Purpose:

**Institutional Values**

Woodbury University is committed to providing a non-discriminatory and harassment-free educational, living and working environment for all members of our community including students, faculty, staff, and guests. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. This policy prohibits all forms of sexual misconduct, including sexual harassment, sexual assault, stalking, intimate partner violence, and sexual exploitation. Misconduct of this nature is contrary to Woodbury’s institutional values and prohibited by state and federal law.

Woodbury University encourages the prompt reporting of any incident of sexual misconduct to the University. Upon receipt of a report, the University will take prompt and effective action to end the misconduct, remedy the effects, and prevent its recurrence. This policy has been developed to reaffirm these principles, define community expectations, provide recourse for those individuals whose rights have been violated, and provide fair and equitable procedures for determining when this policy has been violated.

**Scope**

This policy applies to all Woodbury University community members including students, faculty, staff, volunteers, vendors, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity with the University or on University property. This policy applies to conduct occurring on Woodbury University property or at University-sanctioned events or programs that take place off campus, including study away or internship/work experience programs, and may also apply to other off-campus locations when the University determines that the off-campus conduct has a direct impact on the educational mission and interest of the University.

This policy addresses all forms of sexual misconduct, including sexual harassment, sexual assault, stalking, intimate partner violence, and sexual exploitation against Woodbury community members of any gender, gender identity, gender expression, or sexual orientation. Woodbury University does not discriminate on the basis of sex in its educational, co-curricular, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that states the following:

*No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.*
When used in this policy, “Complainant” refers to the individual who identifies him/herself as being a victim or survivor of sexual harassment, sexual assault, stalking, intimate partner violence, or sexual exploitation. “Respondent” refers to the individual who has been accused of prohibited conduct under this policy. A third party refers to any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else.

If You Have Been Assaulted

Individuals who have been a victim of sexual assault, attempted sexual assault, or other form of sexual violence are encouraged to visit https://www.peaceoverviolence.org/iii-if-you-have-been-sexually-assaulted for comprehensive information regarding what to do, where to get support, and legal options including filing a report with law enforcement. Members of the University’s Title IX team, listed below, are also available for information and support.

Procedure:

Reporting, Confidentiality and Privacy

Woodbury University has designated a Title IX Coordinator and Associate Coordinator to oversee the University’s review, investigation, and resolution of reports of sexual misconduct. The Title IX Coordinator and Associate Coordinator are:

- Responsible for the oversight of the investigation and resolution of all reports of sexual harassment, sexual assault, stalking, intimate partner violence, and sexual exploitation involving students, faculty, staff, vendors, and visitors;
- Assisted by designated Title IX team members, who are accessible to any member of the campus community for consultation and guidance;
- Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
- Available to advise any individual about the courses of action available within the University, both informally and formally, as well as within the community;
- Responsible for monitoring full compliance with all procedural requirements and time frames outlined in this policy; and
- Responsible for training, prevention, and education efforts and periodic reviews of campus climate.

Title IX Coordinator: Natalie Avalos, Vice President, Administrative Services/Human Resources
Hensel Hall
818.252.5107
natalie.avalos@woodbury.edu
Anyone wishing to report an incident of sexual misconduct is encouraged to speak with one of the above individuals. Additionally, the University considers any faculty or staff member (other than Counseling Services staff) who have a responsibility for student welfare to be “responsible employees.” This means that informing them of an incident of sexual misconduct constitutes official notice to the institution; all such faculty and staff (including student staff such as Resident Advisors) are required to report such incidents to the Title IX Coordinator or Associate Coordinator. All members of the University community, even those who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual misconduct to the Title IX Coordinator or Associate Coordinator. Reporting an incident of sexual misconduct does not mean that a disciplinary process will automatically be initiated. The Title IX team will conduct an initial assessment of the incident and will determine—keeping in mind the Complainant’s expressed preferences—the appropriate course of action to support and protect the safety of the Complainant and the community.

Woodbury University is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. All University employees who are involved in the University’s Title IX response, including the Title IX Coordinator, Associate Coordinator, team members, investigators, and hearing board members receive specific training about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy of all individuals involved.
Individuals with complaints of this nature also always have the right to file a formal complaint with the United States Department of Education:

Office for Civil Rights, Region IX  
U.S. Department of Health and Human Services  
90 7th Street, Suite 4-100  
San Francisco, CA 94103  
800.368.1019 or  
202.619.3257  
800.537.7697 or 202.619.3257 TDD  
ocr@ed.gov  
www.ed.gov/ocr

Additionally, any employee who believes that he or she has been the victim of sexual misconduct may file a complaint with the California Department of Fair Employment and Housing at www.dfeh.ca.gov or the United States Equal Employment Opportunity Commission at www.eeoc.gov.

**To Report Confidentially**

Students who wish for the details of an incident to be kept confidential may speak with on-campus mental health counselors in Counseling Services. Counselors are available to all students free of charge, and may be reached at (818) 252-5237 or via email at counseling.services@woodbury.edu.

Faculty and staff seeking confidential support may contact Woodbury’s Employee Assistance Program at 1-855-283-1915 or by visiting www.mylifevalues.com.

Additionally, any individual may contact 24-hour off-campus rape crisis counselors at (626) 793-3385.

**Amnesty for Alcohol or Other Drug Use**

Woodbury University encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many incidents as possible are reported, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual misconduct, either as a Complainant or third-party witness, will not be subject to disciplinary action by the University for his or her own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.
Bystander Intervention

The University expects all community members to take reasonable and prudent action to prevent or stop an act of sexual misconduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. Community members who choose to exercise this positive moral obligation will be supported by the University and protected from retaliation.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (under the Clery Act). All personally identifiable information is kept confidential, but statistical information regarding the type of incident and its general location (on- or off-campus, in the surrounding area, but no addresses are given) is compiled for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. Mandated federal reporters include any faculty or staff member (including student staff such as Resident Advisors) except for Counseling Services staff. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the Complainant and may be done anonymously.

Federal Timely Warning Reporting Obligations

Complainants of sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

Prohibited Conduct and Definitions

Sexual misconduct includes, but is not limited to:

1. Sexual Harassment
2. Non-Consensual Sexual Contact (or attempts to commit same)
3. Sexual Assault (or attempts to commit same)
4. Sexual Exploitation
5. Stalking
6. Intimate Partner Violence
7. Retaliation
1. **Sexual Harassment**

Sexual Harassment is:
- any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal, or physical conduct of a sexual nature when:
  - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, and/or
  - submission to or rejection of the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, and/or
  - submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available through the University, and/or
  - the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance or of creating an intimidating, hostile, or offensive work, educational, or living environment.

Sexual harassment can occur regardless of the relationship, position, or respective sex of the parties. It can occur between equals (e.g., student to student, staff to staff, faculty member to faculty member) or between persons of unequal power status (e.g., supervisor to subordinate, faculty member to student).

Harassment based on gender, gender identity, gender expression, sex or gender stereotyping, or sexual orientation, but does not involve conduct of a sexual nature, is also prohibited by this policy. This policy also prohibits harassment of a faculty or staff member by a student.

The conduct alleged to constitute harassment under this policy will be evaluated from the perspective of a reasonable person similarly situated to the Complainant and considering all of the facts and circumstances.

A single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to provide a hostile environment, particularly if the harassment is physical.

Examples of behavior that might be considered sexual harassment include, but are not limited to:
- Pressure for a date or a romantic or intimate relationship;
- Unwelcome touching, kissing, hugging, or massaging;
- Pressure for or forced sexual activity;
- Unnecessary and unwelcome references to various parts of the body;
- Belittling remarks about a person's gender or sexual orientation;
- Inappropriate sexual innuendos or humor;
- Obscene gestures of a sexual or gender-based nature;
- Offensive sexual graffiti, pictures, or posters;
- Sexually explicit profanity;
- Use of email, the internet, or other forms of digital media to facilitate any of the above-referenced behaviors.
2. **Non-Consensual Sexual Contact**

   Non-Consensual Sexual Contact is:
   - any intentional sexual touching,
   - however slight,
   - with any object,
   - by a man or a woman upon a man or a woman,
   - that is without consent and/or by force.

   Sexual Contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another person with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. **Sexual Assault**

   Sexual Assault is:
   - any sexual intercourse
   - however slight,
   - with any object,
   - by a man or woman upon a man or a woman,
   - that is without consent and/or by force.

   Sexual Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

4. **Sexual Exploitation**

   Occurs when an individual takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

   Examples of sexual exploitation include, but are not limited to:
   - Invasion of sexual privacy;
   - Prostituting another individual;
   - Non-consensual video or audio-taping of sexual activity;
   - Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
   - Engaging in voyeurism;
   - Knowingly transmitting an STI or HIV to another student;
   - Exposing one’s genitals in non-consensual circumstances; inducing another to expose their genitals;
   - Sexually-based stalking and/or bullying may also be forms of sexual exploitation.
5. **Stalking**

A course of physical or verbal conduct directed at another individual that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party. A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

6. **Intimate Partner Violence**

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person with whom one is, or has been involved in, a sexual, dating, domestic or other intimate relationship. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

7. **Retaliation**

Acts or attempts to retaliate or seek retribution against any individual or group of individuals involved in the complaint, investigation and/or resolution of an allegation of sexual misconduct. Retaliation can be committed by any individual or group of individuals. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence or other forms of harm to others.

**Consent: Force, Coercion, Incapacitation, Drugs and Alcohol**

**Consent**: Consent means positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

Consent consists of an affirmative, conscious, voluntary decision by each participant to engage in mutually agreed-upon sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other to engage in said activity. The following are essential elements of effective consent:
- Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

- Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

- Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

- Not indefinite: Consent may be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed "no" or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain, or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

- Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

The age of consent in California is 18 years old. See California Penal Code Section 261.5.

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you. Okay, don't hit me, I'll do what you want.").
**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

**Incapacitation:** Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual’s:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

Evaluating incapacitation also requires an assessment of whether an individual knew, or should have known, that the other party was incapacitated.

**Alcohol and Other Drugs:** In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person’s decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication. If there is any doubt as to the level or extent of the other individual’s intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual assault, stalking or intimate partner violence and does not diminish one’s responsibility to obtain consent.

**Interim Measures**

Upon receipt of a report, the University will provide interim support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational, work, and/or living environment. Interim measures will be implemented at the discretion of the University, and may be imposed regardless of whether formal disciplinary action is pursued.
Potential interim measures include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus;
- Imposition of a campus “no contact” letter;
- Rescheduling of exams and assignments (in consultation with appropriate faculty);
- Providing alternative course completion options (with the agreement of appropriate faculty);
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of appropriate faculty);
- Change in work schedule or assignment;
- Change in on-campus housing;
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies;
- Assistance from University staff in completing housing relocation;
- Limit an individual or organization’s access to certain University facilities or activities pending resolution of the matter;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Interim suspension or University-imposed leave;
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

Role of the Respondent

The specific procedures for resolutions will vary based upon the role of the Respondent:

- For a complaint against a student, disciplinary action may be taken by the Associate Dean of Students or his/her designee following a finding of responsibility by a Hearing Officer or Hearing Board in accordance with the Conduct Process outlined in the Code of Student Conduct.

- For a complaint against a staff member, disciplinary action may be taken at the conclusion of the investigation by the VP, Administrative Services / Human Resources or his/her designee in accordance with procedures outlined in the Employee Handbook.

- For a complaint against a faculty member, disciplinary action may be taken at the conclusion of the investigation by the Senior Vice President, Academic Affairs or Faculty Executive Committee in accordance with procedures outlined in the Faculty Handbook.
Resolving Complaints Against A Student

Overview

As outlined in the Reporting section of this policy, an individual who wishes to make a report of sexual harassment, sexual assault, stalking, intimate partner violence, or sexual exploitation is encouraged to make a report directly to a member of the Title IX team. In every instance under this policy, the University, through the coordinated efforts of the Title IX team, will conduct an initial Title IX Assessment.

At the conclusion of the Title IX Assessment, the report will be referred for Informal Resolution or Investigation to determine if there is sufficient information to proceed with Formal Resolution. Informal Resolution is a non-judicial, remedies-based approach that does not involve disciplinary action against a Respondent. Formal Resolution is a judicial, sanctions-based approach that may involve discipline up to and including expulsion.

Initial Assessment

Upon receipt of a report, the University, through the coordinated efforts of the Title IX team, will conduct an initial Title IX assessment. The first step of the assessment will usually be a preliminary meeting between the Complainant and Title IX Coordinator or Associate Coordinator. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstances of the report; it is not intended to be a full forensic interview. At this meeting, the Complainant will be provided with information about resources, procedural options and interim remedies.

As part of the initial assessment of the report, the Title IX Coordinator or Associate Coordinator will:

- Assess the nature and circumstances of the allegation;
- Address immediate physical safety and emotional well-being needs;
- Notify the Complainant of his/her right to contact law enforcement and seek medical treatment, including the importance of preservation of evidence;
- Provide the Complainant with information about on- and off-campus resources, as well as the range of possible interim remedies;
- Explain the procedural options, including Informal Resolution and Formal Resolution;
- Discuss the Complainant’s preference for manner of resolution and any barriers to proceeding;
- Explain the University’s policy regarding retaliation.

This initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made. Thereafter, an investigation may continue depending on a variety of factors, such as the Complainant’s wish to pursue disciplinary action, the risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.
At the conclusion of the Title IX assessment, the Title IX Coordinator or Associate Coordinator will determine the appropriate manner of resolution and, if appropriate, refer the report for further Investigation, Informal Resolution, or Formal Resolution.

The determination as to how to proceed will be communicated to the Complainant in writing. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the University seeks action that would impact a Respondent, such as protective measures that restrict his or her movement on campus, the initiation of an investigation or the decision to involve the Respondent in Informal Resolution, or Formal Resolution.

**Investigation**

Following the initial Title IX assessment, the University may initiate a prompt, thorough and impartial investigation. The Title IX Coordinator, in consultation with the Title IX team, will oversee the investigation.

The investigation is designed to provide a fair and reliable gathering of the facts. All individuals in the investigation, including the Complainant, the Respondent and any third-party witnesses, will be treated with appropriate sensitivity and respect. Consistent with the need for a full assessment of the facts, the investigation will safeguard the privacy of the individuals involved.

The University will designate an investigator who has specific training and experience investigating allegations of sexual misconduct. The investigator may be an employee of the University or an external investigator engaged to assist the University in its fact gathering. The University will typically use a team of two investigators, which may include the pairing of an external investigator with a University employee. Any investigator chosen to conduct the investigation must be impartial and free of any conflict of interest.

The investigator(s) will coordinate the gathering of information from the Complainant, the Respondent, and any other individuals who may have information relevant to the determination. The investigator(s) will also gather any available physical or medical evidence, including documents, communications between the parties, and other electronic records as appropriate. The investigator(s) may consider prior allegations of, or findings of responsibility for, similar conduct by the Respondent. The Complainant and Respondent will have an equal opportunity to be heard, to submit evidence, and to identify witnesses who may have relevant information, and to suggest questions to the investigator to ask witnesses.

The investigation will usually be completed within twenty (20) business days. Given the availability of witnesses or complexity of the circumstances, this time frame may be extended as necessary to ensure the integrity and completeness of the investigation.
Information gathered during the investigation will be used to evaluate the appropriate course of action, provide for the safety of the individual and the campus community, and impose remedies as necessary to address the effects of the conduct cited in the report.

**Threshold Determination and Appeal of Insufficient Threshold**

At the conclusion of the investigation, the investigator(s) will prepare a written report synthesizing the facts for review by the Title IX Coordinator. The investigator(s) is not charged with reaching a determination as to responsibility, which is a function reserved for the University Committee on Student Behavior or other hearing body as designated by the Associate Dean of Students.

Upon receipt of the investigative report, the Associate Dean of Students, in consultation with the Title IX Coordinator, will review the report and make a threshold determination as to whether there is sufficient information upon which an adjudicator could find a violation of this policy. This threshold determination does not involve making a determination of responsibility, nor does it involve a credibility assessment. If the threshold has been established, the Dean of Students will, at the same time, issue a Notification Letter to the Respondent and the Complainant and refer the report for Pre-Hearing Procedures.

If the Title IX Coordinator, in consultation with the Title IX team, determines that this threshold has not been reached, the Complainant and Respondent will, at the same time, be notified in writing. The Complainant will have the opportunity to seek review by the Dean of Students (or designee) by submitting a written request for review within five (5) business days of receipt of the notification. If an appeal is filed, the Respondent will be notified and have the opportunity to respond. The Dean of Students may affirm the threshold finding, reverse the finding, or remand the matter for additional investigation as warranted. The Dean of Students will render a decision in writing, to both parties, at the same time, within ten (10) business days of receipt of the request for review. The decision of the Dean of Students is final. Where a designee is chosen, the identity of this individual will be shared with both parties.

**Informal Resolution**

Informal resolution is a remedies-based, non-judicial approach designed to eliminate a hostile environment without taking disciplinary action against a Respondent.

Where the Title IX assessment concludes that informal resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the Complainant’s access to the educational and co-curricular activities at the University and to eliminate a hostile environment. Examples of protective remedies are provided in the section *Interim Remedies*. Other potential remedies include targeted or broad-based educational programming or training, direct confrontation of the Respondent and/or indirect action by the Title IX
team or the University. Depending on the form of informal resolution used, it may be possible to maintain anonymity.

The University will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of informal resolution. Mediation, even if voluntary, may not be used in cases involving sexual assault or violence. The decision to pursue informal resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in informal resolution is voluntary, and a Complainant can request to end informal resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolution. Informal resolution will typically be completed within thirty (30) business days of the initial report.

Formal Resolution

Formal resolution of a complaint against a student under the Sexual Misconduct Policy will occur through the University Committee on Student Behavior (UCSB). The Title IX Coordinator or Associate Coordinator may refer matters subject to Formal Resolution to an external adjudicator, such as JAMS, in cases that the relevant Coordinator, in his or her sole discretion, deems appropriate. A UCSB typically consists of four members (three voting members and one, non-voting Chair) who are drawn from a pool of trained faculty, staff, and students. All UCSB members must participate in annual training on the dynamics of sexual misconduct, the factors relevant to a determination of credibility, the appropriate manner in which to receive and evaluate sensitive information, the manner of deliberation, evaluation of consent and incapacitation, the application of the preponderance of the evidence standard, sanctioning, and the University's policies and procedures. The training is coordinated by the Title IX Coordinator and Associate Coordinator in conjunction with campus and external partners.

In cases where a student accused of sexual misconduct faces severe disciplinary sanctions such as suspension or expulsion, and the credibility of witnesses (whether the accusing student, other witnesses, or both) is central to the adjudication of the allegation, the University will use the Formal Resolution process, which provides a mechanism by which the accused may cross-examine witnesses through an adjudicator at a hearing in which the witnesses appear in person or by other means (such as videoconferencing) and a neutral adjudicator has the power independently to find facts and make credibility assessments.

NOTE: In most cases, it is possible to convene a UCSB; however if the hearing must be heard at or after the end of the semester or academic year and/or a full UCSB cannot reasonably be convened, cases may be heard by the Dean of Students (or designee), or the University may substitute an alternate method of adjudication at its discretion.
Advisors

Both the Complainant and Respondent may be supported by an advisor during all phases of the initial interview, investigation, and hearing process. The advisor cannot be a witness in the proceedings, nor may he or she participate directly in the hearing. Attorneys may not formally represent the Complainant or Respondent, as these procedures are entirely administrative in nature and are not considered legal proceedings. The UCSB Chair has the right to determine what constitutes appropriate behavior on the part of the advisor and whether the person may remain at the proceedings.

Hearing Procedures

1. **Notice of Charges**

   Following the threshold determination that there is sufficient information to move forward with a hearing, the Associate Dean of Students (or designee) will send written Notification Letter to both the Complainant and the Respondent. The Notification Letter provides each party with a brief summary of the conduct at issue and the specific provision of the policy violation(s) that are alleged to have taken place.

2. **Pre-Hearing Meeting with Complainant and Respondent**

   Following the Notification Letter, the Associate Dean of Students will contact the Complainant and Respondent to schedule separate meetings with each party. At this pre-hearing meeting, each party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.

3. **Notice of Hearing**

   Once each party has met with the Associate Dean of Students a Notice of Hearing is sent to the Complainant and the Respondent. The Notice provides the parties with the date, time, and place of the hearing, as well as the name(s) of the person(s) hearing the case.

   In general, the hearing will be scheduled within ten (10) business days of the date of the Notice of Hearing. Under extenuating circumstances, this time frame may be extended.

4. **Composition of the UCSB**

   The Complainant and the Respondent may submit a written request to the Associate Dean of Students that a member of the UCSB be removed. The request must clearly state the grounds to support a claim of bias, conflict of interest or an inability to be fair and impartial. This challenge
must be raised within two (2) business days of receipt of the Notice of Hearing. All objections must be raised prior to the commencement of the hearing. Failure to object prior to the hearing will forfeit one's ability to appeal the outcome based on perceived or actual bias.

5. Pre-Hearing Review of Documents

The Complainant and the Respondent will each have the opportunity to review all investigative documents, subject to the privacy limitations imposed by state and federal law, at least five (5) business days prior to the hearing. The investigative documents will include the investigation report, any witness statements or interviews, statements or interviews by both parties, and any other documentary information that will be presented at the hearing.

6. Witnesses

The Complainant, Respondent, and the UCSB all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual’s character.

In general, neither party will be permitted to call as a witness anyone who was not interviewed by the investigator as part of the University’s investigation. If either party wishes to call witnesses, whether or not they were previously interviewed as part of the University’s investigation, the following must be submitted no later than five (5) business days before the hearing to the Dean of Students via e-mail or in hardcopy format:

• The names of any witnesses that either party intends to call;
• A written statement and/or description of what each witness observed, if not already provided during investigation;
• A summary of why the witness’ presence is relevant to making a decision about responsibility at the hearing; and,
• The reason why the witness was not interviewed by the investigator, if applicable.

The Associate Dean of Students will determine if the proffered witness(es) has relevant information and if there is sufficient justification for permitting a witness who was not interviewed by the investigator. The Associate Dean of Students may also require the investigator to interview the newly proffered witness.

If witnesses are approved to be present, the Respondent and Complainant are provided with a list of witnesses and any relevant documents related to their appearance at the hearing no later than five (5) business days before the hearing. All parties have the opportunity to ask questions of witnesses (through the UCSB), regardless of who called them to the hearing.
7. **Relevance**

The Associate Dean of Students will review the investigative report, any witness statements and any other documentary evidence to determine whether the proffered information contained therein is relevant and material to the determination of responsibility given the nature of the allegation. In general, the Associate Dean of Students may redact information that is irrelevant, more prejudicial than probative, or immaterial. The Associate Dean of Students may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

8. **Prior Sexual History and/or Pattern Evidence**

**Prior Sexual History of a Complainant:** In general, a Complainant’s prior sexual history is not relevant and will not be admitted as evidence at a hearing. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. As noted in other sections of this policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

**Pattern Evidence by a Respondent:** Where there is evidence of pattern of conduct 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 deemed relevant and probative to the panel’s determination of responsibility and/or assigning of a sanction. The determination of relevance will be based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of sexual misconduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction.

The University, through the Associate Dean of Students or Title IX Coordinator, may choose to introduce this information with appropriate notice to the parties. Alternatively, a party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Associate Dean of Students. The Associate Dean of Students, in consultation with the Title IX Coordinator, will assess the relevance of this information and determine if it is appropriate for inclusion at the hearing.
To aid in an advance determination of relevance, the following must be submitted no later than five (5) business days before the hearing to the Associate Dean of Students via e-mail or in hardcopy format:

- A written statement and/or description of the proposed information, if not already provided during investigation; and
- A summary of why this information is relevant to making a decision of responsibility at the hearing.

If this information is approved as appropriate for presentation at the hearing, the Respondent and Complainant will be provided with a brief description of the approved information no later than five (5) business days before the hearing.

9. Request to Reschedule Hearing

Either party can request to have a hearing rescheduled. Absent extenuating circumstances, requests to reschedule must be submitted to the Associate Dean of Students with an explanation for his or her request at least three (3) business days prior to the hearing.

10. Consolidation of Hearings

At the discretion of the Associate Dean of Students, in consultation with the Title IX Coordinator, multiple reports may be consolidated against a Respondent in one hearing if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Complainants, multiple Respondents, or related conduct that would regularly have been heard under the Code of Student Conduct.

11. Alternative Testimony Options

A Complainant or Respondent may also request alternative testimony options that would not require physical proximity to the other party. Options include placing a privacy screen in the hearing room or allowing the Complainant or Respondent to speak outside the physical presence of the other by using relevant technology to facilitate participation. Any proposed alternative must be reviewed in advance of the hearing to ensure that it is consistent with the goals of a fair and equitable process. While these options are intended to help make the alleged Complainant or Respondent more comfortable, they are not intended to work to the disadvantage of the other party.
12. **Hearings in Absentia**

If a party does not attend a hearing for any non-emergency or compelling reason, the hearing may be held in his/her absence at the discretion of the Associate Dean of Students.

A Respondent will not be permitted to withdraw from the University prior to the conclusion of an investigation or formal resolution under this policy. If a Respondent chooses not to participate, the University will move forward with the hearing and imposition of sanction(s), if any, in absentia. The Respondent’s academic transcript will be marked Withdrawal Pending Judicial Action, or, if finally resolved in absentia, with the final outcome in accordance with regular practice under this policy.

13. **Standard of Proof**

The standard of proof utilized in sexual misconduct hearings is a preponderance of evidence standard, meaning it is more likely than not that a policy violation occurred.

14. **Notification of Outcome**

Both the Complainant and the Respondent will be notified of the outcome of the hearing and any sanction(s) imposed at the same time, in writing, within five (5) business days of the conclusion of the hearing.

**Appeals**

Either party may appeal the final outcome in writing to the Dean of Students or designee (the “Appeals Officer”). The appeal will be conducted in an impartial manner by an impartial decision-maker. The appeal must be filed in writing within five (5) business days of receiving the written outcome. The appeal should consist of a plain, concise and complete written statement outlining the grounds for appeal and all relevant information to substantiate the basis for the appeal. The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal. The only grounds for appeal are:

- A procedural or substantive error occurred that significantly affected the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- New evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction (a summary of this new evidence and its potential impact
The receipt of the appeal will be acknowledged in writing (which can include email). Each party will be given the opportunity to respond in writing to the other party’s appeal. Any response by the opposing party must be submitted to the Appeals Officer within three (3) business days from receipt of the appeal. The appeals documents from each party will be considered together in one appeal review process.

In any request for an appeal, the burden of proof lies with the party requesting the appeal, as the original determination and sanction are presumed to have been decided reasonably and appropriately. The Appeals Officer shall first consider whether the appeal is timely filed and if so, whether the appeal is properly framed based on the two grounds. If the Appeals Officer determines that the appeal is not properly framed, the appeal will be denied.

If the appeal is based on procedural or substantive error, the Appeals Officer may return the complaint to the original UCSB with instructions to reconvene to remedy the error, or in rare cases where the error cannot be remedied, the Appeals Officer can ask that a new hearing occur before a newly constituted UCSB. In the case of new and relevant information, the Appeals Officer can recommend that the case be returned to the original UCSB to assess the weight and effect of the new information and render a determination after considering the new facts. The reconsideration of the UCSB is final.

Appeals are not intended to be full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. This is not an opportunity for the Appeals Officer to substitute his/her judgment for that of the original hearing body merely because he or she disagrees with its finding and/or sanctions. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error. The Appeals Officer can affirm or alter the original findings, depending on the basis of the requested appeal.

Sanctions imposed are implemented immediately unless the Dean of Students stays implementation in extraordinary circumstances, pending the outcome of the appeal. Pending graduation, study away, internships/work experience, or other events do not typically constitute extraordinary circumstances. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The Appeals Officer will render a written decision on the appeal to the Complainant and Respondent within fifteen (15) business days from the date of the submission of all appeal documents by both parties. Appeal decisions are final.
**Records**

The Title IX Coordinator and Associate Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Title IX assessment, informal resolution or formal resolution.

Complaints resolved by means of Title IX assessment or informal resolution are not part of a student’s conduct file or academic record or of an employee’s personnel record.

Affirmative findings of responsibility in matters resolved through formal resolution are part of a student’s conduct record and an employee’s personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student’s conduct record or an employee’s personnel record.

Suspension, expulsion, and withdrawal pending disciplinary action may be noted on a student’s transcript. The conduct files of students who have been suspended or expelled from the University are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven (7) years from the date of the incident. Further questions about record retention should be directed to the Dean of Students’ Office.

***Further information regarding the conduct process may be found in the Code of Student Conduct in the Student Handbook.***