

TITLE IX SEXUAL HARASSMENT & SEXUAL MISCONDUCT POLICY AND PROCEDURES

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SECTION 1: POLICY STATEMENT & PURPOSE

California University of Science and Medicine (“CUSM” or “University”) is committed to providing an environment that respects the dignity and worth of every member of its community, and strictly prohibits all forms of sexual harassment and sex discrimination. To this end, CUSM will not tolerate sexual misconduct because such conduct violates the community values and principles of our University and disrupts the learning and working environment for students, faculty, staff, and community members. CUSM will respond to complaints, reports, or information about incidents of sexual harassment from students and employees to stop the inappropriate behavior, eliminate any hostile environment(s), and take steps to prevent the recurrence of the prohibited conduct.

CUSM complies with applicable state and federal statutes, including Title IX of the federal Higher Education Amendment of 1972. Title IX prohibits discrimination on the basis of sex in any education program or activity that is federally funded within the United States. Sexual Assault, Domestic Violence, Dating Violence, Stalking, and Sexual Harassment are forms of sex discrimination prohibited by Title IX.

The purpose of this policy is to further the University’s goal to eliminate sexual discrimination in its many forms and to provide resources to students and employees impacted by such incidents. This policy will define consent, provide definitions for sexual harassment which encompasses: quid pro quo, a hostile environment, sexual assault, domestic violence, dating violence, and stalking; describe the procedures and options for reporting violations of this policy; and identify resources available to members of CUSM’s community who are involved in an incident of sexual misconduct.

SECTION 2: JURISDICTION & APPLICABILITY

All CUSM community members are prohibited from engaging in, or assisting or abetting another’s engagement in, sexual harassment and sexual misconduct (see “Prohibited Conduct”, Section 5). This includes, without limitation, all students, faculty, and staff.

CUSM will take action to resolve a Title IX formal complaint of sexual harassment when:

- i. At the time of filing a Title IX formal complaint, a “**complainant**” (the individual who is alleged to be the victim of conduct that could constitute sexual harassment) is participating in or attempting to participate in CUSM’s education program or activity,
- ii. The sexual harassment takes place within a University education program or activity against a person within the United States, and
- iii. The education program or activity (where the alleged incident took place) includes locations, events, or circumstances over which CUSM exercised substantial control over both the “**respondent**” (the individual who has been reported to be the

perpetrator of conduct that could constitute sexual harassment) and the context in which the sexual harassment occurred.

- a. This includes any and all buildings owned or controlled by a student organization that is officially recognized by CUSM.

In situations where the alleged sexual harassment occurred outside of the context of an education program or activity or where the respondent is not a member of the campus community (including when the respondent has graduated or left CUSM), the school typically will not take action to resolve the complaint (for example: conduct an investigation), but may address the situation and provide appropriate resources to impacted individuals and, where appropriate, the broader community.

SECTION 3: RESPONSIBLE EMPLOYEES

A responsible employee must report incidents of sexual harassment and sexual misconduct to the Title IX Coordinator regarding students and/or employees. This includes information about incidents a responsible employee knows or reasonably should have known about. For the purposes of this policy, a responsible employee is defined as a University employee who has the authority to redress sexual misconduct, who has the duty to report incidents of sexual misconduct (in regards to employees and/or students), or who an employee or student could reasonably believe has this authority or duty. The following employees are considered responsible employees: all full-time, part-time, visiting, and volunteer faculty, and administrators.

A responsible employee must report the incident, including all relevant details. This includes the name of the respondent(s) (if known), the name of the employee, student, or program participant who is suspected of, or has been observed experiencing sexual harassment, other individuals involved, as well as relevant facts, including the date, time, and location of the alleged sexual misconduct to the Title IX Coordinator. To the extent practicable, information reported to a responsible employee will be shared only with the University officials responsible for responding to the report. Only if deemed necessary, other staff and/or administrators may be involved in the process, e.g., dean of students, and human resources.

SECTION 4: TITLE IX COORDINATOR

The Title IX Coordinator assists our community with matters related to Sexual Harassment and Sexual Misconduct to ensure a positive learning and working environment are in place. The Title IX Coordinator's responsibilities include:

- Overseeing Title IX compliance
- Providing information, resources, and supportive measures for individuals reporting alleged sexual misconduct (i.e., Complainant)
- Providing information, resources, and supportive measures for individuals accused of sexual misconduct (i.e., Respondent)

- Ensuring prompt and equitable resolution for Formal Complaints that are filed within the campus
- Tracking and monitoring incidents of sexual harassment and sexual misconduct, and
- Coordinating outreach, education, and prevention efforts.

Title IX Coordinator Contact Information

For inquiries on Title IX compliance, to file a Formal Complaint of Sexual Harassment, or to report a Sexual Harassment concern or suspected violation, please contact the Title IX Coordinator.

Sandra E. Hodgin, Ph.D.

Address: 1501 Violet Street, Colton CA 92324

E-mail: titleixcoordinator@cusm.org

Phone Number: (909) 424-0345

Campus Extension: 01345

Please note: Title IX reports (regarding students and/or employees) can be made in person, by mail, by telephone, or by e-mail using the Title IX Coordinator’s contact information listed above, at any time (including non-business hours). If you are making a Title IX formal complaint by e-mail or mail, please be sure to include your physical or digital signature.

SECTION 5: DEFINITIONS (CONSENT AND PROHIBITED CONDUCT)

- I. The obligations of this Policy require a clear understanding of the concept of Consent as is defined under Section 67386 of the California Education Code. Consent is an affirmative, voluntary, and conscious agreement to engage in sexual activity. In order to give effective consent, one must be of legal age (18 years in the State of California) and have the capacity to give consent.**

Affirmative Consent: It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in sexual activity. **Communication regarding consent consists of mutually understandable words or actions that indicate an unambiguous willingness to do the same thing, at the same time, in the same way. In the absence of clear communication or outward demonstration, there is no consent.** Lack of protest, lack of resistance, or silence do not alone constitute consent.

Affirmative consent must be ongoing and **can be revoked at any time** during sexual activity. Thus, even if a person agreed to sexual interaction or continued sexual interaction, that person has the right to change her/his mind, irrespective of how much sexual interaction may have already taken place. Consent to any one form of sexual activity does

not imply consent to any other form(s) of sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent).

- A. **Force and Coercion:** Consent obtained through force is not consent. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force includes the use of threats, intimidation (implied threats) and/or coercion to produce consent. Coercion is unreasonable pressure for sexual activity (“Have sex with me or I’ll hit you. Okay, don’t hit me; I’ll do what you want.”). Coercive behavior differs from seductive behavior based on the type of pressure used to get consent. When someone makes it clear that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Resistance is a clear demonstration of non-consent; however, there is no requirement that a party resist a sexual advance or request. Furthermore, absence of physical trauma does not invalidate accusations.

- B. **Capacity/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). Sexual activity with someone who one should have known to be --or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (i.e. by alcohol or other drug use, unconsciousness, asleep, or blacked out), constitutes a violation of this policy.
- i. **Incapacitation due to alcohol or other drugs:** Because alcohol or other drug use can place an individual’s capacity to consent in question, sober sex is less likely to raise such questions. Being under the influence of alcohol or other drugs does not in and of itself indicate incapacitation. When alcohol or other drugs, including date rape drugs (such as Rohypnol, Ketamine, GHB, etc.), are involved, a person will be considered unable to give valid consent if they cannot fully understand the details of a sexual interaction (the who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Administering a date rape drug to another individual is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>.
- ii. **Incapacitation due to other reasons:** This policy also covers a person whose incapacity results from mental or physical disabilities, sleep, unconsciousness, or involuntary physical restraint.

- C. **Invalid Excuses:** In any proceedings under these policies and procedures, a Respondent may not assert as an excuse to an alleged lack of consent that the Respondent believed that the Complainant consented under any of the following circumstances:
- i. The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
 - ii. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.
 - iii. If the Respondent knew or should reasonably have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:
 - a. The Complainant was asleep or unconscious;
 - b. The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; or
 - c. The Complainant was unable to communicate due to a mental or physical condition.

II. Prohibited Conduct are legally inappropriate sexual behaviors that will not be tolerated on campus. The umbrella term for all such misconduct is Sexual Harassment. Specific conduct within Sexual Harassment are defined within this section for clarity and understanding (i.e., quid pro quo, hostile environment, sexual assault, domestic violence, dating violence, and stalking).

Sexual Harassment is the umbrella term for all prohibited conduct and is generally defined as unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal, nonverbal, or physical conduct made on the basis of sex. Specifically, Sexual Harassment is defined by one or more of the following ways:

(1) Quid Pro Quo: An employee that conditions a person's submission to unwelcome sexual conduct in exchange for education benefit; or

(2) Hostile Environment: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or

(3) Clery Act & VAWA prohibited conduct: Sexual assault, domestic violence, dating violence, or stalking.

- A. Sexual Assault is a forcible or nonforcible sex offense. Non-consensual sexual penetration is one form of Sexual Assault that takes place without the consent of

the Complainant, this form of Sexual Assault, sometimes called “rape,” is any penetration, no matter how slight, of the vagina, anus, or mouth by any body part or object that is without consent and/or by force. Non-consensual sexual contact is another form of Sexual Assault that takes place when, without the consent of the Complainant, there is touching of an intimate body part (genitals, anus, groin, breast, or buttocks) or there is touching of another individual with any of these body parts. This type of Sexual Assault also includes making another touch you or themselves with, or on, any intimate body parts, clothed or unclothed.

Specific Acts of Sexual Assault also known as “Sex Offenses” that are prohibited by this policy include:

- i. Rape: Sexual intercourse of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of the individual’s age or because of the individual’s temporary or permanent mental or physical incapacity.
- ii. Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
- iii. Sexual Assault With An Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
- iv. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity.
- v. Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- vi. Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

NOTE: As defined by the federal Violence Against Women Act (VAWA), sexual assault means an offense classified as a forcible or non-forcible sex offense under the Uniform Crime Reporting (UCR) system and the National Incident-Based Reporting System (NIBRS) of the Federal Bureau of Investigation. Generally, a sexual assault has been committed when an individual engages in sexual activity without the explicit consent of the other individual involved, including when the individual lacks capacity to consent. In this policy, sexual activity is any touching of a sexual or other intimate part of a

person either for asserting power or gratifying sexual desire of either party. This includes the touching of the Responding Party by the Complainant and the coerced touching of the Complainant by the Responding Party, clothed or unclothed.

- B. Domestic Violence is defined as any act of violence or threatened act of violence against a person who is or has been involved in a domestic relationship with the accused. Domestic Violence includes felony or misdemeanor crimes of violence committed by someone who is a:
- i. Current or former spouse or partner of the victim
 - ii. Person with whom the victim shares a child in common
 - iii. Person who is cohabitating with or has cohabitated with the victim as a spouse or partner
 - iv. Person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or
 - v. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- C. Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the impacted party, and where the existence of such a relationship is determined based on a consideration of the following factors:
- i. Length of the relationship
 - ii. Type of relationship
 - iii. Frequency of interaction between the people involved in the relationship.
- D. Stalking is defined as engaging in conduct directed at a specific person that would cause a reasonable person to:
- i. Fear for the person's safety or the safety of others; or
 - ii. Suffer substantial emotional distress.

For the purposes of the Stalking definition:

- (a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

- (c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.)

Examples of Sexual Harassment as defined by Quid Pro Quo, Hostile Environment, and the Clery Act and VAWA prohibited conduct, include:

❖ **Quid Pro Quo:**

- Direct or implied threats that submission to sexual advances will be a condition of employment, work status, promotion, grades, academic evaluation, or letters of recommendations.
- Subtle pressure for sexual activity, an element of which may be repeated requests for private meetings without an academic and employment purpose.
- Direct propositions of a sexual nature.

❖ **Hostile Environment:**

- A pattern of conduct that would discomfort or humiliate, or both, a reasonable person at whom the conduct was directed that includes one or more of the following: (1) unnecessary touching, patting, hugging, or brushing against a person's body; (2) remarks of a sexual nature about a person's clothing or body, whether or not intended to be complimentary; (3) remarks about sexual activity or speculations about previous sexual experience; (4) other comments of a sexual nature, including sexually explicit statements, questions, jokes or anecdotes; or (5) letters, notes or electronic mail containing sexual comments, words or images.

❖ **Clery Act and VAWA prohibited conduct:**

- Sexual assault, or other unwelcome non-consensual touching.
- Physical assault, or property damage.
- Emotional violence, or physical threat.
- Direct verbal threat of violence to one's self, one's romantic partner, or to others.
- Pursuing, following, waiting, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the victim.
- Stalking through non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, texts, letters, notes, gifts, or any other communications that are undesired and place another person in fear.
- Stalking through surveillance or other types of observation, including staring or "peeping".

NOTE: Sexual Harassment may occur between individuals regardless of their genders or gender identities.

SECTION 6: FRATERNIZATION (CONSENSUAL RELATIONSHIPS)

CUSM's fraternization policy 'Consensual Sexual or Romantic Relationships in the Workplace and Educational Setting', emphasizes that all sexual or romantic relationships

between individuals in inherently unequal positions assume special risks and therefore, are **prohibited**.

In the university context, such sexual or romantic relationships include, but are not limited to:

- ❖ faculty and student
- ❖ supervisor and employee
- ❖ senior administrative faculty to faculty
- ❖ faculty to staff
- ❖ mentor and trainee
- ❖ adviser and advisee
- ❖ teaching assistant and student

When the policy on consensual relationships is violated, a violation of this Title IX policy may also result. Under both policies, a romantic or sexual relationship in which one individual is in a position to exercise authority over the other creates a potential for sexual harassment, exploitation, and/or perceptions of undue advantage or disadvantage.

Additionally, when both parties have consented at the outset to a romantic or sexual relationship, this consent does not remove grounds for a charge of sexual harassment, conflict of interest, or other violations applicable to both policies.

SECTION 7: REPORTING OPTIONS

I. Internal Reports

Students and/or employees of the CUSM community who believe that they have been or may be subjected to Sexual Harassment (i.e., quid pro quo, hostile environment, sexual assault, domestic violence, dating violence, stalking) or who have witnessed or are aware of any incident of the same during an education program or activity, are encouraged to report such concerns to obtain supportive measures and/or to file a Formal Complaint.

Reports may be made to the Title IX Coordinator listed below, regardless of whether the reporting party is a student, faculty member, staff member, or third party. Under no circumstances is an individual required to report sexual misconduct or other prohibited conduct to a supervisor or academic instructor who is the alleged perpetrator.

Reports to the Title IX Coordinator can be made via email, phone, mailing address, or in person to the following contact information:

Sandra E. Hodgin, Ph.D.

Address: 1501 Violet Street, Colton CA 92324

E-mail: titleixcoordinator@cusm.org
Phone Number: (909) 424-0345
Campus Extension: 01345

II. Anonymous Reports

CUSM students may make anonymous reports of Sexual Harassment through the Canvas online “Anonymous Reporting and Suggestion Form”. However, depending on the extent of information available about the parties involved and the incident, the University’s ability to respond to such reports may be limited.

III. External Reports

CUSM strongly encourages all individuals (i.e., students and/or employees) who are the subject of sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking to pursue all remedies available to them, including reporting incidents of potential criminal conduct to law enforcement. Below is the contact information for the Colton Police Department.

Colton Police Department

650 N. La Cadena Drive

Colton, CA 92324

Lobby Hours: 8:00 am - 4:00 pm, Monday-Thursday (Closed Fridays and Holidays)
(909) 370-5000 (**non-emergencies**)

Emergencies: 9-1-1

SECTION 8: CONFIDENTIALITY

I. Limited Confidentiality within the University

CUSM respects the privacy of those reporting Sexual Harassment also defined as Prohibited Conduct (see section 5: Definitions) and will endeavor to respect requests for confidentiality to the greatest extent practicable.

Prior to the filing of a Formal Complaint, a Complainant’s request for confidentiality will be maintained, meaning their identity will not be released to the Respondent, and the Title IX Coordinator will provide the Complainant resource options, and supportive measures.

Please Note: The Title IX Coordinator will have confidentiality limitations, after a Formal Complaint is filed. Also, confidentiality may be limited prior to a Formal Complaint if a particular supportive measure, such as a no-contact order where a Respondent would need to know the identity of the person with whom the Respondent’s communication is restricted.

After a Formal Complaint is filed, identification of both parties will be included within the written notice of allegations report. This report will include the alleged conduct, the

date and time of the alleged conduct, and the identity of the Complainant. Parties will have the right to discuss the allegations under investigation, however parties will be warned to not discuss the allegations in a manner that constitutes Retaliation (see Section 11) that is a violation of this Policy and would be considered a serious, separate offense.

II. Confidential Resources within the Community

Students and/or employees who wish to seek advice or assistance or to discuss options for dealing with issues involving Sexual Harassment and any and all forms of sexual misconduct on a strictly confidential basis may do so by speaking with licensed counselors, clergy, medical providers in the context of providing medical treatment, rape crisis center counselors, and sexual violence advocates. Students, staff, and faculty who wish to speak to someone on a strictly confidential basis may contact the following confidential resources to discuss options available to you:

San Bernardino Sexual Assault Services (Local Rape Crisis Center)

Free confidential advice and counseling available 24 hours, 7 days a week

909-885-8884

Website: <https://www.sbsas.org/>

Project Sister Advocates & Counselors (Local Rape Crisis Center)

Free confidential advice and counseling available 24 hours, 7 days a week

909-626-HELP (909-626-4357)

Website: <http://projectsister.org/>

RAINN Advocates & Counselors (National Sexual Assault Crisis Center)

Free confidential advice and counseling available 24 hours, 7 days a week

800-656-HOPE (800-656-4673)

For Online Hotline Assistance: <https://ohl.rainn.org/online/>

Website: <https://rainn.org/>

SECTION 9: GRIEVANCE PROCEDURES

Notice of a report may be made in person, by mail, by telephone, or by e-mail to the Title IX Coordinator listed in Section 4.

While there is no time limit for reporting, reports of Prohibited Conduct (see Definitions, Section 5), that took place while the Complainant participated within or attempted to participate within an education program or activity (see Jurisdiction and Applicability, Section 2), should be brought forward as soon as possible; all incidents should be reported even if significant time has elapsed but prompt reporting will better enable CUSM to respond, and provide an appropriate and equitable remedy.

Within this Policy, CUSM and the Title IX Coordinator will not treat CUSM applicants, students, or employees differently on the basis of sex or identity and therefore will not favor Complainants over Respondents or Respondents over Complainants. The Title IX Coordinator does not promote CUSM's interests other than its interest in gender equity as evidenced in this Policy and provided by law. The Title IX Coordinator's primary job is to ensure CUSM complies with Title IX regulations which includes (i) responding to reports and complaints of sexual harassment, (ii) informing Complainants of the availability of supportive measures and of the process for filing a Formal Complaint, (iii) offering appropriate supportive measures for Complainants designed to restore or preserve equal access to CUSM's education program or activity, (iv) working with Respondents to provide supportive measures as appropriate, (v) coordinating the effective implementation of both supportive measures (to one or both parties) and remedies (complainant), and (vi) ensuring equitable and prompt resolution.

Although a report may come in through many sources, CUSM is committed to ensuring that all reports of sexual misconduct are referred to the Title IX Coordinator, by students and employees, which ensures consistent application of this Policy and Procedures.

Please Note: CUSM and the Title IX Coordinator's actions are not dependent on the initiation or outcome of criminal charges. Disciplinary proceedings may be carried out prior to, simultaneously with, or following civil or criminal proceedings.

I. Initial Report and Supportive Measures

As soon as practicable after receiving a report, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to the supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

- A. **Supportive Measures** are confidential, individualized services (without fee for the Complainant or the Respondent) following an initial report. Supportive measures can be provided with or without the filing of a formal report. These measures are designed to protect the safety of all parties, CUSM's educational environment, and deter sexual harassment.

Range of Supportive Measures

For Students and/or Employees:

- Counseling services
- Course-related adjustments (exams, assignments, etc.)
- Work or class schedule modifications
- Academic support services
- Campus escort services
- Mutual No-Contact Order between parties (*see Confidentiality, Section 8, regarding confidentiality limitations with this option*)

- Voluntary leaves of absence
- Increased security and monitoring in certain areas at CUSM
- And other similar remedies to support the goals of this Policy.

II. Formal Complaint (Preliminary Steps)

Following the Initial Report, if a Complainant decides to file a formal Title IX complaint the signature of the Complainant and the Title IX Coordinator will both be placed on the information provided within the Formal Complaint. Various preliminary steps (listed below) will take place once the Formal Complaint is signed.

A. Notice of Allegation

A written notice of the Formal Complaint will be emailed to all parties and will include the identification of the parties involved, the alleged conduct, the date and time of the alleged conduct, CUSM's grievance process, information on the Title IX informal process, details on having an advisor throughout the Title IX process, and information on the prohibition of false reports and retaliation.

B. Safety and Risk Analysis

A Safety and Risk Analysis will immediately be done by the Title IX Coordinator to see if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. If there is an immediate threat, a Respondent can be removed from CUSM on an emergency basis, as follows:

- i. **Emergency Removal:**
A student Respondent will be provided a notice and will then have an opportunity to challenge the decision immediately following the removal.
- ii. **Administrative Leave:**
An employee Respondent will be placed on leave throughout the duration of the grievance process.

Note: Any emergency removal or administrative leave imposed pursuant to this section shall have no bearing on the presumption of non-responsibility established throughout the Grievance Procedures described within this Policy.

C. Complainant's Right to Dismiss the Formal Complaint

Following the filing of the Formal Complaint, the Complainant will be told of their right and ability to stop the Title IX case within the grievance process.

- i. Dismissal of a Formal Complaint by the Complainant can take place if:
 - a. the Complainant chooses to withdraw their complaint,
 - b. the Complainant notifies the Title IX Coordinator in writing, and
 - c. the request is submitted during the investigation or the hearing.

D. Formal Complaint Assessment

This Assessment will be performed to ensure the Formal Complaint can proceed legally and in accordance with Federal Title IX regulation.

- i. Dismissal of a Formal Complaint by CUSM will take place if:
 - a. the alleged conduct did not occur within a CUSM education program or activity,
 - b. the alleged conduct did not occur within the United States,
 - c. the Respondent is no longer enrolled or employed by CUSM, or
 - d. there are specific circumstances preventing CUSM from gathering sufficient evidence to reach a determination.

III. Informal and Formal Resolution Procedures

Following the filing of a Formal Complaint, the Complainant will have the option to proceed with either Informal or Formal Resolution Procedures.

A. Advisor Throughout Informal and Formal Resolution Procedures

Regardless of the selection to proceed with Informal or Formal Procedures, the Complainant and Respondent may each have a support person of their choosing present with them at all meetings and any hearing associated with the Resolution Procedures. The support person is an advisor of choice and can include a current member of the CUSM community or be an external individual to the University such as an attorney, advocate, or family member. The support person cannot be involved in the underlying case and cannot be part of the investigation, such as be a witness.

Note: Under Title IX 2020 regulations, CUSM reserves the right to establish restrictions regarding the extent to which an advisor may participate in the proceedings, as long as the restrictions are applied equally to both parties.

B. Standard of Evidence

To ensure a fair process, it is important all parties understand that throughout the grievance process, either Informal or Formal, CUSM will uphold the **preponderance of the evidence standard** (there is a greater than 50% chance the claim is true) for all Formal Complaints of Sexual Harassment, including those against employees.

C. Presumption of Non-Responsibility

There is a presumption that the Respondent is not responsible for the alleged Sexual Harassment until a determination regarding responsibility is made at the conclusion of the Grievance Procedures.

D. Time Frames

All grievance procedures, Informal or Formal, will be concluded within a reasonably prompt time frame, unless there is notice of a short-term delay or extension for good cause that will be temporary and limited in duration.

Reasonable time frames that will be applied to Formal Complaints include: 40 days for Informal Resolutions, and 90 days for Formal Resolutions.

IV. INFORMAL Resolution Procedures

After a Formal Complaint is filed, an Informal Resolution process may be initiated. Informal Resolution Procedures do not involve a full investigation and adjudication, rather Informal Resolution Procedures facilitate a restorative justice approach, which can include mediation.

For an Informal Resolution to take place, all parties must provide voluntary, written consent to move forward with this option.

Scenarios where an Informal Resolution may take place:

- Facts alleged in a Formal Complaint are not contested;
- The Respondent has admitted or wishes to admit responsibility; or
- Both parties want to resolve the case without a completed investigation or adjudication.

At any time prior to agreeing to an Informal Resolution, any party has the right to withdraw from the process and resume the grievance process through the Formal Resolution Procedures. Also, if the Formal Resolution process was initially selected, at any time **prior to** reaching a determination regarding responsibility within that process, an Informal process can be initiated in its place.

Note: Formal Complaints alleging sexual harassment by an employee(s) will not be provided an Informal Resolution option.

V. FORMAL Resolution Procedures

After a Formal Complaint is filed, a Formal Resolution process may be initiated. Formal Resolution Procedures involve a full investigation, live hearing, and adjudication. The Title IX Coordinator shall select the Investigator, Hearing Officer, and Appeals Officer, for each investigation from a pool of University employees or third parties specifically trained to serve in those roles.

A. Conflict of Interest

Neither the Title IX Coordinator nor any Investigator, Hearing Officer, or Appeals Officer will make findings or determinations in a case in which they have a material conflict of interest or material bias. Any party who believes one or more of these University officials has a potential material conflict of interest or material bias must raise the concern to the Title IX Coordinator within two (2) calendar days of discovering the perceived conflict so that the University may evaluate the concern

and find a substitute, if appropriate. The parties will be notified of the identities of the Hearing Officer and, if applicable, the Appeals Officer prior to the start of the specific grievance procedure. The Title IX Coordinator or designee will determine whether a conflict of interest exists. The failure of a party to raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified within this section listed under subsection (E) Appeals.

B. Investigation

All CUSM investigations will be thorough, reliable and impartial. All investigations will entail interviews with all relevant parties and witnesses, to systematically obtain available evidence. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on CUSM and not on the parties.

The Title IX Coordinator will email the Investigation Process and Rights for both the Complainant and Respondent (Appendix A) to ensure they both understand the process and their rights.

C. Pre-Hearing Conference

Ten (10) days prior to the Live Hearing, a conference with the Hearing Officer will be held (i.e., in-person or virtually) with each respective party and their advisor at separate times. The purpose of the Pre-Hearing Conference is to educate parties on the Live Hearing, answer questions, and discuss specific details such as the expected scope of the Live Hearing, decorum, logistics, and to request a witness list for the campus to invite witnesses to be present for the Live Hearing.

Note: If witness statements from the investigation are deemed not relevant to the allegation(s) a witness may not be called to make a statement during the Live Hearing and this will be noted in a preliminary witness list created by the Hearing Officer.

D. Live Hearing

Following the completion of the investigation and a Pre-Hearing Conference, a Live Hearing will be performed either in-person or virtually, by a Hearing Officer. The Hearing Officer is deemed the decision-maker to reach a fair, and accurate determination within the Title IX Grievance Procedure. The Hearing Officer will be a separate person from the Investigator and is under an obligation to objectively evaluate all **relevant evidence**, both inculpatory and exculpatory. Therefore, the Hearing Officer will independently reach a determination regarding responsibility and credibility by reviewing the Final Investigation Report and observing and overseeing the parties' equal right to present and cross-exam parties and witnesses (this includes the investigator, and fact and expert witnesses).

Note: The Hearing Officer will independently reach a determination regarding responsibility based on statements provided within the Live Hearing, without giving deference to only the investigative report.

i. Cross-Examination

CUSM understands cross-examination is a valuable tool for resolving the truth of serious allegations such as those presented in a Formal Complaint of Sexual Harassment. Therefore, the following are specific guidelines for all cross-examinations that will be upheld:

- Cross-examination must take place directly, orally, and in real time, in other words, cross-examination questions will not be requested for screening prior to the hearing (or during the hearing);
- Cross-examination must only be conducted by party advisors and not directly or personally by the parties themselves;
- The Hearing Officer must make relevance determinations for all questions asked;
- Only relevant questions must be answered. Therefore, before a party or witness answers a cross-examination question a **“pause”** is required prior to a party or witness answering for the Hearing Officer to determine the relevance of each question;
- If cross-examination questions are excluded, the Hearing Officer will provide an explanation about irrelevance, and parties and advisors are prevented from challenging the relevance determination during the hearing;
- Upon any parties request the entire live hearing, including cross-examination, must occur with the parties in separate rooms (e.g., technology will be used so that parties can hear and see each other virtually);
- Questions about a Complainant’s prior sexual behavior are barred based on rape shield protections, with two (2) exceptions:
 - someone else may have committed the alleged behavior, or
 - if the questions/evidence relate to sexual behavior with respect to the Respondent and are offered to prove consent.
- Limits on evidence introduced at the hearing that was not gathered and presented prior to the hearing, will be decided by the Hearing Officer and will be based on the following standard:
 - Relevant evidence is evidence of facts to prove or disprove a fact in issue. In other words, “is the evidence relevant to a fact at issue in the case?”
- A party’s medical or psychological records can only be used with the party’s voluntary consent;
- If a party or witness chooses to be absent from a hearing, or to not answer questions during a live hearing, this Title IX policy protects every individual’s choice and cannot require participation. Please be aware that if an individual does not appear or does not answer a question(s) *any and all* statements

made during the Investigation and during the Live Hearing will not be considered by the Hearing Officer. Therefore, the Hearing Officer will decide responsibility of the allegations based on the remaining evidence without retaliation or negative interpretation;

- Written statements cannot be relied on by the Hearing Officer if the party or witness chooses to not participate with cross-examination;
- Whether a party or witness's statement is considered reliable or truthful must be determined in light of the credibility-testing function of cross-examination; and
- CUSM will oversee cross-examination in a manner that avoids aggressive, abusive, questioning of any party or witness.

Note: If a party does not have an advisor of choice for the hearing, CUSM will provide an advisor (of CUSM's choice) for the purpose of conducting cross-examination. Self-representation where a party personally conducts cross-examination will be strictly prohibited.

E. Written Determination

Following the conclusion of the Live Hearing, the Hearing Officer will provide a written determination regarding responsibility (within five (5) business day). The written determination will be sent simultaneously to both parties.

The written determination will include the following key elements:

- Identification of the specific allegations alleged to constitute sexual harassment as described in this Policy;
- The procedural steps taken from receipt of the Formal Complaint through the determination regarding responsibility (this includes the Investigative process, timeline, interviews with parties and witnesses, methods used to gather any and all evidence, and hearings held);
- Findings of fact supporting the determination;
- Conclusions regarding the application of CUSM's Title IX prohibited conduct Policy to the facts of the conduct alleged;
- Determination regarding responsibility for each allegation and the Hearing Officer's rationale for the result;
- Any disciplinary sanctions that will be imposed on the Respondent and whether or not the Complainant will be provided remedies (a description of what remedies will be implemented, if any, will not be disclosed for privacy purposes); and
- Information regarding the appeals process and grounds for appeal.

i. Range of Possible Disciplinary Sanctions and Remedies

Student Sanctions:

- Warning- written or verbal

- Required counseling
- Required training or education
- Withholding diploma
- Revocation of degree
- Transcript notation
- Banning from campus
- Suspension
- Expulsion

Employee Sanctions:

- Warning- written or verbal
- Performance improvement plan
- Required counseling
- Required training or education
- Demotion
- Suspension without pay
- Suspension with pay
- Revocation of tenure
- Termination

Remedies:

- Counseling services
- Course-related adjustments (exams, assignments, etc.)
- Work or class schedule modifications
- Academic support services
- Campus escort services
- Mutual No-Contact Order between parties (*see Confidentiality, Section 8, regarding confidentiality limitations with this option*)
- Voluntary leaves of absence
- Increased security and monitoring in certain areas at CUSM

ii. Final Determination

If neither party appeals the written determination, then the Title IX case will be considered closed and the conclusions by the Hearing Officer will be considered the Final Determination.

F. Appeals

Appeals will be performed by an Appeals Officer that will be deemed the decision-maker to reach a fair determination, free from bias and conflicts of interest. The Appeals Officer will, therefore, be a separate person from the Title IX Coordinator, the Investigator, and the Hearing Officer.

Appeals rights are mandatory for Title IX procedures and therefore are equally available to both the Complainant(s) and the Respondent(s). Parties have the opportunity to appeal a determination regarding responsibility based on any of four grounds (listed below). Additionally, parties also have the equal opportunity to appeal CUSM's decision to dismiss a Formal Complaint or an allegation contained within the Formal Complaint.

i. Grounds for Appeal, For Both Parties:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against either party, that affected the outcome of the matter; and
- d. Disproportionate sanction that is considered excessively severe or insufficient.

ii. Appeal Submission and Other Party Response

The appealing party will have five (5) business days to submit a written appeal to the Title IX Coordinator from the date the Written Determination is delivered to both parties. Upon receipt of an appeal, the Title IX Coordinator will notify and provide a copy of the appeal to the other party. The other party shall then have an opportunity to respond in writing to the appeal within five (5) business days from the date of the appeal.

Requests for appeal and responses to the same must not exceed 10 pages (double-spaced, 12 point Times New Roman font). Nonconforming submissions will not be considered beyond the first 10 pages. Late submissions will not be accepted. Either party may request a waiver of the page limitation. Such request must be made in writing to the Title IX Coordinator prior to the deadline for the appeal submission and should include a reason for the request.

Following the receipt of a written appeal, the Title IX Coordinator will contact the designated Appeal Officer. The Title IX Coordinator will provide the Appeal Officer with a copy of the written appeal and the other party's response. The Appeal Officer will determine whether any grounds for the appeal are substantiated, and if changes to the Written Determination should be made. The Appeal Officer will provide a response to both parties within fifteen (15) business days of the initial appeal date.

iii. Supportive Measures

If an appeal is submitted, supportive measures will stay in place until the appeal is resolved. Following the Appeals Officer's decision to change or not change the

Written Determination of responsibility, the disciplinary sanctions and remedies that coincide with the Appeal's Officer's decision will be implemented.

iv. Final Determination

If there is no appeal request, the written determination becomes final after the time period to file an appeal has expired (i.e., five (5) days). Or, if an appeal request is made, and an appeal decision has been made and sent to both parties, the appeals decision will become the Final Determination.

SECTION 10: GOOD SAMARITAN PROVISION (AMNESTY)

To encourage reporting, individuals cooperating in a Title IX investigation or hearing may be provided immunity on sanctions related to alcohol and drug policy violations to determine consent or memory only under this Policy. This behavior will not serve as the foundation for discipline or independent proceedings under another University policy. However, the University may, at its discretion, require individuals who engaged in such behavior to participate in education programs or recommend a meeting with a counselor or other support persons.

SECTION 11: RETALIATION & FALSE ACCUSATIONS

RETALIATION

Retaliation is any attempt by a student, faculty, or staff member to penalize, intimidate, threaten, coerce, or discriminate in any way against a person who makes a report of, or who is otherwise involved in reporting or an investigation of alleged violations of CUSM's Sexual Harassment and Sexual Misconduct policies and procedures. Persons who believe that they have been retaliated against for making a complaint/report or for cooperating in an investigation should immediately contact the Title IX Coordinator. Retaliation is itself a violation of this Policy and is a serious, separate offense. Any person who retaliates against a person who has filed a complaint or cooperated in an investigation is in violation of University policy and will be subject to disciplinary action.

FALSE ACCUSATIONS

Knowingly making a false accusation of sexual harassment (i.e., quid pro quo, hostile environment, sexual assault, domestic violence, dating violence, and/or stalking) under this Policy is itself a violation of this Policy and a basis for disciplinary action, up to and including dismissal, expulsion, or termination of employment from the University.

Reports of a false accusation shall not be addressed immediately but rather following the investigation of the Formal Complaint in question.

NOTE: Failure to prove a claim of sexual harassment, as defined within this Policy (see Section 5, Definitions), **is not** the equivalent of a knowingly false accusation.

SECTION 12: REFERENCES AND LEGAL AUTHORITY

- Title IX of the 1972 Education Amendments to the Higher Education Opportunity Act, 20 U.S.C. § 1681, et seq. (34 C.F.R. § 106).
- California Education Code: Student Safety, Section 67386.
- Violence Against Women Act, 34 U.S.C. § 12291, et seq., “dating violence” as defined in 34 U.S.C. § 12291(a)(10), “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), “stalking” as defined in 34 U.S.C. § 12291(a)(30).
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. § 1092(f) and implementing regulations, 34 C.F.R. § 668.41 and 668.46) (“Clery Act”): “sexual assault” as defined in 20 U.S.C. § 1092(f)(6)(A)(v).
- U.S Constitution. Amendments V and XIV.
- Title VII of the Equal Employment Opportunity Act of 1972 (as amended).
- Federal Civil Rights Statutes of 1964.
- Government Code Sections 12940 (i) and (j) of the California Fair Employment and Housing Act.
- Government Code Section 19702 of the State Civil Service Act.

APPENDIX A

Investigation Process and Rights

- 1) Rights that are provided to both parties equally during an investigation include:
 - ❖ Neither party is restricted to discuss the allegations under investigation. However, both parties are warned to not discuss the allegations in a manner that constitutes Retaliation (see Section 10) because that is a violation of the Title IX Policy and would be considered a serious, separate offense.
 - ❖ Neither party is restricted to gather and present relevant evidence during the investigation.
 - ❖ Parties may identify and present fact and expert witnesses during the investigation.
 - ❖ Parties have the right to have an advisor of choice present during any grievance proceeding, such as an investigation interview.
 - ❖ Parties will be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
 - ❖ Parties have the right to review any evidence obtained that is directly related to the allegations, including evidence that will not be used in reaching a determination, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
 - ❖ Parties have the right to not participate within the grievance process but are warned that CUSM may still proceed with the grievance process without a party's participation.
- 2) At the start of the investigation process, an Investigator will be assigned to investigate the Formal Complaint. During this time the Investigator will contact the Complainant and Respondent and begin an investigation to obtain evidence.
- 3) As the investigation nears completion, a **Preliminary Investigation Report** will be shared with both parties and their respective advisor, through email.
 - a. Parties will have ten (10) days to submit a written response, which the Investigator will consider prior to the completion of the **Final Investigative Report**.

Examples of what a written response may include:

- Any additional evidentiary materials that should be collected and reviewed to the extent that such items are reasonably available (e.g., text messages, social media postings, etc.);
- Any follow-up issues or questions for any witness, including the other party;

- A request for a follow-up interview to clarify or provide additional information;
- Any new witness who should be interviewed (including a description of what topics/issues the witness should be asked to address and why this is necessary for the investigation).

Note: All evidence reviewed will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- 4) The **Final Investigative Report** will include a fair summary of **only relevant evidence** in regard to the allegations of the hearing. The Final Investigative Report will be shared with both parties and their respective advisor, through email, at least ten (10) days prior to a hearing.
 - a. The investigator is required to only summarize “relevant” evidence in the Final Investigative Report (which would exclude sexual history information that is barred by rape shield protections §106.45(b)(6)(i)).