



Interim Policy on Sexual Harassment  
Prohibited by Title IX  
Chapman University | August 2020

Revised August 14, 2020

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## **I. Policy Overview**

This policy sets forth The University's obligations under the 2020 Title IX Regulations. This policy also includes The University's obligations under the 2013 Clery Amendments pertaining to sexual assault, dating violence, domestic violence, and stalking.

Questions about Title IX may be referred to the Equal Opportunity and Diversity Officer or to the Assistant Secretary for Civil Rights:

**Albert Roberson**, Equal Opportunity and Diversity Officer  
Deputy Title IX Coordinator and 504 Officer  
DeMille Hall  
One University Drive  
Orange, CA 92866  
Tel: (714) 997-6847  
Email: [aroberson@chapman.edu](mailto:aroberson@chapman.edu)

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

Any person may report conduct prohibited by this policy to the Equal Opportunity and Diversity Officer or to the Lead Title IX Coordinator. A complaint about the Equal Opportunity and Diversity Officer may be made to the Chief Human Resources Officer.

## **II. Statement of Non-Discrimination**

The University does not discriminate on the basis of sex in its education programs and activities, including employment and admission. Complaints of discrimination based on sex will be handled under [Discrimination, Harassment, and Retaliation Prevention Policy for Employees](#). Title IX-based complaints of any kind, and retaliation against an employee or third party may be directed to the Equal Opportunity and Diversity Officer.

## **III. Scope**

This policy applies to any student or employee who experiences prohibited sexual harassment by an employee in University education programs or activities. This includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. The University has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this policy or otherwise falls within the scope of this policy, including the [Discrimination, Harassment, and Retaliation Prevention Policy for Employees](#).

This Policy also applies to all students, although alleged violations of this policy and disciplinary action involving students shall be conducted and determined in accordance with the [Student Conduct Code](#) and/or the [Student Sexual Misconduct Policy](#).

All employees (faculty and staff) must cooperate fully with investigations in a timely manner undertaken by persons charged with conducting the inquiry except if otherwise prohibited by law, *e.g. investigations and fact-finding under the [Student Sexual Misconduct Policy](#) and the [Policy on Sexual Harassment Prohibited by Title IX](#).*

#### IV. Prohibited Sexual Harassment

In accordance with its obligations under the Title IX Regulations of 2020, the University prohibits sexual harassment, which is conduct based on sex, including gender identity, gender expression, or sexual orientation, that satisfies one or more of the following definitions:

**1. Quid Pro Quo Conduct.** An employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

**2. Unwelcome Conduct.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

**3. Sexual assault.** This category of prohibited conduct includes the following:

- i. Sex Offenses**—Any sexual act directed against another person, without the affirmative consent of the victim including instances where the victim is incapable of giving affirmative consent.
- ii. Non-Consensual Penetration** - Actual or attempted 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. This includes penetration forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their temporary or permanent mental or physical incapacity.
- iii. Fondling**—The non-consensual touching of the private body parts of another person for the purpose of sexual gratification, without affirmative consent, whether forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their age or because of their temporary or permanent mental or physical incapacity.
- iv. Other Lawfully Prohibited Sexual Intercourse**

This category includes conduct constituting sexual assault that does not meet the definition of Non-Consensual Penetration or Fondling:

- i. Non-Forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, regardless of affirmative consent.
- ii. Non-Forcible sexual intercourse with a person who is under the statutory age of consent, regardless of affirmative consent.

**4. Dating violence.** Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

**5. Domestic violence.** A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of California or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of California.

**6. Stalking.** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

**7. Sexual Exploitation** occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to: prostituting another person; recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent; distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, re, and for the purpose of arousing or gratifying sexual desire. Sexual exploitation may occur regardless of whether sexual activity takes place.

## V. Definitions

**7. Affirmative consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.

- Lack of protest or resistance does not mean consent.
- Silence does not mean consent.
- The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

In addition, it shall not be a valid excuse to allege lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

8. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under this policy.
9. **Formal complaint** means a document signed and filed by a Complainant (or signed by the Equal Opportunity and Diversity Officer) or designee alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the Formal Complaint is filed.
10. **Grievance Process** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).
11. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this policy.
12. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.

## VI. Reporting Prohibited Sexual Harassment

### 1. Where to Report

The University takes allegations of prohibited conduct very seriously, and will take appropriate action against all alleged discrimination and/or harassment, even in the absence of a Formal Complaint. The University's response is intended to ensure that all parties involved receive appropriate support, fair treatment, and that all allegations are handled in a prompt, thorough, and equitable manner. The following individuals are responsible for responding to complaints, determined by the status of the alleged harasser.

University employees, third parties, and students who believe they or others have been subjected to harassment, discrimination and/or sexual harassment by a University employee or third party, please contact one of the following:

**Albert Roberson**, Deputy Title IX Coordinator,  
 Equal Opportunity and Diversity Officer and  
 504 Officer  
 DeMille Hall  
 One University Drive  
 Orange, CA 92866  
 Tel: (714) 997-6847  
 Email: [aroberson@chapman.edu](mailto:aroberson@chapman.edu)

**Dawn White**, Investigator  
 DeMille Hall  
 One University Drive  
 Orange, CA 92866  
 Tel: (714) 997-6827  
 Email: [dawwhite@chapman.edu](mailto:dawwhite@chapman.edu)

University employees, third parties, and students who believe they or others have been subjected to harassment, discrimination and/or sexual harassment by a University student, please contact one of the following:

**DeAnn Yocum-Gaffney**, Lead Title IX Coordinator  
Associate Vice President for Student Affairs  
and Senior Associate Dean of Students  
Argyros Forum 302A  
One University Drive  
Orange, CA 92866  
Dean of Students Office  
Tel: (714) 532-6056  
Email: [gaffney@chapman.edu](mailto:gaffney@chapman.edu)

**Lauren Lockwood**, Title IX Investigator  
and Program Coordinator for Student Affairs  
Argyros Forum 302  
One University Drive  
Orange, CA 92866  
Dean of Students Office  
Tel: (714) 744-7693  
Email: [lockwood@chapman.edu](mailto:lockwood@chapman.edu)

**Ezra Baccar**, Title IX Investigator  
and Program Coordinator for Student Affairs  
Argyros Forum 302  
One University Drive  
Orange, CA 92866  
Dean of Students Office  
Tel: (714) 532-6039  
Email: [baccar@chapman.edu](mailto:baccar@chapman.edu)

Reports may be made at any time (including during non-business hours) by using the telephone number, electronic mail address or Equal Opportunity and Diversity Office webpage, or by mail to the office address listed above. A Complainant has the option to choose whether they will notify and seek assistance from law enforcement.

2. **Notice of Allegations.** The University has notice of sexual harassment or allegations of sexual harassment under this policy when such conduct is reported to the Equal Opportunity and Diversity Officer or any official of the University who has authority to institute corrective measures on behalf of the University. However, all employees are required to report sexual harassment, as defined and prohibited by this policy or the [\*Discrimination, Harassment, and Retaliation Prevention Policy for Employees\*](#) to the Equal Opportunity and Diversity Officer.
3. **Response to a Report.** With or without a Formal Complaint, upon a report of sexual harassment, the Equal Opportunity and Diversity Officer will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.
4. **Information Resource Packet.** Upon receipt of a report of sexual assault, dating violence, domestic violence, stalking or sexual exploitation, the University shall provide an information resource packet that contains procedures to follow if any of the above prohibited conduct has occurred, including information in writing about:
  - I. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
  - II. How and to whom the alleged offense should be reported;
  - III. Options regarding law enforcement and campus authorities, including notification of the option to:

- a. notify proper law enforcement authorities, including on-campus and local police;
  - b. be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
  - c. decline to notify such authorities;
- IV. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
  - V. Information about appropriate and available services both at the institution and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate; and
  - VI. Options for, reasonably available assistance and accommodations and how to request them; and
  - VII. Information about the participation of victim advocates and other supporting people.

The University's information packet for victims of sexual assault, dating violence, domestic violence and stalking is available by contacting Equal Opportunity and Diversity Officer or visiting the Equal Opportunity and Diversity Office.

- 5. **Implementation of Supportive Measures.** The University shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the Supportive Measures. The Equal Opportunity and Diversity Officer is responsible for coordinating the effective implementation of Supportive Measures. The Equal Opportunity and Diversity Officer should record and retain records regarding requests and provision of Supportive Measures in accordance with the requirements set out at XIV. Record Keeping, see below.
- 6. **Emergency removal.** Nothing in this part precludes the University from removing a Respondent from the University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- 7. **Administrative Leave.** The University reserves the right to place a Respondent that is a non-student employee on administrative leave during the pendency of a grievance process.
- 8. **Amnesty for Student Code of Conduct Violations.**  
An individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the University's student conduct policy at or near the time of the incident, unless the University determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty



## VII. Procedures for Resolving Complaints of Prohibited Sexual Harassment

### 1. Alternative Resolution

Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility the University may facilitate an alternative resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the University:

- i. Provides to the parties a written notice disclosing:
  - The allegations,
  - The requirements of the alternative resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process and resume the grievance process with respect to the Formal Complaint; and
  - Any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared.
- ii. Obtains the parties' voluntary, written consent to the alternative resolution process; and
- iii. Does not offer or facilitate an alternative resolution process to resolve allegations that an employee sexually harassed a student.
- iv. Completes the alternative resolution process within 60 business days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

The University does not require as a condition of enrollment or continuing enrollment, employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. The University shall not require the parties to participate in an alternative resolution process and will not offer an alternative resolution process unless a Formal Complaint is filed.

### 2. Formal Complaint and the Grievance Process

- i. **Filing a Formal Complaint.** A Formal Complaint may be filed with the Equal Opportunity and Diversity Officer in person, by mail, online, or by electronic mail using the contact information listed for the Equal Opportunity and Diversity Officer above. A "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Equal Opportunity and Diversity Officer signs a Formal Complaint, the Equal Opportunity and Diversity Officer is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below. The Formal Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known. The Formal Complaint form can be found by visiting: <https://www.chapman.edu/faculty-staff/human-resources/files/employment-relations/chapman-h-d-complaint-form.pdf>.
- ii. **Dismissal of a Formal Complaint.** The University shall investigate the allegations in a Formal Complaint, except as follows:

- a. Mandatory Dismissal.** The University shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint:
- i.** would not constitute sexual harassment as defined by this policy, even if the allegations were true;
  - ii.** did not occur in the University's education program or activity; or
  - iii.** did not occur against a person in the United States.

The dismissal does not preclude action under another policy or procedure of the University.

- b. Discretionary Dismissal.** The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
- i.** a Complainant notifies the Equal Opportunity and Diversity Officer in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
  - ii.** the Respondent is no longer enrolled in or employed by the University;
  - iii.** specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein; or
  - iv.** The alleged sexual harassment occurred prior to August 14, 2020, in which case, the University's [Harassment, Discrimination and Sexual Harassment Policy](#) shall be used.

The Equal Opportunity and Diversity Officer may dismiss a Formal Complaint at any time in the process if it becomes aware that one of the foregoing reasons for dismissal applies.

Upon a dismissal required or permitted under this section, the Equal Opportunity and Diversity Officer will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties. The Equal Opportunity and Diversity Officer may also refer the matter for resolution to the appropriate department under the applicable University Policy.

- iii. Consolidation of Formal Complaints.** The University may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
- v. Notice of Allegations**
- a. Initial Notice of Allegations.** Upon receipt of a Formal Complaint, prior to commencing the investigation, The University shall provide the following written notice to the parties who are known. This notice shall include:

- This policy (as a link or attachment);

- Notice of the allegations potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notification to the parties that they may inspect and review evidence, as set forth in this policy;
- Any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- Describes the standard of evidence that will be used.
- Lists all possible sanctions the institution may impose.

**vi. Amended Notice of Allegations.** If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of allegations, the University must provide notice of the additional allegations to the parties whose identities are known.

**vii. Principles for the Grievance Process**

Under this grievance process, the University shall:

- a.** Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties, provided that the University cannot 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 in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then the University must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).
- b.** Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- c.** Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- d.** Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit

the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. For the purposes of this policy, the role of the advisor is limited to the following: the advisor may attend any interview or meeting connected with the grievance process, but may not actively participate in interviews nor provide testimony or argument on behalf of the party. The advisor may attend the live hearing and may conduct cross-examination of the other party and any witness at the hearing; otherwise, the advisor may not actively participate in the hearing.

- e. Allow each party to be accompanied by a support person if they do not wish to have an advisor. Each party may be accompanied by only one person.
- f. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- g. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- h. Require that any individual designated as a Title IX Coordinator, investigator, decisionmaker, or any person to facilitate an alternative resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. The University may use internal personnel or external parties in the alternative resolution process or the grievance process, provided that they meet this requirement.
- i. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- j. Use the following standard of evidence to determine responsibility for allegations in a Formal Complaint of sexual harassment: the preponderance of the evidence standard. This standard of evidence is the same for Formal Complaints that are resolved under this policy against students, faculty, and staff.
- k. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

**viii. Extensions of the Grievance Process**

The Equal Opportunity and Diversity Officer may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**ix. Investigation of Formal Complaints**

If not serving as the Investigator, the Equal Opportunity and Diversity Officer will appoint an Investigator, who may be an employee or official of the University or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator, and will be informed that any objections to the service

of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Equal Opportunity and Diversity Officer within three days of notice of the appointment. The Equal Opportunity and Diversity Officer will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not.

When investigating a Formal Complaint, the University shall, within 30 business days of receiving the Formal Complaint, unless unusual or complex circumstances exist:

- a. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
- b. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- c. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- e. Create an investigative report that fairly summarizes relevant evidence and, at least 10 business days prior to a hearing or other time of determination regarding responsibility, the Equal Opportunity and Diversity Officer shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Equal Opportunity and Diversity Officer shall provide it to the decision-maker(s).

## **VIII. Live Hearings Under the Grievance Process**

### **1. Requirement of a Live Hearing for Fact-Finding and Determining Responsibility**

- i. Following the investigation, and within 30 business days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, the University shall conduct a live hearing in front of the decision-maker(s), which may be an individual or a Hearing Board, for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint. The decision-maker(s) cannot be the same person(s) as the Equal Opportunity and Diversity Officer or the investigator(s). A decision-maker may include internal employees or external third-parties contracted by the University. If using a Hearing Board, the Equal Opportunity and Diversity Officer will choose three (3) Hearing Board members from its pool to attend the hearing and make determinations. All potential Hearing Board members will receive annual training as specified by this policy. The parties each may challenge the participation of any member of the Hearing Board for conflict of interest or other good cause. The Equal Opportunity and Diversity Officer will make the final

decision whether to select an alternate upon a challenge from a party. If using a Hearing Board, the Equal Opportunity and Diversity Officer will appoint a member of the Hearing Board to be Chair of the Hearing Board.

- ii. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the Complainant and Respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
- iii. If a party does not have an advisor present at the live hearing, the University shall provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. In providing an advisor who maybe an attorney, the University is not intending to create an attorney-client relationship. The University is obligated to ensure each party has an advisor whether or not the party is present at the hearing. If a party's selected advisor is unavailable for a hearing date, the live hearing date may be postponed for good cause.
- iv. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- v. At the request of either party, the University shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- vi. The University shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other recording is prohibited, and violations may result in discipline.
- vii. The parties shall separately participate in a pre-hearing meeting with the Equal Opportunity and Diversity Officer to go over the process and administration of the live hearing. Prior to or during this meeting, the Equal Opportunity and Diversity Officer will set the deadlines for submitting and exchanging names of witnesses, evidence, and pre-hearing questions. (The parties will also be permitted to submit questions during the live hearing.) Participation in this pre-hearing meeting is required in order to facilitate the efficient and fair administration of the live hearing process.

## **2. Questioning at the Live Hearing**

- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Only relevant cross examination and other questions may be asked of a party or witness.
- Decision-maker(s) also have the right to question a party or witness.
- Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the University's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
- Before the Complainant, Respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant. The Chair must explain to the party proposing the questions any decision to exclude a question as not relevant.

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

### **3. Use of Witness Statements**

- If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility but may reach a determination based on evidence that does not constitute a statement by the party.
- The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

### **4. Written Determination of the Decision-Maker**

- The decision-maker(s) shall issue a written determination regarding responsibility. If the decision-maker is a Hearing Board member, a majority of the Hearing Board must find that a policy violation occurred for a finding of responsibility and a majority of the Hearing Board must assent to the sanction(s) imposed, if any.

To reach this determination, the decision-maker must apply the preponderance of the evidence standard. The written determination must include:

- Identification of the allegations potentially constituting sexual harassment as defined by this policy;
  - A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of the University's policy to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent (including any referrals to the University's separate procedures for disciplining and terminating staff and faculty as set forth in the Faculty Manual or other procedures), and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and
  - The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
- The University shall provide the written determination to the parties simultaneously.
  - The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an

appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **IX. Appeals**

### **1. Grounds**

Within 10 business days either party may appeal the University's dismissal of a Formal Complaint or receiving the written determination regarding responsibility, on the following grounds:

- Ground 1:** Procedural irregularity that affected the outcome of the matter;
- Ground 2:** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- Ground 3:** The Equal Opportunity and Diversity Officer, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals must be sent to the Equal Opportunity and Diversity Officer in writing.

### **2. Response to Appeals**

As to all appeals, the Equal Opportunity and Diversity Officer (or designee) shall:

- i.** Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
- ii.** Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Equal Opportunity and Diversity Officer;
- iii.** Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
- iv.** Give the non-appealing party an opportunity to submit a written statement in response to the appeal within 10 business days of receiving the appeal, which shall be transmitted within 2 business days to the Appeal decision-maker(s).

### **3. Decision on Appeal**

Within 20 business days of receiving the appeal and the response, the Appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The Appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) *has or have been met*, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the Appeal decision-maker(s) shall identify which aspects merit further review.

## **X. Remedies and Sanctions**

Remedies and Sanctions must be designed to restore or preserve equal access to the University's education program or activity which may include, but are not limited to:



- Written warning
- Educational Training
- Referral for substance abuse evaluation, education, and/or treatment
- Referral for personal counseling
- Restitution for damages
- Special restriction or loss of privilege
- Disciplinary probation
- Restricted campus access
- Placement on unpaid leave of absence
- Termination of employment – employees, could apply to student employees
- Referral to public law enforcement agencies

Employees who fail to complete or fulfill assigned sanctions within the time allowed are subject to additional disciplinary actions including increased sanctions, placement on an unpaid leave of absence, and/or in some cases, termination of employment.

A student found responsible for a violation of this policy (for sexual harassment of faculty or staff) will be subject to sanction(s) in accordance with the [Student Sexual Misconduct Policy](#), regardless of whether legal proceedings involving the same incident are underway or anticipated.

The Equal Opportunity and Diversity Officer is responsible for effective implementation of remedies and sanctions.

## **XI. Retaliation Prohibited**

No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Intimidation, threats, coercion, or discrimination, including allegations against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right under this policy constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section. The University policy on Free Speech can be found by visiting <https://www.chapman.edu/about/our-family/leadership/provosts-office/statement-on-free-speech.aspx>.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination through the [Discrimination, Harassment, and Retaliation Prevention Policy](#).

Finding an individual responsible with a violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to determine that any party made a materially false statement in bad faith.

## **XII. Confidentiality**

Consistent with the requirements of this policy, the University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR

part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that The University will protect the party's privacy consistent with this policy but may disclose information to those who have a legitimate need to know and in order to process complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for the University to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.

Counselors and medical providers working at or on behalf of the University are Confidential Resources. In most cases, Confidential Resources at the University will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that the University will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with Confidential Resources. Reports or records maintained by the University (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of the University's compilation of campus crime statistics. In addition, when appropriate and legally permissible, the University shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any complainants.

Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a physical condition to a person who he or she knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury where the injury is the result of assaultive or abusive conduct (including Sexual Assault, and Dating and Domestic Violence). This requirement does not apply to sexual assault and domestic violence counselors and advocates.

### **XIII. Required Trainings**

The Equal Opportunity and Diversity Officer, investigators, decision-makers, and any person who facilitates an alternative resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and alternative resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an alternative resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

#### **XIV. Recordkeeping**

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

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the University's education programs or activities;
2. Any appeal and the result therefrom;
3. Any alternative resolution and the result therefrom;
4. All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an alternative resolution process. The University shall make these training materials publicly available on its website; and
5. Records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, the University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the University does not provide a Complainant with Supportive Measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.
6. Any other records as required by the [University's Records Retention Policy](#).

#### **XV. Effective Date; Revisions**

This interim policy is effective as of August 14, 2020