b. If an appeal is filed, on the date the University provides the parties with the written outcome of the appeal.

For purposes of a record, the Title IX Coordinator will provide a copy of the Hearing Decision to the office or department with oversight as follows:

- a. Officer of Student Services for student
- b. Office of Human Resources for staff
- c. Associate Vice Provost for Faculty Affairs for faculty
- d. Appropriate administrative offices (e.g. College of Medicine) for trainees, fellows or similarly situated

## **VII. Appeal Process**

### **A. Mutual Rights**

The Complainant and Respondent have an equal right to appeal a determination regarding culpability, sanctions or remedies.

### **B. Basis for Appeal**

An appeal must be based on one of the foregoing basis:

1. Procedural error that affected the outcome of the matter;
2. New evidence that could affect the outcome but was not reasonably available at the time of the hearing determination was made;
3. The Title IX Coordinator, investigator or decision maker had a conflict of interest or bias for or against Complainant or Respondent that affected the outcome of the matter;
4. A sanction or remedy was not reasonable in light of the findings in the case.

### **C. Submitting an Appeal**

An appeal must be in writing and delivered to the Title IX Coordinator within (10) days after delivery of the Hearing Decision. An appeal must (1) explain the basis (s) for the appeal (2) the facts or circumstances supporting such basis and (3) what the appealing party wants changed.

### **D. Notice of Appeal**

All parties and their Advisors will be given notice of the appeal as set forth in C. above promptly, but no later than three (3) days after the Title IX Coordinator receives the appeal. Each party may file a response to the other party's appeal. An appeal response can be submitted to the Title IX Coordinator by a date determined, but generally ten (10) days after the appeal is shared. The Title IX Coordinator will make the appeal response available to the other party, but no further responses are permitted.

#### **E. Appeal Body**

The Title IX Coordinator, or designee can appoint an appeal Officer or panel. The designation shall occur within three (3) days after receipt of the Notice of Appeal.

An Appeal Body may be comprised of one to three individuals who will hear and decide the appeal

#### **F. Notice of Review of Request for Appeal**

The Title IX Coordinator shall provide the parties and their Advisors notice of the appointment of the Appeal Officer or panel (Appeal Body) within three (3) days of appointment of the designation.

#### **G. Appeal Body**

The Appeal Body shall consider the appeal documents, investigative file developed by the investigator as well as the evidence presented at the hearing available by transcript in making any determinations consistent with the grounds for appeal.

1. The Appeal Body may render a decision that:
  - a. Upholds the findings remedies and/or sanctions;
  - b. Overturns the findings, remedies and/or sanctions;
  - c. Issues new or modified the findings, remedies or sanctions;
  - d. In matters alleging bias or conflict of interest, return the case for further action with a new Hearing Officer as directed by the appeal body, and thereby sets aside the initial case findings and sanctions and remedies if any;

- e. In cases alleging material procedural error, or new evidence (See B. above) return the case back to the Hearing Officer for further fact-finding if needed.
2. The Appeal Body will issue its decision in writing and include:
    - a. Restatement of the grounds upon which the appeal was heard;
    - b. A summary of the appeal process;
    - c. A summary of the information considered by the Appeal Body;
    - d. The decision of the Appeal Body which includes an explanation of how a decision was reached and the evidence considered in reaching the decision. In cases where a decision overturned or modified, the Appeal Body shall explain its reasoning, including why the determination regarding culpability, sanction or remedy was not reasonable, or what new information or procedural error was determined that affected the outcome and how the outcome was affected.

The Appeal Body will have twenty (20) days after receiving the hearing transcript and other evidence to render a decision.

The Title IX Coordinator will be responsible for disseminating the Appeal Body's decision within three (3) days after receipt. The Complainant, Respondent, and Title IX office shall receive a copy of the decision. The decision of the Appeal Officer or body shall be final.

## **VIII. IMPOSITION OF DISCIPLINARY ACTION**

Disciplinary sanctions are intended to be consistent and equitable in response to a violation of the Policy. A violation of Policy could lead to termination or separation of faculty, staff, trainees, and expulsion for students. The Hearing Officer must impose actions and remedies that reflect the seriousness of the incident and its harm. The Hearing Officer may consult with the Title IX Coordinator or other appropriate University officials such as Deans or the Director of Human Resources, regarding community standards and other relevant information when drafting sanctions.

### **A. Factors**

When determining the appropriate sanctions, the following factors shall be considered:

1. Seriousness of the violation including the extent of the contact, duration, location,, single or repeated acts, presence of weapons or use of force and physical injury;.

2. Intent and motivation for the harm imposed including the influence of others, passivity of role, use of authority, planned or predatory conduct, deliberately intoxicating another, recording, transmission or viewing of intimate acts, hate or bias because of protected class;
3. Voluntary acknowledgement of wrongful conduct or willful disobedience or disregard for conduct including failure to follow no contact orders, or otherwise obstructing any process delineated herein;
4. Prior disciplinary history, even if unrelated to current matter;
5. Impact on others, input of the Complainant and well-being and safety of the campus community.

## **B. General Guidelines**

1. Student discipline shall be consistent with any applicable portions of the Student Code of Conduct.

Faculty and staff sanctions should be consistent with any applicable handbook or contract.

2. Disciplinary sanctions shall be reasonable and proportionate to the violation taking into consideration any relevant context and severity of the violation and any mitigating factors.
3. When a student is found not in violation of policy, action shall be taken to assist the student who has been disadvantaged with respect to academic or related status because of the unsubstantiated allegations.
4. Sanctions are intended to hold persons accountable for their conduct and to promote personal growth and self-awareness. Sanctions are also intended to be a deterrent to prevent reoccurrence.

## **C. Types of Disciplinary Sanctions**

1. Students – Student sanctions may include:
  - a. Dismissal from the University;
  - b. Suspension from the University, which shall not exceed one year in any case;
  - c. Exclusion from areas of campus or from University functions;
  - d. Removal from University owned housing, if applicable;
  - e. Loss of privileges and exclusion from activities;
  - f. Restitution;
  - g. Probation with or without a suspended term for implementation;
  - h. Written warning or admonition;
  - i. Required individual education awareness and coaching;



- j. Community service hours;
- k. Any other action set forth in University policy.

Disciplinary sanctions shall be recorded on academic transcripts as set forth in University policy.

- 2. Faculty – Faculty sanctions may include:
  - a. Termination;
  - b. Suspension without pay for a determined period;
  - c. Denying an opportunity for promotion;
  - d. Denying the opportunity to hold committee or community roles;
  - e. Letter of reprimand or admonishment in personnel file;
  - f. Required personalized education awareness and coaching;
- 3. Staff – Staff sanctions may include:
  - a. Termination;
  - b. Suspension without pay for a determined period;
  - c. Denying an opportunity for promotion;
  - d. Denying the opportunity to hold committee or community roles;
  - e. Letter of reprimand or admonishment in personnel file;
  - f. Required personalized education awareness and coaching;

**RELATED POLICIES AND RESOURCES:**

CDU Policy Sex/Gender Discrimination and Harassment Policy

Title IX of the Education Amendments of 1972, 20 U.S.C §1681

Violence Against Women Act of 2013, U.S.C 42 §13931

California Education Code sections 67380, 67383 and 67386

Government Code §12950.1

Title VII of the Civil Rights Act of 1964

California Fair Employment and Housing Act, Government Code §12940 et. seq.