

# The University of Southern California Resolution Process for Sexual Misconduct

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## **I. Introduction**

The University of Southern California (University) is committed to providing a prompt and equitable response to all reports and Formal Complaints of Title IX Sexual Harassment, California Education Code Sexual Harassment, and other forms of Sexual Misconduct, all of which fall under the University's definitions of Prohibited Conduct under the Policy on Prohibited Discrimination, Harassment, and Retaliation (Policy). The University's Resolution Processes for addressing Prohibited Conduct are grounded in fairness and support for all parties, and include procedural protections that ensure notice, equitable opportunities to participate, and a neutral and impartial investigation, resolution, and appeal process. The definitions of specific forms of Prohibited Conduct and other core concepts are included in the Policy.

## **II. Scope**

This Resolution Process will be used to resolve reports and Formal Complaints of the following forms of Prohibited Conduct, referred to collectively in this Resolution Process as Sexual Misconduct:

**Title IX Sexual Harassment**, which includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking

**California Education Code Sexual Harassment**, which includes Sexual Violence, Rape, Sexual Battery, and Sexual Exploitation

**Other Forms of Sexual Misconduct**, which includes Sexual or Gender-Based Harassment, Non-Consensual Viewing, Recording, and Dissemination, Exposure, and other forms of Dating and Domestic Violence

**Retaliation**, when related to a report or Formal Complaint of Sexual Misconduct

This Resolution Process applies to reports and Formal Complaints against Students, Faculty, and Staff that occur within the University's education program or activity. In this Resolution Process, the individual reported to have experienced Sexual Misconduct is referred to as the Reporting Party.<sup>1</sup> The individual who is reported to have committed Sexual Misconduct is referred to as the Respondent.

For reports of Formal Complaints against Third Parties, which include contractors, vendors, visitors, guests, or other individuals who are participating in or seeking to participate in the University's education program or activities, the University will determine the appropriate manner of resolution, which may include referral to local law enforcement or to the home school or employer of the Third Party Respondent, and/or restriction from access to campus or University programs or activities. The University's ability to take disciplinary action against a Third Party

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<sup>1</sup> The U.S. Department of Education uses the term Complainant to refer to the individual who is reported to have experienced Title IX Sexual Harassment. The University chooses to use the term Reporting Party, which should be read as synonymous with Complainant under the Title IX regulations; a Reporting Party has all of the same rights and procedural protections as a Complainant under Title IX's implementing regulations.

Respondent will be limited and is determined by the context of the Sexual Misconduct and the nature of the University's relationship to the Third Party Respondent.

The term "education program or activity," whether singular or plural, includes all of the University's operations, including locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the conduct occurred; and any building owned or controlled by a student organization that is officially recognized by the University. Under limited circumstances, the Policy and this Resolution Process may also apply to instances in which the conduct occurred outside of the education program or activity, but where the University otherwise regulates the conduct, the conduct has or could have a continuing impact within the University's education program or activity, or the conduct may have the effect of posing a serious threat to the University community

In the event any individual with a responsibility identified in the Policy or Resolution Process, including the Vice President for Equity, Equal Opportunity, and Title IX (VP for EEO-TIX), investigator, or Hearing Officer, has a conflict of interest that would compromise that individual's objectivity in discharging that responsibility, the University will appoint a designee. Concerns about a potential conflict of interest involving an investigator, Hearing Officer, or other implementer should be raised with the VP for EEO-TIX. Concerns about a potential conflict of interest with the VP for EEO-TIX should be raised with the Senior Vice President of Human Resources, Ethics, and Compliance.

### **III. Resources and Reporting Options**

#### **A. Reporting Options**

The University encourages anyone who has experienced Prohibited Conduct to report it directly to the VP for EEO-TIX or Office for Equity, Equal Opportunity, and Title IX (EEO-TIX Office).<sup>2</sup> Any individual may make a report of Prohibited Conduct under this Policy regardless of affiliation with the University and regardless of whether or not the person reporting is the person alleged to be the individual impacted by the conduct. Reports can be made in person, by mail, by telephone, or by electronic mail, or by any other means that results in the VP for EEO-TIX or EEO-TIX Office receiving the verbal or written report. A report may be made at any time (including during non-business hours) by using the telephone number, email address, or office mailing address, of the VP for EEO-TIX, listed below:

Catherine Spear  
Vice President for Equity, Equal Opportunity, and Title IX  
**Office for Equity, Equal Opportunity, and Title IX**  
USC Credit Union Building  
3720 South Flower Street, 2nd Floor  
Los Angeles, CA 90089-0704  
213-740-5086  
<http://eetix.usc.edu>  
[eeotix@usc.edu](mailto:eeotix@usc.edu)

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<sup>2</sup> The VP for EEO-TIX serves as the University's Title IX Coordinator. All references to the VP for EEO-TIX include an appropriately trained and experienced designee.

In addition, the University encourages anyone who experiences or witnesses an incident of Prohibited Conduct that may also violate criminal law to *immediately* report the incident to the Department of Public Safety or external law enforcement using the following contact information:

- **Department of Public Safety**  
UPC: (213) 740-6000 (24 hour, non-emergency number)  
HSC: (323) 442-1200 (24 hour, non-emergency number)
- **Los Angeles Police Department**  
911 (for emergencies)  
1-877-ASK-LAPD (24-hour, non-emergency number)

A Reporting Party may choose to make a report to the University to pursue resolution under this Resolution Process and may also choose to make a report to external law enforcement. A Reporting Party may make a report to the University, to law enforcement, to neither, or to both. As set forth in the Policy, a Reporting Party has the right to report, or decline to report, potential criminal conduct to law enforcement.<sup>3</sup> Upon request, the University will assist a Reporting Party in contacting law enforcement at any time, regardless of whether the Reporting Party wishes to pursue a Formal Complaint under this Resolution Process. Under limited circumstances posing a threat to the health or safety of any University community member, or as required by the University's Memorandum of Understanding with the Los Angeles Police Department, the University will independently notify law enforcement. The University's Resolution Process and law enforcement investigations may be pursued simultaneously, but will operate independently of one another. The University will, when appropriate, coordinate information with law enforcement if law enforcement is notified.

## **B. Confidential Resources**

The University also offers access to Confidential Resources for individuals who are unsure about whether to report Sexual Misconduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. Confidential Resources include:

- **Relationship and Sexual Violence Prevention and Services (RSVP)**  
Provides direct support to Reporting Parties, including crisis appointments, group therapy, discussions of reporting options, and support surrounding academic accommodations.  
<https://studenthealth.usc.edu/sexual-assault/>  
USC Student Health's Engemann Student Health Center Suite 356  
(213) 740-9355 (WELL)(available 24/7)
- **Counseling and Mental Health**  
Provides counseling and support for students, including direct support to both Reporting

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<sup>3</sup> The University will comply with external reporting obligations under California state law related to known or suspected abuse, molestation, or neglect relating to children, elders, or dependent adults. For more information, please visit <https://policy.usc.edu/mandated-reporters/>.

Parties and Respondents  
<https://studenthealth.usc.edu/counseling/>  
BIPOC Mental Health  
<https://sites.google.com/usc.edu/bipocmentalhealth>  
(213) 740-9355 (available 24/7)

- **Center for Work and Family Life**  
Provides support for employees  
<http://cwfl.usc.edu/>  
(213) 821-0800 (available 24/7)

#### **IV. Role of the Advisor of Choice and Hearing Advisor**

The Reporting Party and Respondent each have the right to be accompanied at any meeting or hearing under the Policy and this Resolution Process by an advisor of their choice. This advisor may be any person, including an attorney, but need not be an attorney.<sup>4</sup> A party may also choose to rely upon a Support Person instead of an attorney advisor. A party may only have one advisor present at a meeting or hearing at any time, even if they choose to work with both an attorney advisor and a Support Person. A party may decline to use an advisor for all stages of the formal or Alternative Resolution process, with the exception of the hearing, where any questioning of the other party must be conducted by the party's advisor for cases involving Title IX Sexual Harassment as required by federal law. If a party does not have an advisor for the hearing, the University will provide an advisor, free of charge. This University-appointed advisor may be, but is not required to be, an attorney, and will attend the hearing and conduct questioning on behalf of that party. The University-appointed advisor is referred to as a Hearing Advisor. The Hearing Advisor will be selected from a pool of diverse individuals that reflect a multiplicity of identities who have been trained on the University's Policy and Resolution Processes.

The Resolution Process is not a legal proceeding and, although a party may be advised by their advisor, the conduct of the advisor will be governed by the Policy and this Resolution Process. A party's Advisor of Choice may provide support and advice to the parties at any meeting and/or proceeding, but, except as otherwise permitted by this Resolution Process, they may not speak on behalf of the parties or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings. With the exception of the advisor's live questioning during a hearing involving Title IX Sexual Harassment, the advisor may observe, provide support, and provide guidance or advice to the party (in a non-disruptive manner). The University may remove or dismiss advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. Repetitive, irrelevant, or harassing questions will not be permitted. An advisor may be asked to meet with a member of the EEO-TIX Office in advance of any meetings or proceedings to receive and acknowledge the University's overview of the Policy and Resolution Process, expectations of the role, privacy considerations, and appropriate decorum.

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<sup>4</sup> Under California Senate Bill, which amended the California Education Code, Section 66281.8, student Reporting Parties and student Respondents each have the opportunity to have a support person or advisor accompany them during any stage of the process. Student Reporting Parties and Respondents have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. Under the Education Code, an attorney may serve as a support person or advisor.

Generally, all communications between the EEO-TIX Office and a Reporting Party or Respondent will occur through the party directly, not the advisor, and the party, rather than the advisor, is required to submit any written correspondence or documents. The University will not share information with a student party's advisor unless the student has executed a Family Education Rights and Privacy Act (FERPA) waiver. An advisor should plan to make themselves reasonably available for all meetings and proceedings. The University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

An advisor is entitled to review all information gathered in the investigation that is directly related to the allegations (as part of evidence review), to access the investigation report, and, to the extent required by federal law, to conduct cross-examination of parties and witnesses during the hearing. See below for more information about the hearing.

## **V. Initial Assessment**

### **A. Response to Report of Sexual Misconduct**

Any person may report Sexual Misconduct to the University's VP for EEO-TIX. Upon receipt of a report alleging Sexual Misconduct or notice to the VP for EEO-TIX of an alleged violation of the Policy, the VP for EEO-TIX will conduct an Initial Assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The VP for EEO-TIX or their designee will also promptly contact the Reporting Party to share the following information:

1. that the University has received a report that the Reporting Party may have experienced sexual harassment or another form of Prohibited Conduct;
2. a statement that retaliation for making a report, filing a Formal Complaint or participating in a resolution process, is prohibited;
3. available counseling resources within the University or in the community;
4. where a potential crime may have occurred, notice that the Reporting Party has the right, but not the obligation, to report the matter to law enforcement;
5. the University's investigation procedures established under this Resolution Process;
6. reasonably available supportive measures, such as Avoidance of Contact directives, housing changes, and academic schedule changes, where applicable, and that the EEO-TIX Office will consider the Reporting Party's preferences as to supportive measures;
7. that the University will ascertain and consider the Reporting Party's wishes with respect to supportive measures;
8. the availability of supportive measures with or without the filing of a Formal Complaint;

9. the importance of preserving evidence;
10. a request for the Reporting Party to meet with the Title IX Coordinator or other designated employee of the EEO-TIX Office to discuss options for responding to the report;
11. the process for filing a Formal Complaint; and
12. the manner in which the University responds to reports of sexual harassment and other forms of Prohibited Conduct and a description of potential disciplinary consequences.

A Reporting Party may: request supportive measures only; file a Formal Complaint; or request more time to consider their options. Alternatively, as described below, the VP for EEO-TIX may determine that it is appropriate to file a Formal Complaint on behalf of a Reporting Party. After the filing of a Formal Complaint, the Reporting Party may decide to seek an Alternative Resolution in lieu of a Formal Resolution process (investigation and hearing). A Reporting Party is always entitled to reasonably available supportive measures, regardless of whether a formal or Alternative Resolution process has been initiated.

As part of the Initial Assessment, the VP for EEO-TIX will determine, in consultation with other need-to-know University officials, as appropriate, whether the Policy applies to the report and whether the reported conduct falls within the jurisdiction and scope of the Policy, including Title IX Sexual Harassment.

#### **B. Intake Meeting**

The Initial Assessment typically includes an initial intake meeting (which may take place in person, by telephone, or via live technology), with the Reporting Party to understand the nature and circumstances of the report and to provide the Reporting Party with information about resources, including local law enforcement resources as applicable, procedural options, supportive measures, and an opportunity to discuss the Policy and these Procedures.

In addition to the intake meeting, the University will provide the Reporting Party with written information about resources within the University or in the community; procedural options for alternative and formal resolution, including the investigation procedures; reasonably available supportive measures, such as Avoidance of Contact Directives, housing changes, and academic schedule changes, and the process for requesting and obtaining those supportive measures; the range of disciplinary sanctions available upon a finding of responsibility for violating the Policy, the prohibition against retaliation for making a report, filing a Formal Complaint, or participating or refusing to participate in a resolution process; the available mechanisms to report concerns of retaliation; the right, but not the obligation, to report the matter to law enforcement; and the importance of preserving evidence. The written information will also include information about campus and community resources and services, including counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other available services. This written information will also include a notification about the process for seeking language-related accommodations (i.e., translations/interpreters) and disability-related



accommodations, academic adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act and/or other applicable federal, state, or local laws.

### **C. Overview of Initial Assessment**

As part of the Initial Assessment of the report, the VP for EEO-TIX will:

- Address the immediate physical safety and emotional well-being of the Reporting Party or other campus community members, and offer support and assistance;
- Notify the Reporting Party of the availability of medical and counseling resources to address physical and mental health concerns;
- Notify the Reporting Party of the importance of preserving evidence, including examples of the types of evidence to preserve;
- Notify the Reporting Party of the right to contact or decline to contact law enforcement, and, if requested, assist them with notifying law enforcement;
- Conduct an individualized analysis of safety and risk for the campus community to determine whether a Student Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student, faculty, staff, or other individual such that it justifies emergency removal;
- Conduct an individualized analysis of safety and risk for the campus community to determine the need for administrative leave for an Employee Respondent;
- Consult with the University's threat assessment team as necessary and appropriate;
- Promptly contact the Reporting Party to discuss the availability of supportive measures;
- Consider the Reporting Party's wishes with respect to supportive measures;
- Assess the nature and circumstances of the report based on reasonably available information;
- Discuss the Reporting Party's expressed preference for manner of resolution (*i.e.*, formal resolution in the form of an investigation and hearing or informal resolution) and any barriers to proceeding;
- Share information with the Department of Public Safety (DPS) to comply with Clery Act reporting requirements and timely warning assessments;
- Provide the Reporting Party with information about on- and off-campus support resources;

- Provide the Reporting Party with a copy of the Policy and an explanation of the procedural options, including seeking supportive measures, the process for filing a Formal Complaint, the Formal Resolution process, and alternative resolution;
- Inform the Reporting Party that they may seek an Advisor of Choice to assist them throughout the investigation and resolution of the report, that the advisor may accompany them to any meeting or proceeding under the Policy and Resolution Process, and that if the matter proceeds under the Formal Resolution process and either party does not have an advisor, the University will provide a Hearing Advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing;
- Assess for relevant evidence of a pattern or other similar conduct by the Respondent; and
- Explain the University’s policy prohibiting Retaliation and that the University will take prompt appropriate action in response to the known circumstances of any report of alleged Retaliation.

#### **D. Formal Complaint**

The Formal Resolution process (*i.e.*, investigation, hearing, and appeal) is initiated by the filing of a Formal Complaint. A Formal Complaint is a written document submitted to the VP for EEO-TIX by the Reporting Party alleging that a Respondent engaged in Sexual Misconduct and requesting an investigation. The Formal Complaint may be submitted to the VP for EEO-TIX in person, by mail, or by electronic mail, using the Formal Complaint form. The Reporting Party may also contact the VP for EEO-TIX directly for assistance in making a Formal Complaint. At the time of filing the Formal Complaint, the Reporting Party must be participating in or attempting to participate in the University’s education program or activities. In addition, the VP for EEO-TIX retains discretion, in consultation with relevant University stakeholders, to file a Formal Complaint on behalf of any individual. Where a Reporting Party files a Formal Complaint and requests an investigation and the reported conduct falls within the scope and jurisdiction of the Policy, the EEO-TIX Office must pursue an investigation.

##### **1. Dismissal (Mandatory and Discretionary)<sup>5</sup>**

The VP for EEO-TIX will determine whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the Title IX definition of Sexual Harassment.

Under the Title IX regulations, the University must dismiss some or all of the allegations in the Formal Complaint that relate to Title IX Sexual Harassment if it is determined at any stage during the process that:

1. the conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment, as defined in the Title IX regulations and the Policy; and/or

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<sup>5</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations at 34 C.F.R. Section 106.45.

2. the conduct did not occur within the University's education program or activity (which requires substantial control over both the Respondent and the context, or where the conduct occurred in a building controlled by recognized student organizations); and/or
3. the conduct did not occur against an individual in the United States.

It is important to note that, where the allegations in the Formal Complaint include other forms of Sexual Misconduct prohibited by the University, the conduct occurred outside of the United States, or the conduct is not within the education program or activity (but still within the scope of conduct regulated by the University), the Formal Resolution process will apply and the remaining allegations will proceed to an investigation and hearing pursuant to that process.<sup>6</sup>

In addition, under the Title IX regulations, the VP for EEO-TIX may dismiss a Formal Complaint, at any stage of the process, in any of the following three circumstances:

1. the Reporting Party notifies the VP for EEO-TIX in writing that the Reporting Party would like to withdraw the Formal Complaint or any of its allegations;
2. the Respondent is no longer enrolled or employed by the University; or
3. specific circumstances, including a Reporting Party's decision not to respond to outreach by the EEO-TIX Office, prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

The decision about whether to dismiss a Formal Complaint, in whole or in part, may be made at any stage in the process. Upon any dismissal, the VP for EEO-TIX will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. Either party may appeal the dismissal of some or all of the allegations in a Formal Complaint by notifying the VP for EEO-TIX in writing of the challenge within five (5) calendar days of the date of the notification of the dismissal. The other party will be notified of the appeal. The appeal will be heard by an impartial Appellate Authority, who may be a university administrator or an external professional who is appropriately trained and free from conflict of interest or bias. For more information about the appeals process, see Section X.N.

A Reporting Party who withdraws a complaint may later request to reinstate or refile it, and a new Initial Assessment will be conducted.

## **2. VP EEO-TIX Discretion to File Formal Complaint**

The VP for EEO-TIX also has the discretion, in consultation with relevant University stakeholders, to file a Formal Complaint on behalf of any individual. Even in the absence of a report or a Formal Complaint, if the University knows, or reasonably should know, about possible Sexual Misconduct

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<sup>6</sup> As noted above, this includes circumstances where the University otherwise regulates the conduct, the conduct has or could have a continuing impact within the University's education program or activity, or the conduct may have the effect of posing a serious threat to the University community. Although the Formal Resolution process is the same for conduct regulated by the Title IX regulations and other forms of Sexual Misconduct, the parties, pursuant to the Title IX regulations, have the opportunity to appeal the mandatory dismissal of the allegations related to Title IX Sexual Harassment.

involving individuals subject to the University's policies at the time, the University will promptly investigate to determine whether the alleged conduct more likely than not occurred unless the University determines that an investigation is not required. In evaluating the appropriate manner of resolution, including whether the VP for EEO-TIX will file a Formal Complaint in the absence of a Formal Complaint by the Reporting Party, the VP for EEO-TIX will consider the following list of risk factors:

1. whether the Reporting Party has requested anonymity or believes that they will be less safe if their name is disclosed or an investigation is conducted;
2. whether the Reporting Party wants to participate in an investigation;
3. the totality of the known circumstances;
4. the severity and impact of the alleged Sexual Misconduct on the Reporting Party and/or campus community members;
5. whether the alleged Sexual Misconduct was committed with a weapon;
6. the respective ages of the parties, including whether the Reporting Party is a minor (under the age of 18) or was a minor at the time of the alleged Sexual Misconduct;
7. any power imbalance between the parties;
8. whether the Respondent is a faculty or staff member with oversight of students;
9. whether the Respondent has made any statements of admission or otherwise accepted responsibility for the alleged Sexual Misconduct;
10. whether the alleged Sexual Misconduct involved physical violence or use of physical restraints (*i.e.*, exerting control over another person through the use of physical force, such as hitting, punching, slapping, kicking, restraining, or strangling);
11. whether the Respondent has a history of prior arrests or being the subject of multiple or prior reports or complaints of any form of Sexual Misconduct, or has any documented history of violent behavior;
12. whether the Respondent is alleged to have threatened to commit violence or any form of Sexual Misconduct;
13. whether the alleged Sexual Misconduct was committed by multiple perpetrators;
14. whether the report reveals a pattern of Sexual Misconduct (*e.g.*, by the Respondent; at a particular location, event, or activity; by a particular group or organization);
15. whether the alleged Sexual Misconduct was facilitated through the use of "date-rape" or similar drugs or intoxicants;

16. whether the alleged Sexual Misconduct occurred while the Reporting Party was unconscious, physically helpless, or unaware that the Sexual Misconduct was occurring;
17. the existence of independent evidence that may be available without the participation of the Reporting Party;
18. the scope and nature of prior remedial methods taken with respect to the Respondent;
19. whether the Respondent has a history of failing to comply with any University directives (*e.g.*, Avoidance of Contact Directive) or any judicial protective order;
20. whether any other aggravating circumstances or signs of predatory behavior are present; and
21. any other relevant and available information.

The EEO-TIX Office will take all reasonable steps to respond to the report in a manner that honors the Reporting Party's requested course of action, but its ability to do so may be limited based on the nature of the reported information. Where the VP for EEO-TIX files a Formal Complaint on behalf of the Reporting Party, the VP for EEO-TIX will inform the Reporting Party about the chosen course of action and the underlying rationale based on the risk factors listed above before disclosing the Reporting Party's name or other identifying information to the Respondent and initiating an investigation. The Reporting Party may request that EEO-TIX inform the Respondent that the Reporting Party asked that the matter not be investigated and that the Reporting Party did not seek discipline.

### **3. Consolidation of Formal Complaints**

The University may consolidate Formal Complaints against more than one Respondent, or by more than one Reporting Party against one or more Respondents, or by one party against the other party (*i.e.*, counterclaim), where the allegations of Sexual Misconduct or other forms of Prohibited Conduct or potential Conduct Code violations arise out of the same or substantially similar facts or circumstances. All parties will receive simultaneous, timely notification of any such consolidation. During the course of the investigation, the investigation may reveal the existence of additional or different potential policy violations, which may also be consolidated following notification to the parties of the amended Notice of Investigation.

The University is committed to ensuring that the Formal Resolution process is not abused for retaliatory purposes. The University permits the filing of counterclaims; however, it will use an Initial Assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims determined based on the available information to be made in good faith (which is not the same as a determination as to whether they are substantiated or not) will be processed using this resolution process. Depending upon the timing and circumstances of such allegations, the VP for EEO-TIX retains discretion to resolve such claims through the same investigation with the same investigator(s) or following resolution of the initial allegations that gave rise to the formal investigation, in which case a delay may occur. When counterclaims are not made in good faith, they may constitute Retaliation in violation of the Policy.

**E. Determining the Scope and Appropriate Manner of Resolution**

The VP for EEO-TIX will consider the nature of the report, the safety of the individual and the campus community, and the Reporting Party’s expressed preference for the manner of resolution in determining the appropriate course of action to achieve the goals of Title IX and/or the Policy. The range of available resolution options include:

<b>No Further Action</b>	<b>Supportive Measures Only</b>	<b>Formal Resolution</b>	<b>Alternative Resolution</b>
(which may involve referral to another University policy)	(regardless of whether a Formal Complaint is filed)	(following a Formal Complaint by the Reporting Party or VP for EEO-TIX)	(following a Formal Complaint by the Reporting Party or VP for EEO-TIX)

The Initial Assessment will proceed to the point where a reasonable individualized assessment of the safety of the Reporting Party and of the campus community can be made, and the VP for EEO-TIX, in consultation with other University stakeholders as appropriate, has sufficient information to determine the appropriate course of action. The VP for EEO-TIX will seek to complete the Initial Assessment as promptly as possible, typically within ten (10) calendar days of notice of the report or complaint. There may be circumstances, however, where the Initial Assessment takes longer, based on the availability of the Reporting Party or other necessary information, the need to gather additional information, and/or other factors outside of the University’s control. The University also understands that a Reporting Party may engage in delayed decision-making, which may impact the timing of the conclusion of the Initial Assessment.

At the conclusion of the Initial Assessment, the Reporting Party will receive a written notice, which may be by email, of the determination about how the University will proceed. If the matter is proceeding via a Formal Complaint, the Respondent will also be notified and invited to participate in an intake meeting that will cover the same type of information as is provided to the Reporting Party, including supportive measures.

**VI. Supportive Measures**

**A. Supportive Measures**

As set forth in the Policy, supportive measures are non-disciplinary, non-punitive, individualized support services that are offered as appropriate, as reasonably available, and without fee or charge to the Reporting Party when a report is received, whether or not a Formal Complaint is filed, and to Respondents after a Formal Complaint has been filed. Supportive measures are designed to address the physical safety and emotional well-being of the parties (and University community, as appropriate), as well as to restore or preserve equal access to the University’s education programs and activities (including employment opportunities) without unreasonably burdening the other party, or to deter any form of Prohibited Conduct.

Supportive measures may be temporary or permanent and may include, but are not limited to, the following:

1. supportive measures may be temporary or permanent and may include, but are not limited to, the following:
2. access to confidential counseling and assistance with scheduling initial appointments;
3. arrangement of a meeting with appropriate law enforcement to discuss or report conduct and/or to discuss safety planning;
4. assistance in seeking academic accommodations, such as modified class schedules (including transfer to another section); permission to withdraw from and/or retake a class, or attend a class via alternative means (*e.g.*, online or independent study); extensions of deadlines or other course-related adjustments; and voluntary leaves of absence;
5. assistance in modifying University housing arrangements, including immediate temporary relocation to safe living quarters and/or permanent reassignment of University residence halls;
6. assistance in modifying University employment conditions, such as changes in work schedules, job or supervisory assignments, work locations, and/or assigned parking;
7. assistance in arranging campus escort services;
8. an Avoidance of Contact Directive (*i.e.*, a written directive to refrain from contact directly or indirectly through a third-party);
9. increased security and monitoring of certain areas of the campus; and
10. any other similar measures that may be arranged by the University (to the extent reasonably available) to ensure the physical safety and emotional well-being of a Reporting Party or Respondent.

The VP for EEO-TIX will consider a number of factors in determining what supportive measures are appropriate and reasonably available, including the needs of the student or employee seeking supportive measures; the severity or pervasiveness of the alleged misconduct; any continuing effects on the Reporting Party; whether the Reporting Party and the Respondent share the same residence hall, academic courses, or job locations; and whether judicial measures have been taken to protect the Reporting Party (*e.g.*, protective orders). The University will work in good faith to implement the requirements of judicially-issued protective orders and similar orders, to the extent it has the authority to do so.

Avoidance of Contact Directives are typically interim in nature. A mutual Avoidance of Contact Directive will not be issued automatically; instead, the VP for EEO-TIX will consider the specific circumstances of the report to determine whether a mutual Avoidance of Contact Directive is necessary or justifiable to protect either party's safety or well-being or to respond to interference with an investigation.

When a mutual Avoidance of Contact Directives is issued, the parties will be provided with a written justification for the directive, and an explanation of the terms, and the circumstances, if any, under which violation of the Directive could be subject to disciplinary action.

In addition, unilateral Avoidance of Contact Directives may be issued in limited circumstances, including to help enforce a restraining order, preliminary injunction, or other order of protection issued by a court, or when requested by a Reporting Party. Following a decision of responsibility, any Avoidance of Contact Directive must be unilateral and must only apply against the party found responsible.

The VP for EEO-TIX is responsible for ensuring the effective implementation of supportive measures and coordinating resources with the appropriate offices on campus. The University will maintain the confidentiality of any supportive measures provided under the Policy to the extent practicable and will promptly address any violation of supportive measures. Allegations that a party has violated the terms of a supportive protective measure, including but not limited to an Avoidance of Contact Directive or other University directive, may constitute a violation of the Policy and may subject the individual who has been alleged to violate the supportive measure to disciplinary or administrative actions. The VP for EEO-TIX will determine and identify the appropriate procedures to be followed for such alleged violations, depending on the timing and circumstances of the reported violation.

The VP for EEO-TIX will also provide reasonably available supportive measures for third parties, provided that the supportive measures are within the scope of that individual's relationship to the University.

## **B. Emergency Removal**

Certain circumstances may warrant removing a Student Respondent from a University program or activity on an emergency basis, typically in the form of an interim suspension. The University may remove a Student Respondent on an emergency basis from University property or employment, education, research programs or activities, or other University programs and activities. Before imposing an emergency removal, the University will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the University program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct, and justifies removal of the Respondent from the University program or activity.

The VP for EEO-TIX will promptly provide the Reporting Party, where appropriate because the removal relates to them, and the Respondent with simultaneous written notice of the Emergency Removal, the effect of the Emergency Removal, the rationale for the Emergency Removal, and an opportunity for the Respondent to challenge the Emergency Removal. During any challenge, the Respondent will remain off campus and must comply with the notice of Emergency Removal. That notice will include a statement that any information the Respondent or Reporting Party chooses to provide during the challenge may subsequently be used in implementing any aspect of this Policy, including the investigation and hearing.



The Respondent will have 72 hours from the notice of Emergency Removal to submit a written challenge to the safety and risk analysis that forms the rationale for the Emergency Removal to the VP for EEO-TIX. The VP for EEO-TIX will assign the matter to be reviewed by the Vice President for Student Affairs or designee to evaluate the information in support of the individualized safety and risk analysis and any information provided by the Respondent and the Reporting Party, as applicable. The Vice President for Student Affairs will submit a final decision in writing to the Respondent and the Reporting Party within three (3) calendar days, with a copy to the VP for EEO-TIX.

### **C. Administrative Leave**

The University may place a non-Student Staff or Faculty Respondent on administrative leave, with or without pay, at any time. In reaching a determination as to administrative leave, the VP for EEO-TIX will consult with the Respondent's immediate supervisor or designee, the Senior Vice President of Human Resources, Ethics, and Compliance, or the Provost.

## **VII. Formal Resolution**

This Formal Resolution process is followed after the filing of a Formal Complaint by the Reporting Party or VP for EEO-TIX. The Formal Resolution process, including the investigation and hearing, is not an adversarial process between the Reporting Party, the Respondent, and the witnesses, but rather a University administrative process to comply with obligations under existing law. The Reporting Party does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation(s) of Sexual Misconduct. Expectations of the Parties

During the Formal Resolution process, both the Reporting Party and Respondent can expect:

### **A. Expectations of the Parties**

1. a prompt, trauma-informed, fair, impartial, thorough, and equitable investigation and resolution of allegations of Sexual Misconduct conducted by individuals with sufficient training and/or experience related to their role;
2. an investigator, decision-maker, and/or facilitator of alternative or formal resolution free from conflict of interest or bias for or against reporting parties or respondents generally or the individual parties related to the report or Formal Complaint;
3. privacy, to the extent possible, in accordance with the Policy and any legal requirements;
4. access to reasonably available supportive measures without fee or charge;
5. the opportunity to request and receive reasonable accommodations for a disability or necessary language translation or interpreter services to ensure meaningful participation in any step of the proceedings under the Policy;

6. freedom from Retaliation for making a good faith report of Sexual Misconduct, including Title IX Sexual Harassment and California Education Code Sexual Harassment, or participating in any proceeding pursuant to the Policy;
7. a presumption that the Respondent is not responsible until a determination is made at the conclusion of the Formal Resolution process;
8. written notice of any meeting or proceeding at which the party's presence is contemplated by the Policy or this Resolution Process, including 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;
9. an equal opportunity to identify witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
10. freedom to discuss the allegations under investigation or to gather and present relevant evidence;
11. the opportunity to be accompanied by an Advisor of Choice, including the right to have that advisor accompany the party at any meeting or proceeding, and to have the University provide an advisor at no cost to conduct questioning on the party's behalf at any hearing;
12. an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, by an impartial decision-maker;
13. reasonably prompt time frames with permissible extensions for good cause;
14. written notice of a Formal Complaint (*i.e.*, investigation), including notice of potential Policy violations and the nature of the alleged Sexual Misconduct;
15. timely and equal access to any information that will be used during formal resolution pursuant to this process and any related meeting or proceeding under this Policy, including all information gathered that is directly related to the allegations in the Formal Complaint as well as the information contained in the investigation report;
16. reasonable time to prepare any response contemplated by the Formal Resolution process;
17. timely, written notice of the hearing;
18. to the extent required by federal law, the opportunity, through a party's Advisor of Choice or Hearing Advisor provided by the University, to question the other party or any witnesses during the hearing;
19. the opportunity to be heard, verbally and/or in writing, as to the determination of a Policy violation and the appropriate sanction;

20. written notice of the outcome of any Formal Resolution, including the determination of a Policy violation, any sanctions, and the rationale; and
21. the opportunity to appeal the outcome of the hearing, as described below.

## **B. Participation by the Parties Generally**

The Investigator may receive any information presented by the parties, but the Investigator, not the parties, is responsible for gathering relevant evidence. The Reporting Party and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, and other evidence, if available. The parties are encouraged to provide all relevant information as soon as possible to facilitate prompt resolution. In the event that a party declines to voluntarily provide material information or delays in doing so, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted. The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, but the parties should be advised that doing so in a way that constitutes Harassment or Retaliation may subject them to additional Policy violations.

### **i. Obligation to Provide Truthful Information**

All University community members are expected to provide truthful information in any report or proceeding under this Resolution Process and are further expected to cooperate in any such proceeding. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Sexual Misconduct is prohibited and may lead to administrative or disciplinary action under other applicable University policies. This provision does not apply to reports made or information provided in good faith, even if the information alleged in the report is not later substantiated or no Policy violation is found to have occurred.

### **ii. Obligation to Participate by University Employees**

The University expects all Faculty and Staff to cooperate fully in the investigation of Formal Complaints. In addition, except as limited under the Title IX regulations, Faculty and Staff may be required to participate in the investigation and resolution, and declining to cooperate in an investigation is subject to discipline up to and including termination of employment under other applicable University policies. The University will ensure that all participating Faculty and/or Staff are protected from retaliation for such participation.

## **C. Initiating an Investigation**

The VP for EEO-TIX will assign one or more trained investigators to conduct a prompt, thorough, fair, and impartial investigation. The VP for EEO-TIX will assign an Investigator, who may be a University employee or an external professional. The role of the Investigator will be to gather information through interviews of the Reporting Party, Respondent, and relevant witnesses, and to synthesize relevant information in a report that will be provided to the Reporting Party, the Respondent, and the Hearing Officer. The investigation report will include all relevant information provided by either party, including inculpatory and exculpatory information, that will be used in the determination of responsibility or sanction.

Any Investigator used by the University will be impartial and free from conflict of interest or bias and will receive annual training on the issues related to Sexual and Gender-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and all other forms of Discrimination and Harassment under the Policy; the definition of Sexual Harassment in the Title IX regulations; the scope of the University's education programs and activities (to include employment and other University programs and activities); how to conduct an investigation and resolution process that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Reporting Parties while promoting accountability; how to create an investigation report that fairly summarizes relevant evidence; how to serve impartially, including by avoiding prejudgment of the facts at issue; avoidance of conflicts of interest and bias; trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process; best practices for assessment of a sexual harassment or sexual violence complaint; best practices for questioning of the Reporting Party, Respondent, and witnesses; and implicit bias and racial inequities, both broadly and in disciplinary processes.

#### **D. Notice of Investigation**

After a Formal Complaint is filed and accepted, the VP for EEO-TIX will simultaneously notify the Reporting Party and the Respondent, in writing, of the following information:

1. the process for Formal and Alternative Resolution;
2. a meaningful summary of all allegations with sufficient details regarding:
  - a. the identity of the Reporting Party and the Respondent, if known;
  - b. the date, time (if known), location, and precise nature of the reported conduct;
3. specific potential Policy violation(s);
4. the name and contact information of the Investigator;
5. how to challenge participation by the Investigator on the basis of a conflict of interest or bias;
6. information about the parties' respective expectations and responsibilities;
7. the University's prohibition against Retaliation;
8. the importance of preserving any potentially relevant evidence in any format;
9. information about the privacy of the process;
10. information about how a party may request reasonable accommodations for a disability or language diversity during the process;
11. 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 Formal Resolution process;
12. that the parties are entitled to an advisor of their choice, including an attorney advisor, and the advisor is permitted to review the evidence gathered in the investigation that is relevant or directly related to the investigation, and also that if parties at a hearing do not have an advisor, the University will provide one to them at no cost or charge;
13. that the University prohibits providing false or misleading information; and
14. a copy of the Policy and this Resolution Process, including the reasonably prompt timeframes for all major stages of the Resolution Process.

If, at any time, the investigation reveals the existence of additional or different potential policy violations, including a violation of a supportive measure, the VP for EEO-TIX will promptly issue an amended Notice of Investigation to both parties detailing any additional allegations and corresponding potential Policy violations.

#### **E. Informational Meeting with the Respondent**

Upon the filing of a Formal Complaint and provision of the written Notice of Investigation, the University will provide outreach to a Respondent, in writing, to invite the Respondent to an informational meeting (in person or via live technology), similar to the intake meeting with the Reporting Party. The written communication will include notice of the date, time, location, participants, and purposes of the informational meeting, and will be provided with sufficient time for the Respondent to prepare to participate in the meeting. This meeting is informational in nature and is separate and distinct from a fact-gathering interview with the Investigator. At the informational meeting, the VP for EEO-TIX will provide the Respondent with information about resources, procedural options, and supportive measures, and an opportunity to ask any questions. In addition to the informational meeting, the University will provide the Respondent with written information about procedural options for alternative and formal resolution, reasonably available supportive measures and the process for requesting and obtaining those supportive measures, the range of disciplinary sanctions available upon a finding of responsibility for violating the Policy, the prohibition against retaliation, and how to report concerns of retaliation. The written information will also include information about campus and community resources and services, including counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other available services. Further, this written information will include a notification about the process for seeking disability-based accommodations, academic adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act and/or other applicable federal, state, or local laws

#### **F. Overview of Fact-Gathering Process**

During an investigation, the Investigator will seek to meet separately with the Reporting Party, Respondent, and relevant witnesses. The Investigator will send a written notice of the interview date, time, and location, name of participant(s), and purpose of the interview to the parties and witnesses, and any identified party advisor, in sufficient time for the party to prepare and participate. The Investigator will also independently gather other relevant information or evidence, including documents, photographs, communications between the parties, and medical records (subject to the consent of the applicable person), and other electronic records as appropriate, as well as identify relevant witnesses not identified by the parties.

The Investigator will 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. If a person voluntarily chooses to share medical or counseling records with the Investigator, they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond.

At the conclusion of the investigation, the Reporting Party and the Respondent will both have the opportunity to review and respond to all information gathered in the investigation that is directly related to the allegations, including information shared by the Reporting Party or the Respondent during their interviews or through evidence that either party provides or that the Investigator independently gathers.

The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

The Investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The EEO-TIX Office does not, however, actively monitor social media or online sources, and as with all potentially relevant information, the Reporting Party, Respondent, or witnesses are encouraged to bring online information to the attention of the Investigator.

The Investigator will seek to complete the fact-gathering stage of the investigation within sixty (60) to ninety (90) calendar days of the issuance of the Notice of Investigation. Based on a number of factors, the fact-gathering stage may take longer. As detailed later in this process, the VP for EEO-TIX and the Investigator may grant limited extensions of time frames or temporary delays of the investigation for good cause with written notice to the Reporting Party and the Respondent of the delay or extension, and the reason(s) for the delay. The Investigator will also provide the parties with periodic status updates.

#### **G. Witnesses**

Both the Reporting Party and Respondent have the option to provide names of potential witnesses to the Investigator. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. Witnesses may also be offered to provide subject matter expert information. Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be shared with the parties at the conclusion of the investigation. The Investigator has the discretion to determine which of those potential witnesses, or other persons, may have relevant information about the alleged Sexual Misconduct. Witnesses may include individuals outside the University community.

Throughout the investigation, the Investigator will be alert to whether a witness may have been impacted by the effects of the reported Sexual Misconduct, and, if so, whether the witness should be treated as a Reporting Party under the Policy and this Resolution Process, and therefore entitled to equitable access to process afforded to Reporting Parties and Respondents.

#### **H. Documentary or Other Additional Evidence**

Both the Reporting Party and the Respondent are permitted to provide other relevant evidence to the Investigator. Such evidence may include any information presented in support of a party statement and may include text messages, email exchanges, timelines, receipts, photographs, etc.

Any documentation shared by the Reporting Party or the Respondent with the Investigator will be provided to the other party. The Investigator may also consider additional documents, items, or other relevant information that the Investigator independently obtains through witnesses or otherwise during the course of the investigation. This information also will be shared with the parties.

Any evidence available, but not disclosed by the parties during the investigation, may be precluded from consideration at a subsequent hearing.

During the course of the investigation, the parties are encouraged to bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the Investigator or VP for EEO-TIX. The Investigator may consider such information in the investigation and will also share any such information about retaliation or potential violation of the terms of a supportive measure and/or conduct that violates the Policy with the VP for EEO-TIX for consideration of appropriate action.

## **I. Evidentiary Considerations**

### **1. Medical or Counseling Records or other Legally-Privileged Documents**

Legally-privileged documents, including medical and counseling records of a Reporting Party and Respondent, are privileged and confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the Investigator. In such circumstances, the University must obtain voluntary, written consent from the proffering party. Any records provided to the Investigator by a party will be available for review by the other party.

### **2. Prior or Subsequent Sexual History of the Parties**

The prior sexual history of a Reporting Party or a Respondent is generally not relevant, although evidence may be admitted if determined relevant only in the following circumstances:

1. where the evidence of prior or subsequent dating relationship or consensual sexual relations is offered as to the manner and nature of how the parties communicated consent in the past, as relevant in assessing whether consent occurred with respect to the alleged Sexual Misconduct at issue, recognizing, however, that the mere fact of a current or previous dating or sexual relationship or activity between the parties, by itself, is not sufficient to constitute consent;
2. where the evidence of prior or subsequent sexual history between the Reporting Party and anyone other than the Respondent is directly relevant to prove that physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or
3. where the evidence of prior or subsequent sexual history is offered to show that someone other than the Respondent committed the alleged Sexual Misconduct.

Any party seeking to introduce information about prior sexual history should bring this information to the attention of the Investigator at the earliest opportunity. Where a sufficient informational foundation exists, the Investigator will assess the relevance, form, and reliability of the information and determine, in consultation with the VP for EEO-TIX, if it is appropriate for inclusion in the Investigation Report. Before allowing the consideration of the above evidence, the investigator or Hearing Officer shall provide a written explanation to the parties as to why consideration of the evidence is appropriate under the Policy.

### **3. Prior or Subsequent Conduct**

In gathering information, the Investigator may also consider other reports of, or findings of responsibility for, the same or substantially similar conduct by the Respondent to the extent such information is relevant and available. Such information may be relevant in determining motive, intent, absence of mistake, pattern, or another material fact. For example, where there is evidence of a pattern of conduct the same or substantially similar in nature by the Respondent, either prior to or subsequent to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be relevant and probative to the determination of responsibility and/or sanctioning, as applicable. Similarly, prior or subsequent conduct of a Reporting Party, even when it involves conduct that may violate University policy, may be considered when relevant.

Any party seeking to introduce information about prior or subsequent conduct should bring this information to the attention of the Investigator at the earliest opportunity. Where a sufficient informational foundation exists, the Investigator will assess the relevance, form, and reliability of the information and determine, in consultation with the VP for EEO-TIX, if it is appropriate for inclusion in the Investigation Report.

#### **J. Evidence Review**

At the conclusion of the fact-gathering, the Investigator will make information gathered in the investigation available for review by the parties and any advisors. The parties will have 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 the conclusion of the investigation. The Investigator will 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 will have ten (10) business days to submit a written response, which the Investigator will carefully consider prior to completion of the Investigation Report. The written response may include comments or proposed questions for the Investigator to ask the other party, or identify additional witnesses or sources of evidence, which the Investigator will consider prior to completion of the Investigation Report.

#### **K. Investigation Report**

The Investigator will produce a written investigation report that fairly summarizes the relevant information gathered during the investigation. The Investigation Report will include both



inculpatory and exculpatory information. As noted above, the Investigator has the discretion to determine the relevance of any witness or other evidence.

The will include a recommendation by the Investigator whether the conduct alleged in the Formal Complaint and Notice of Investigation falls within the scope of the Policy and the definitions of Prohibited Conduct. In particular, the Investigator will determine whether the reported conduct, if substantiated, would constitute Title IX Sexual Harassment or other form of Sexual Misconduct. This assessment is not a determination of responsibility, nor does it involve a determination about the credibility of the information gathered; those decisions are reserved for the Hearing Officer. Rather, this evaluation accepts all information as presented by the Reporting Party as true in order to determine the potential Policy violations that would move forward to a hearing.

The VP for EEO-TIX will concurrently provide the Investigation Report, to the parties and their advisors, if any, via email at least ten (10) calendar days prior to the hearing. The Investigator will also reopen Evidence Review at that time so that the parties and their advisors have access to any exhibits referenced in the Investigation Report. The Reporting Party and Respondent may submit a written response to the Investigation Report, which will be provided to the other party and the Hearing Officer. The written response may address the assessment of scope, the Investigator's determination of relevance, or any other information from the Investigation Report. The written response must be submitted to the VP for EEO-TIX within ten (10) calendar days of the date the VP for EEO-TIX shares the Investigation Report with the parties.

#### **L. Review for Mandatory or Discretionary Dismissal Following Investigation**

The VP for EEO-TIX will review the Investigator's determination as to whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the definitions of Sexual Misconduct as outlined above. In making this decision, the VP for EEO-TIX may consider whether the parties elected to participate in the investigation and whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation.

If the VP for EEO-TIX agrees with an Investigator's determination regarding dismissal of any allegations or potential Policy violations, the VP for EEO-TIX will concurrently issue a written Notice of Dismissal to both parties and provide them with an opportunity to appeal, as described below.

The VP for EEO-TIX, in partnership and consultation with relevant stakeholders (*e.g.*, Employee Relations, Student Affairs, Faculty Affairs), may address unprofessional, disrespectful, and/or offensive conduct that:

1. does not rise to the level of creating a hostile environment or a violation of this Policy;  
or
2. is of a generic nature not clearly based on a Protected Characteristic; and/or
3. runs counter to the University's mission and values.

Addressing such behaviors will not typically result in the imposition of disciplinary sanctions under the Policy, but may be addressed through restorative remedial actions, such as coaching, education, and/or effective conflict resolution or other Alternative Resolution mechanisms. However, the University reserves the right to take any action it deems, in its sole discretion, to be appropriate in response to such behaviors.

#### **M. Acceptance of Responsibility**

At any point during the investigation, the Respondent may elect to accept responsibility for some or all of the Policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the charges, the investigation will continue to conclusion and any acceptance of responsibility will be documented in the Investigation Report. Where there is an acceptance of responsibility as to all of the potential Policy violations, the Investigator will complete an Investigation Report of all information gathered to date and, after consultation with the VP for EEO-TIX, will refer the matter for sanctioning, as described below. Where both parties agree, the matter may also be resolved through the Alternative Resolution process.

#### **N. Notice of Hearing**

The VP for EEO-TIX will simultaneously provide the Reporting Party and Respondent with a written Notice of Hearing. The Notice of Hearing will include: the specific Policy violations that will be the subject of the hearing; the date, time, and location of the hearing; the name of the Hearing Officer; instructions on how to challenge participation of the Hearing Officer on the basis of conflict of interest or bias; a statement that all evidence that is directly related to the allegations, as shared in evidence review, will be available to enable each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; a statement that the parties can challenge the Investigator's determination of relevance at the hearing; a statement that the parties have the right to have an advisor present at the hearing, who will conduct questioning on the party's behalf; a statement that the University will provide a Hearing Advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing, if the party does not already have an advisor present for the hearing; information regarding how to request that witnesses be present at the hearing; information about the hearing format; and information regarding the right to request reasonable accommodations for disability or language diversity at the hearing.

#### **O. Hearing Officer: Role, Procedure, and Responsibility**

A Hearing Officer is a fair and impartial decision-maker who will conduct an objective evaluation of all relevant evidence, including both inculpatory or exculpatory evidence. The Hearing Officer is typically an external, trained professional, although it may be a campus administrator. The role of the Hearing Officer is to provide all parties with an equitable opportunity to be heard and to reach a full and fair determination as to responsibility and imposition of any sanction, should there be a finding of responsibility. The Hearing Officer must be trained in how to serve as an informed and impartial decision-maker; this training will include training content provided to investigators, as well training on any technology to be used at a live hearing and on issues of relevance of questions and evidence. The Hearing Officer may reach credibility determinations, but may not base credibility determinations on a person's status as a Reporting Party, Respondent, or witness.

Where a Reporting Party or Respondent declines to participate in a hearing, the Hearing Officer may not make an adverse inference against that party.

The Hearing Officer must be free of conflict of interest or bias for or against either party. The Reporting Party and Respondent will be provided the name of the Hearing Officer in advance and have the opportunity to raise a challenge for bias or conflict of interest to the VP for EEO-TIX prior to the hearing. The VP for EEO-TIX will render a determination in writing on any such challenge.

The Hearing Officer will review the Investigation Report and any written statements provided by the parties in response to the Investigation Report, all exhibits, and any additional relevant evidence introduced at the hearing.

The Hearing Officer will determine whether there is sufficient evidence, by a preponderance of the evidence, to support a finding of responsibility as to each element of each Policy violation at issue. The Hearing Officer will not determine sanction.

#### **P. Hearing Format**

The hearing will be live and require the participants to simultaneously see and hear each other. A hearing may be conducted with all parties physically present in the same geographic location. Alternatively, at the discretion of the VP for EEO-TIX, any or all parties, witnesses, or other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other. Either party may request that the parties be located in separate rooms or locations for the hearing, with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or witness answering questions. Such a request should be submitted to the VP for EEO-TIX at least two (2) calendar days prior to the hearing. Nothing in this section requires the parties to appear in-person before the Hearing Officer and the hearing may proceed with all parties participating virtually as appropriate and necessary. The format of the hearing (*e.g.*, in person or virtual) is at the discretion of the Hearing Officer and/or VP for EEO-TIX.

The hearing is an opportunity for the parties to address the Hearing Officer. The parties may address any information in the Investigation Report and supplemental statements submitted in response to the Investigation Report. The University will make all evidence directly related to the allegations, as shared in the evidence review, available to the parties at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including, to the extent required by federal law, for purposes of cross-examination.

The Hearing Officer has the discretion to determine the format of the hearing and its deliberations. Typically, the Reporting Party and Respondent will have an opportunity to provide an opening statement to the Hearing Officer. Each party will then have an opportunity to address the Hearing Officer and respond to questions by the Hearing Officer, or, as described below, questions by the other party's advisor. The Hearing Officer may also choose to directly question relevant witnesses, including the Investigator. To the extent required by federal law, each party will have the opportunity to conduct cross-examination of the other party, witnesses, and/or the Investigator through their Advisor of Choice — or Hearing Advisor provided by the University — directly,

verbally, and in real-time. As previously noted, if a party does not have an advisor for the live hearing, the University will provide a Hearing Advisor, at no cost, who may be, but is not required to be, an attorney.

Only relevant questions may be asked of a party or witness. The parties may submit written questions to the Hearing Officer in advance, but are not required to do so. Before a Reporting Party, Respondent, or witness responds to a question at the Hearing, the Hearing Officer, to the extent permitted by federal law, will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, as defined in this Resolution Process. The parties shall have an opportunity to note an objection to the questions posed, which, at the discretion of the Hearing Officer, may be in writing or verbally. To the extent permitted by federal law, the Hearing Officer shall have the authority and obligation to discard or rephrase any question that the Hearing Officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the Hearing Officer is not bound by, but may take guidance from, the formal rules of evidence.

Questions related to the following areas of inquiry are irrelevant: information protected by a legally-recognized privilege, or any party's medical, psychological, and similar records, unless the party has given voluntary, written consent; and information about the parties' prior sexual history, except as described above. Before allowing the consideration of any evidence regarding prior sexual history, the Hearing Officer will provide a written explanation to the parties as to why consideration of the evidence is appropriate under this Resolution Process.

If a party or witness does not submit to questioning by the other party's advisors at the hearing, the Hearing Officer may exercise their judgment in evaluating whether their statements have a sufficient indicia of reliability to be admissible, and if so, in evaluating what weight, if any, to give to the statements of a party or witness not subject to cross-examination. In determining the relevance, admissibility, and weight, the Hearing Officer may consider longstanding principles of jurisprudence and evidence. The Hearing Officer may not draw any adverse inference from the decision of a party or witness to not participate at the hearing. However, if the credibility of a Reporting Party is central to a finding of responsibility, the University must provide for indirect cross-examination of the Reporting Party in order for the Hearing Officer to consider the Reporting Party's statements in reaching a finding of responsibility.

The Hearing Officer may directly ask questions and elicit information from parties, witnesses, and/or the Investigator to aid the Hearing Officer's findings of fact, conclusions regarding the application of the Policy to the facts, and the determination of responsibility.

Generally, the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the Hearing Officer has discretion to accept or exclude, for good cause, new evidence offered at the hearing.

After all parties and witnesses have been heard, the parties will have an opportunity to provide a closing statement.

The advisor may not provide the opening or closing statement and may not provide answers or responses on behalf of a party. The advisor's role during the hearing is to conduct questioning of the other party and any witnesses, to the extent required by federal law. A party may never conduct questioning of the other party themselves.

At the conclusion of the hearing, the Hearing Officer will deliberate in private to determine whether there is sufficient evidence, by a preponderance of the evidence, that the Respondent engaged in conduct that violated the Policy. The Hearing Officer will draft a written Notice of Determination that will be distributed as follows:

- Where there is a finding of non-responsibility, the VP for EEO-TIX will issue a written notice of determination as set forth below.
- Where there is a finding of responsibility, the VP for EEO-TIX will initiate the sanctioning process. Following a finding of responsibility, a Sanctioning Officer/Panel will determine the appropriate sanction based on all available information, and the written notice of determination will be distributed as set forth below.

The hearing will be audio-recorded by the University. Neither the parties, nor any participants or observers, will be permitted to make any audio or video recordings of the hearing. However, upon request, the hearing transcript will be made available to the parties for review and inspection.

#### **Q. Standard of Evidence**

The standard of review that the University will use when reviewing a Formal Complaint and making related determinations is preponderance of the evidence. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is responsible for the alleged Policy violation(s).

A Respondent is presumed to be not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the resolution process.

#### **R. Sanctioning**

The composition of the Sanctioning Panel/Officer will be determined by the role of the Respondent:

- For Student Respondents, the Sanctioning Panel will be composed of two employees appointed by the Provost and Senior Vice President for Academic Affairs, and one student appointed by the Vice President for Student Affairs.<sup>7</sup>
- For Faculty Respondents, the Committee on Professional Responsibility will serve as the Sanctioning Panel. Under the Faculty Handbook, the Committee on Professional Responsibility is a subcommittee of the Committee on Tenure and

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<sup>7</sup> The student should be an undergraduate student in the case of an undergraduate student Respondent, and a graduate student in the case of a graduate student Respondent.

Privileges Appeals Committee. It is appointed by the Provost after consulting with the Chair of the Committee on Tenure and Privileges Appeals and the President of the Faculty. It will include past Presidents of the Faculty, if available, and research-, teaching-, practitioner-, or clinical-track faculty members.

- For a Staff Respondent, the Sanctioning Officer is a delegate of the Senior Vice President of Human Resources, Ethics, and Compliance.
- The Sanctioning Panel/Officer will convene no later than ten (10) calendar days following the referral of the Hearing Officer's finding of facts and determination of responsibility. The Sanctioning Panel/Officer is responsible for reviewing the Investigation Report, written responses to the Investigation Report, the Hearing Officer's finding of facts and determination of responsibility, and any mitigation or impact statements submitted.

### **1. Impact and Mitigation Statements**

The Reporting Party may submit a written statement describing the impact of the Sexual Misconduct on the Reporting Party. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The VP for EEO-TIX will provide any statement(s) to the Sanctioning Panel/Officer. Each party has the opportunity to view the other party's statement prior to the imposition of sanction.

### **2. Sanctioning Considerations**

The Sanctioning Panel/Officer is responsible for reviewing the investigation report, the Hearing Officer's notice of determination, any mitigation or impact statements submitted, and all other submissions from the parties, and determining the appropriate sanction.

In determining sanction, the Sanctioning Panel/Officer will consider the following factors:

- the nature and severity of the conduct;
- the impact of the conduct on the Reporting Party;
- the impact or implications of the conduct on the community or the University;
- prior misconduct for which the Respondent has been found responsible, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if available), including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning, including whether there is a continued hostile environment on campus caused by the Respondent's conduct;

- presence or absence of bias as a motivation for the Respondent’s conduct;
- protection of the University community requiring extended protective measures or other sanctions; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

The Sanctioning Panel/Officer will draft a written sanctioning determination that will include the sanction and the rationale for the sanction, and forward it to the EEO-TIX Office within five (5) calendar days for inclusion in the written notice of determination set forth below.

In the event the Sanctioning Panel/Officer recommends dismissal of a tenured faculty member, that information should be included in the written sanctioning determination that is forwarded to both the parties and the Provost.

**The imposition of sanctions will take effect immediately and will not be stayed pending the resolution of any appeal.**

#### 1. Range of Sanctions

Sanctions imposed upon Students can include a range of sanctions, including one or more of the following: warning, censure, education, counseling, disciplinary probation, loss of privileges, suspension or expulsion from University housing, suspension or expulsion from University premises, and/or suspension or expulsion from the University’s academic or extracurricular programs. Any of these sanctions may be supplemented with additional required actions by the Respondent.

Sanctions imposed on employees, including Staff and Faculty, can include one or more of the following: warning, censure, education, counseling, disciplinary probation, paid or unpaid suspension of employment, demotion, or termination of employment.

For tenured Faculty Respondents, the Sanctioning Panel may recommend that the Provost initiate formal charges for termination consistent with Chapter 8 of the Faculty Handbook. This recommendation will consider whether the findings and conclusions meet the criteria stated in Section 8-C of the Faculty Handbook for adequate cause for dismissal of a tenured faculty member. The Provost may decide to bring formal charges and, if so, the charges shall be considered pursuant to the formal proceedings set forth in Section 8-D (2) of the Faculty Handbook, commencing with Step 4. Formal charges are heard by a dismissal Hearing Board as provided in Step 5 of Section 8D (2). It is up to the Provost to decide whether to file formal dismissal charges, regardless of whether the panel has recommended them. At the conclusion of the tenure dismissal process, the Provost will communicate the sanctioning determination to the VP for EEO-TIX.

#### S. Remedies

The VP for EEO-TIX will review the determination of responsibility and sanction, if any, to determine whether additional remedies for the Reporting Party or the University community are necessary to restore and preserve equal access to the University’s education program and activity.

Examples of such remedies may include the continuation or initiation of supportive measures, including the provision of counseling, academic services, escort services, and/or training for members of the University community, as well as modifications to academic, employment, or housing conditions or assignments.

#### **T. Written Notice of Outcome**

The Hearing Officer and Sanctioning Panel/Officer will prepare a written decision, including the finding of responsibility or non-responsibility, and rationale. The VP for EEO-TIX will issue the written notice of outcome to the Reporting Party and Respondent within ten (10) calendar days following the conclusion of the deliberations. The notice of outcome will include:

- (i) identification of the allegations potentially constituting Sexual Misconduct;
- (ii) 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;
- (iii) findings of fact supporting the determination;
- (iv) conclusions regarding the application of the Policy to the facts;
- (v) a statement of, and rationale for, the outcome;
- (vi) the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Reporting Party; and
- (vii) the procedures, including the permissible grounds and deadlines, for the Reporting Party and Respondent to appeal.

#### **U. Appeals**

Both a Reporting Party and Respondent have the right to appeal the dismissal of the Formal Complaint, the final determination of responsibility, and/or the resulting sanction based on the following three limited grounds:

- 1. Procedural irregularity that affected the outcome of the matter.** Procedural or technical irregularities will not be sufficient to sustain an appeal unless found to have affected the outcome of the Formal Complaint.
- 2. New evidence, not reasonably available at the time of the hearing, regarding responsibility or dismissal of the Formal Complaint, that could affect the outcome of the matter.**<sup>8</sup> An appeal on this basis is limited to new evidence that was not reasonably available at the time the determination regarding responsibility was made and that could affect the outcome of the Formal Complaint. The appeal must specify the new evidence that was not reasonably available at the time of the

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<sup>8</sup> The time frame for filing an appeal based on newly-discovered information may be extended at the discretion of the VP for EEO-TIX where the evidence could not reasonably have been discovered within the time frame and a compelling justification exists for its consideration.



determination, why the evidence was unknown or unavailable, and how the new evidence could affect the outcome of the Formal Complaint.

- 3. The VP for EEO-TIX, Investigator(s), Hearing Officer, or Sanctioning Officer/Panel had a conflict of interest or bias for or against Reporting Parties or Respondents generally, or the individual Reporting Party or Respondent, that affected the outcome of the matter.** The appeal must specify the basis on which the party believes there is an actual conflict of interest or bias that affected the outcome of the matter.

A concise written request for appeal must be submitted to the VP for EEO-TIX within seven (7) calendar days following delivery of either the notice of the outcome in the event of a finding of non-responsibility, or the written sanctioning decision in the event of a finding of responsibility. Each party may respond in writing to any appeal submitted by the other party. Written responses must be submitted within seven (7) days following delivery of the notice of the written appeal. Written requests for appeal submitted by one party will be shared with the other party.

The designated Appellate Authority may be an external professional or a University administrator who is appropriately trained and free from conflict of interest or bias. Depending on the identity of the Respondent at the time of the alleged Sexual Misconduct, the Appellate Authority may be:

- For a Student Respondent, the Appellate Authority is a delegate of the Vice President of Student Affairs who is not otherwise involved in any step of the process.
- For a Faculty Respondent, the Appellate Authority is a delegate of the Provost who is not otherwise involved in any step of the process.
- For a Staff Respondent, the Appellate Authority is a delegate of the Senior Vice President of Human Resources, Ethics, and Compliance, who is not otherwise involved in any step of the process.

Either party may challenge the Appellate Authority on the basis of conflict of interest or bias.

The Appellate Authority will review the written appeal submissions by the parties, the Investigation Report (including all exhibits and related materials), and the written notice of outcome. The Appellate Authority may: (a) affirm the findings or determination of responsibility; (2) affirm or modify the sanction(s); or (3) remand the matter for reevaluation or further investigation. The Appellate Authority will issue a simultaneous written decision to the parties within ten (10) calendar days of receipt of the appeal. In reaching a decision, the Appellate Authority has the discretion to consult with relevant stakeholders.

The decision by the Appellate Authority is final.

## **V. Time Frame for Resolution**

The EEO-TIX Office will seek to complete the Formal Resolution process in a prompt and timely manner consistent with the reasonably prompt timeframes for the major stages of the process

designated in this Resolution Process. The VP for EEO-TIX may extend any timeframe in this Resolution Process for good cause. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties (or their advisors) or witnesses; based on the need for language assistance or accommodation of disabilities; or for other legitimate reasons, such as intervening breaks in the academic business, finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. The VP for EEO-TIX will not unreasonably deny a student party's request for an extension during periods of examination or school closures. While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under the Policy.

Reasonable requests for delays by the parties will serve to extend the anticipated time period for resolution of the report. The VP for EEO-TIX, in consultation with the Investigator, has the authority to determine whether an extension is required or warranted by the circumstances, and will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

The University's overarching goal is that all complaints be investigated in a prompt, fair, and impartial manner. Although cooperation with law enforcement may require the University to suspend the fact-gathering portion of the investigation temporarily, the University will promptly resume its investigation as soon as it is notified by law enforcement that it has completed its initial evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures for the Reporting Party and Respondent.

### **VIII. Alternative Resolution**

Following receipt of a Formal Complaint, the University may resolve reports through Alternative Resolution, as appropriate based on the circumstances. Alternative Resolution is available only once a Formal Complaint has been filed, prior to a determination of responsibility, and if the Reporting Party and Respondent voluntarily consent to the process in writing. Under the Title IX regulations, the Policy, and this Resolution Process, Alternative Resolution is not available in cases in which an employee (faculty or staff) is alleged to have sexually harassed a student. In all cases, the VP for EEO-TIX will have discretion to determine whether or not Alternative Resolution, or any particular form of Alternative Resolution, is appropriate to the circumstances. Alternative Resolution in the form of mediation, even on a voluntary basis, is not permissible to resolve reports of Sexual Violence under California Education Code Sexual Harassment.

Alternative Resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent; mediation (subject to the provisions outlined above); indirect action by the EEO-TIX Office or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the parties. With the voluntary consent of the parties, Alternative Resolution may be used to impose agreed-upon disciplinary sanctions. Any person who facilitates an Alternative Resolution will be trained and free from conflicts of interest or bias for or against either party.

If the parties are interested in pursuing Alternative Resolution, the VP for EEO-TIX will send written notices to the parties describing:

1. the allegations at issue;
2. the requirements of the Alternative Resolution process;
3. the circumstances under which the parties are precluded from resuming a Formal Complaint arising from the same allegations;
4. the right to end the Alternative Resolution process at any time prior to resolution and resume the Formal Complaint process; and
5. the consequences resulting from participating in the Alternative Resolution, including that the records and communications created or maintained as part of the Alternative Resolution process may be viewed by parties, or later used or considered in the Formal Complaint process, including in an investigation or at a hearing if found to be relevant by the Investigator or Hearing Officer.

All parties will be required to return signed copies of the written notices agreeing to the Alternative Resolution process.

With any form of Alternative Resolution, each party has the right to choose and consult with an advisor, or request that one be provided to them by the University, if available. The advisor may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective advisors at any meeting or proceeding held as part of Alternative Resolution. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Any form of Alternative Resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Reporting Party, and the Respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed. The VP for EEO-TIX or designee will monitor the implementation of the agreement as appropriate. If an agreement between the parties and subject to the VP for EEO-TIX's approval is not reached or if a Respondent fails to comply with the terms of the Alternative Resolution, the Formal Complaint may be referred for investigation or an investigation may resume under the Formal Resolution process. Depending on the terms of the Alternative Resolution agreement, the matter may be considered closed, and the parties will be precluded from filing another Formal Complaint arising from the same set of facts or circumstances.

Prior to reaching a resolution, any party can withdraw from the process, and the University will resume the Formal Complaint process. The University's goal is to complete an Alternative Resolution within thirty (30) calendar days of the parties' written agreement to participate in the process. If the University anticipates the process will take longer, written notification will be provided to the parties with an explanation regarding the delay.