Prohibiting Discrimination Based on Sex Under Title IX

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I. Introduction

This Policy sets forth the obligations of the San Francisco Conservatory of Music (SFCM) under the 2024 Title IX Regulations and incorporates the definitions and procedural requirements from the 2013 Clery Amendments pertaining to sexual assault, dating violence, domestic violence, and stalking. This Policy also sets forth SFCM's obligations pertaining to sex-based discrimination (including sex-based harassment) and related retaliation under the California Fair Employment & Housing Act and the California Education Code.

Pursuant to this Policy, SFCM will:

- Respond to all reports of sex-based discrimination and/or retaliation.
- It will take necessary measures to end conduct that is in violation of this Policy, prevent its recurrence, and remedy its effect on individuals and the community.

Within any process related to this Policy, SFCM provides reasonable accommodations to persons with disabilities and reasonable religious accommodations, consistent with California and federal law.

Situations involving other conduct that may be in violation of SFCM student or employee conduct policies should be reported to Timothy Dunn, Associate Dean for Student Affairs for matters involving students, or Michael Patterson, Associate Vice President for Human Resources and Administration or the for matters involving faculty or staff. Situations involving other conduct relating to nonaffiliates should be reported to Michael Patterson, Associate Vice President of Human Resources and Administration.

Complaints of sexual assault, sexual harassment, or other conduct prohibited under this policy, and any questions about filing a complaint under this policy, the grievance process, or Title IX or its regulations should be directed to the Title IX Coordinator or the Deputy Coordinators listed below:

Title IX Coordinator
Molly O'Malley
Title IX Coordinator
Email: Momalley@sfcm.edu
Phone: 650-383-4753 x176
Bowes Center for the Performing Arts
Room 116B

Deputy Title IX Coordinator for Students

Timothy Dunn
Associate Dean for Student Affairs and
Deputy Title IX Coordinator

Phone: 415-503-6281
Email: tdunn@sfcm.edu
Bowes Center for the Performing Arts
Room 116B

Deputy Title IX Coordinator for Faculty and Staff

Michael Patterson
Associate Vice President of Human Resources and Administration and
Deputy Title IX Coordinator
Phone: 415-503-6237
Email: mpatterson@sfcm.edu
Address: Getty Center for Education
Room 407

Statement of Nondiscrimination and Applicability of this Policy

As set forth in this Policy, SFCM prohibits discrimination on the basis of sex in its programs and activities. As defined by Title IX and California law, discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Except as permitted by law, SFCM does not discriminate in its admissions practices, in its employment practices, or in its educational programs or activities on the basis of sex. SFCM also prohibits retaliation against any person opposing sex discrimination or participating in any sex discrimination investigation or complaint process, whether internal or external to SFCM. Sex-based harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX, California law, and by this Policy.

California law prohibits coworkers, third parties (including students), as well as supervisors and managers with whom an employee (including a student-employee, applicant for employment, contractor, volunteer or intern) comes into contact, from engaging in conduct prohibited by the California Fair Employment and Housing Act.

When brought to the attention of SFCM, conduct prohibited by this Policy will be addressed by SFCM according to the procedures set forth in this Policy. Discrimination on the basis of any other protected category will be addressed in accordance with *SFCM's Sexual and Other Unlawful Harassment policy in the* **Employee and Collegiate Student Handbooks***, Equal Employment Opportunity* policy in the **Employee Handbook** and *Equal Educational Policy* in the **Student Handbook**.

Statement of Equal Access

The San Francisco Conservatory of Music shall provide certain support and modifications to people experiencing pregnancy or related conditions to ensure their equal access SFCM's program or activity. Pregnancy or related conditions include pregnancy, childbirth, termination of pregnancy, lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; and recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

SFCM treats pregnancy or related conditions in the same manner and under the same policies as any other temporary medical conditions and must allow voluntary leaves of absence. Students, employees, or applicants should contact the Title IX Coordinator for more information. Employees or applicants for employment may also contact Human Resources for more information, because additional workplace laws and policies apply. Collegiate students should refer to SFCM's Policy on Accommodations for Pregnant Graduate Students pursuant to Education Code 66281.7.

Application of Section 504/Americans with Disabilities Act to this Policy

The San Francisco Conservatory of Music complies with the requirements of the Americans with Disabilities Act of 1990, as amended 2008 ("ADAAA"); Sections 504 and 508 of the Rehabilitation Act of 1973, as amended; and all other federal and California laws and regulations prohibiting discrimination on the basis of disability. SFCM is committed to providing individuals with disabilities equal access to SFCM's programs and activities.

Parties may request reasonable accommodations for disabilities to the Title IX Coordinator at any point relating to the implementation of this Policy, including making a disclosure or report, and initiating a grievance procedure. Accommodations will be granted if they are reasonable and do not fundamentally alter the procedures established by this Policy. Please note that the Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the parties, even where the parties may be receiving accommodations in other SFCM programs and activities.

With the consent of the impacted student or employee, the Title IX Coordinator will work collaboratively with the Associate Dean for Student Affairs or the Associate Vice President of Human Resources and Administration to ensure that approved reasonable accommodations (disability-related) are implemented.

II. Scope and Jurisdiction

All members of SFCM's community, including, but not limited to, students, student organizations, faculty, administrators, and staff, whether on or off campus, and third parties such as contractors, interns, guests, visitors, volunteers, invitees, and alumni when they are on campus or participating in SFCM sponsored activities, are subject to this Policy, though the procedures for resolving conduct prohibited by this Policy will vary based on one's status. This

Policy applies to all students and employees and all other individuals participating in (or attempting to participate in) SFCM programs or activities, including SFCM sponsored events that take place off-campus.

This Policy may also pertain to instances in which the conduct occurred outside of the campus or SFCM sponsored activity if SFCM determines that the off-campus conduct is within the jurisdiction of its disciplinary authority or affects a substantial SFCM interest, including access to the educational program or activity, safety and security, compliance with applicable law, and meeting its educational mission.

SFCM shall take reasonable steps to respond to each incident of Prohibited Conduct involving individuals subject to SFCM's policies that occur in connection with any educational activity or other program of SFCM, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus to a student, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

Any individual covered by this Policy expected to provide truthful information in any report, meeting, or proceeding under this Policy.

Unless otherwise specified in this Policy, any individual who is accused of engaging in conduct prohibited by this Policy who is not a student, faculty member, or staff member is generally considered a third party. SFCM's ability to take corrective action against a third party may be limited and will depend on the nature of the third party's relationship, if any, to SFCM. When appropriate, the Title IX Coordinator will refer such allegations against a third party to the appropriate office.

The status of a party may impact which resources and remedies are available to them under this Policy.

If there is a conflict between the provisions of this Policy and other SFCM policies, procedures, rules, regulations, or terms or conditions of employment, the provisions of this Policy will govern unless otherwise stated. Any capitalized terms in this Policy are defined as stated or in Section XXI.

III. Prohibited Conduct

This Policy prohibits sex discrimination, including sex-based harassment, and retaliation as defined below. These acts shall also be referred to as Prohibited Conduct under this Policy:

Discrimination on the Basis of Sex

Except as permitted by Title IX, prohibited discrimination on the basis of sex (where sex includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) is defined as actions that cause an individual to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by SFCM.

Except as permitted by Title IX, SFCM, including employees, students, participants and agents of SFCM, shall not, engage in any of the following prohibited discriminatory actions on the basis of sex if it would cause more than *de minimis* harm:

1. Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
2. Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
3. Deny any person any such aid, benefit, or service;
4. Subject any person to separate or different rules of behavior, sanctions, or other treatment;
5. Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
6. Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
7. Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

For the purposes of this definition, unless permitted by Title IX, adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex and will be considered prohibited discrimination.

Sex-Based Harassment

Sex-based harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, as defined by Title IX, including harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Under this Policy, prohibited Sex-based Harassment includes the following conduct:

Quid Pro Quo Harassment

Quid pro quo harassment occurs when someone from or in the work or educational setting, including an employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity explicitly or implicitly actually, attempts to or purports to provide and condition an aid, benefit, or service under the recipient's education program or activity of SFCM on an individual's participation in unwelcome sexual conduct, which includes but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, including under any of the following conditions:

- Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress;
- Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; 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 at or through the educational institution.

Sex-Based Hostile Environment Harassment in Programs and Activities

Sex-based Hostile environment harassment in Programs and Activities is defined as:

1. Unwelcome sex-based conduct (where sex includes sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity) that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from SFCM's education program or activity (i.e. creates a hostile environment; or

2. Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting where 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 or educational environment.

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. The degree to which the conduct affected the individual's ability to access SFCM's education program or activity;
2. The type, frequency, and duration of the conduct;
3. The parties' ages, roles within SFCM's education program or activity, previous interactions, and other factors about a party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and

5. Other sex-based harassment in SFCM's education program or activity.

California Sex-based Harassment in Employment

Prohibited conduct is defined as any unwelcome behavior towards an employee (which for this definition includes a student-employee in their capacity as an employee), applicant for employment, unpaid intern, contractor or volunteer, that is reasonably regarded as offensive that is based on sex that:

- Sufficiently offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim's emotional tranquility in the workplace, or
- Affects the victim's ability to perform the job as usual, or
- Otherwise interferes with and undermines the victim's personal sense of well-being.

For California sex-based harassment in employment, a single incident of harassing conduct based on sex may create a hostile work environment if the harassing conduct has unreasonably interfered with the victim's work performance or created an intimidating, hostile, or offensive work environment. Whether or not the person meant to give offense or believed their comments or conduct were welcome is not significant. Rather, the policy is violated when other individuals, whether recipients or mere observers, are actually offended by comments or conduct based on sex and the conduct is considered offensive by a reasonable person.

<u>Sexual Assault & Interpersonal Violence</u>

1. **Sexual assault.** Sexual assault is defined as any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving affirmative consent.

   Sexual assault includes:

   i. **Rape**—The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the affirmative consent of the victim. Attempted rape falls under this prohibition.
   ii. **Fondling**—The touching of the private body parts of another for the purpose of sexual gratification, without the affirmative consent of the victim, including instances where the victim is incapable of giving affirmative consent because of their age or because of their temporary or permanent mental incapacity.
   iii. **Incest**—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
   iv. **Statutory Rape**—Sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in California is eighteen.

2. **California Sexual Violence (Against Students**)

The San Francisco Conservatory of Music also prohibits Sexual Violence as defined by the California Education Code. Conduct defined as California Sexual Violence may be eligible for alternative resolution except for mediation (a form of alternative resolution), which is never permitted for California Sexual Violence.
California Sexual Violence means physical sexual acts perpetrated against a person without the person's Affirmative Consent. Physical sexual acts include both of the following:

(A) Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.

(B) Sexual battery, defined as the intentional touching of another person's intimate parts without their Affirmative Consent, intentionally causing a person to touch the intimate parts of another without Affirmative Consent, or using a person's own intimate part to intentionally touch another person's body without Affirmative Consent.

For the purposes of these definitions, a Sexual Act is defined as conduct between persons consisting of:

Contact between the penis and the vulva or between penises and vulvas
Contact between the penis and the anus.
Contact between the mouth and the penis.
Contact between the mouth and the vulva.
Contact involving any of the above or the buttocks or breasts

Private body parts include all of the body parts specified above.

3. **Dating Violence**

This includes violence committed by a person:

i. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
ii. Where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. The length of the relationship;
2. The type of relationship; and
3. The frequency of interaction between the persons involved in the relationship.

Emotional and psychological abuse do not constitute violence for the purposes of this definition.

4. **Domestic Violence**

This includes felony or misdemeanor crimes of violence committed by a person who:

i. Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of SFCM, or a person similarly situated to a spouse of the victim;
ii. Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
iii. Shares a child in common with the victim; or
iv. Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of California.

Emotional and psychological abuse do not constitute violence for the purposes of this definition.

5. **Stalking**

Stalking is defined as engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

6. **California Sexual Exploitation**

Sexual exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

i. The prostituting of another person;
ii. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
iii. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent;
iv. The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
v. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy,

without that person's consent, for the purpose of arousing or gratifying sexual desire.

Retaliation

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of Prohibited Conduct under this Policy. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct by SFCM, a student, or an employee or other person authorized by SFCM to provide aid, benefit, or service under SFCM's education program or activity, for the purpose of interfering with any right or privilege secured by this Policy or by law, including Title IX or its regulations. Adverse action does not include perceived or petty slights, or trivial annoyances.

The prohibition against retaliation applies to any individuals who participate (or refuse to participate) in any manner in an investigation and to any student who refuses to participate in an investigation or proceeding.

Retaliation may occur even where there is a finding of "not responsible" under this Policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation.

IV. The Institution's Duty to Respond and Delegation of Duties

The San Francisco Conservatory of Music shall respond to all allegations of Prohibited Conduct, as defined above.

Obligations created by this Policy, including when responding to reports of Prohibited Conduct may be delegated by SFCM, including to external professionals.

V. Conflicts of Interest or Bias

Any individual carrying out any part of this Policy shall be free from any actual conflict of interest or demonstrated bias that would impact the handling of a matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator shall immediately notify the Deputy Title IX Coordinators who will either take, or reassign, the role of Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue.
Should any Investigator, Decisionmaker, or Appeals Officer have a conflict of interest, the Investigator, Decisionmaker, or Appeals Officer shall notify the Title IX Coordinator upon discovery of the conflict so that the Title IX Coordinator may reassign the role as appropriate. This Policy will note where parties have the opportunity to challenge the

participation of any individual implementing this Policy based on actual conflict of interest or demonstrated bias.

VI. Crime and Indecent Disclosure Obligations

The Clery Act is a federal crime and incident disclosure law. (Section 67380 of the California Education Code has similar requirements.) The Clery Act requires, among other things, SFCM to report the number of incidents of certain crimes, including some of the Prohibited Conduct in this Policy, that occur in particular campus-related locations. The Clery Act also requires SFCM to issue a warning to the community in certain circumstances.

In the statistical disclosures and warnings to the community, SFCM will ensure that a Complainant's name and other identifying information is not disclosed. When reporting to law enforcement under the Education Code, SFCM will not disclose the personally identifiable information without a Complainant's consent. The Title IX Coordinator will refer information to the Clery Officer when appropriate for a determination about Clery-related actions, such as disclosing crime statistics or sending campus notifications.

VII. Reporting Sex Discrimination, Including Sex-Based Harassment

A. Employee Reporting Obligations

All employees, with limited exceptions for Confidential Employees designated by SFCM below, are required to promptly provide to the Title IX Coordinator all complaints and/or reports of Prohibited Conduct and share all information reported or made available to the employee. As required by California law, if an employee in a supervisory capacity has knowledge of an incident of Prohibited Conduct directed toward any employee, that supervisor is required to bring the matter to the attention of the Title IX Coordinator unless they are serving as a Confidential Employee when the disclosure is made.

When providing this information to the Title IX Coordinator, the employee must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals and the nature of the incident.

Aside from this reporting obligation, employees will, to the fullest extent possible, maintain the privacy of an individual's information, consistent with FERPA.

B. Public Awareness Events

Employees are required to report to the Title IX Coordinator information about sex discrimination they learn about at public awareness events such as Take Back the

Night, Voices United in Power, or other group speak out programs connected to sexual violence awareness and prevention.

The Title IX Coordinator is not obligated to respond directly to any identified Complainant in a report of sex-based harassment disclosed at a public awareness event that takes place on-campus or in a school-sponsored online platform unless there is an imminent and serious threat to someone's health or safety.

The Title IX Coordinator must respond to reports of conduct that could constitute sex discrimination other than sex-based harassment if disclosed at public awareness events, wherever they occur. In all cases, SFCM must use the information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

C. How to Make a Report to San Fransico Conservatory of Music

All complaints of violations of this Policy will be taken seriously and in good faith. The Title IX Coordinator will provide information and guidance regarding how to file a complaint with SFCM and/or local law enforcement, as well as information and assistance about what course of action may best support the individual(s) involved and how best to address the complaint.

Every reasonable effort will be made to maintain the privacy of those making a report to the extent possible. In all cases, SFCM will give consideration to the party bringing forward a report with respect to how the matter is pursued. SFCM may, when necessary to protect the community, initiate an investigation or take other responsive actions to a report, even when the person identifying a concern chooses not to participate in a resolution process and/or requests that SFCM not initiate an investigation.

Employees, students, guests, or visitors who believe that this Policy has been violated should promptly contact the Title IX Coordinator or another member of the Title IX Office as follows:

The reporting party may email the Title IX Coordinator or Deputy Coordinator. The reporting party may also file a report at:

https://sfcm.edu/discover/campus-life/campus-safety/forms.

Reports can be filed anonymously.

There is no timeline for making a report of Prohibited Conduct, however, SFCM encourages the prompt reporting of a complaint as the ability of SFCM to pursue the complaint to conclusion may be hindered by the passage of time.

Individuals may also refer to Section XIX of this Policy for other reporting options.

D. Amnesty for Student Conduct Charges When Reporting Prohibited Conduct

An individual who participates as a Complainant or witness in an investigation of Prohibited Conduct will not be subject to disciplinary sanctions for a violation of SFCM's student conduct policy at or near the time of the incident, unless SFCM determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

E. Privacy and Confidentiality in the Process

References made to privacy mean San Francisco Conservatory of Music offices and employees who cannot guarantee confidentiality, but will maintain privacy to the greatest extent possible, relaying information as necessary to investigate or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. SFCM will limit the disclosure as much as practicable.
All activities under these procedures shall be conducted with the privacy interests of those involved. While SFCM will take all reasonable steps to protect the privacy of individuals involved in a complaint, it may be necessary to disclose some information to individuals or offices on campus in order to address a complaint or provide for the physical safety of an individual or the campus. Thus SFCM cannot, and does not, guarantee that all information related to complaints will be kept confidential.

To maintain the privacy of evidence gathered as part of any resolution process, access to materials under the procedures in this Policy will be provided only by a secure method and parties and advisors are not permitted to make copies of any documents shared or make use of the documents outside of the processes described in this Policy. Parties may request to review a hard copy of materials, and SFCM will make that available in a supervised or monitored setting. Inappropriately sharing materials provided during this process may constitute Retaliation under this Policy.

F. Options for Confidential Reporting at San Francisco Conservatory of Music

Individuals may speak confidentially with a Confidential Resource. Confidential Resources (e.g., licensed mental health care providers, physicians and clergy) may not report to Title IX Coordinator any identifying information about conduct that may violate this Policy without the written consent of the individual who supplied the information, unless

required by law. Such disclosures will not be reported to the Title IX Coordinator or initiate any process under this Policy.

Privileged and Confidential Employees.
Communications with the Director of Counseling Services are privileged or confidential under Federal or State law. The employee must be hired for and functioning within the scope of their duties to which the privilege or confidentiality applies. For example, physicians, clergy, and mental health counselors are all confidential employees. Disclosures made to these employees means that information cannot be disclosed to anyone internal or external to SFCM without the express permission from the individual disclosing the information except where a health care provider observes an injury related to sexual violence. Individuals should clarify a Confidential Employee's ability to keep information confidential **before** disclosing information.

State law requires professional counselors to report: (i) when a patient is likely to engage in conduct that would result in serious harm to the patient or others; (ii) if there is reasonable cause to suspect that California's Mandatory Reporting Obligations have been triggered. Mandatory reports pertaining to abuse and neglect should be made pursuant to SFCM's Mandatory Reporting Policy in the **Employee Handbook**.
A list of resources may be found in Section XXII - Resources.

G. Reporting to External Law Enforcement

Some Prohibited Conduct may constitute a violation of both the law and SFCM policy. SFCM encourages students to report alleged crimes promptly to local law enforcement agencies. All persons have the right to file with law enforcement, as well as the right to decline to file with law enforcement. The decision not to file shall not be considered as evidence that there was not a violation of SFCM policy.

As a condition of participation in CalGrants, SFCM states the following pursuant to section 67380 of the California Education Code:

SFCM require any report made by a victim or an employee pursuant to Section 67383 of a Part 1 violent crime, sexual assault, or hate crime, as described in Section 422.55 of the Penal Code, received by a campus security authority and made by the victim for purposes of notifying the institution or law enforcement, to be immediately, or as soon as practicably possible, disclosed to the local law enforcement agency with which the institution has a written agreement pursuant to Section 67381 without identifying the victim, unless the victim consents to being identified after the victim has been informed of the victim's right to have the victim's personally identifying information withheld. If the victim does not consent to being identified, the alleged assailant shall not be identified in the information disclosed to the local law enforcement agency, unless the institution determines both of the following, in which case the institution shall disclose the identity of

the alleged assailant to the local law enforcement agency and shall immediately inform the victim of that disclosure:

(i) The alleged assailant represents a serious or ongoing threat to the safety of students, employees, or the institution.
(ii) The immediate assistance of the local law enforcement agency is necessary to contact or detain the assailant.

Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy. Conduct may constitute Prohibited Conduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. However, when a complaint is made to SFCM as well as to law enforcement, SFCM may delay its process if a law enforcement agency requests that SFCM delay its process for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. Criminal or legal proceedings are separate from the processes in this Policy and do not determine whether this Policy has been violated.

All investigations and determinations under this Policy will be thorough, reliable and impartial, and will seek to collect evidence and names of witnesses to gather information that is directly or substantially relevant to whether the alleged policy violation occurred and will not be based on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

In the case of an emergency, where the physical well-being of a member of SFCM community or the safety of SFCM as an institution is threatened, any individual with such knowledge should promptly inform the Director of Campus Safety. SFCM may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the well-being of SFCM community and SFCM as an institution.

SFCM's Board of Trustees, by this Policy, requires SFCM to enter into written agreements with local law enforcement agencies that clarify operational responsibilities for investigations of Part 1 violent crimes, sexual assaults, and hate crimes occurring on each campus.

VIII. Response to a Report

SFCM's Response to a report of Prohibited Conduct shall generally include the following:

A. Initial Contact

Following receipt of a report alleging a potential violation of this Policy, the Title IX Coordinator will contact the Complainant to meet with the Title IX Coordinator for an initial intake and assessment meeting, and will provide the following:

1. An invitation to meet to offer assistance and explain their rights, resources, and options under this Policy;
2. Access to this Policy;
3. Information regarding available campus and community resources for counseling, health care, mental health, or victim advocacy. Upon request, information regarding legal assistance, visa and immigration assistance, student financial aid and other available services may be provided;
4. The availability of Supportive Measures regardless of whether a complaint is filed and/or any resolution process is initiated;
5. The options for resolution (no action, prevention, agreement, investigation) and how to initiate such resolution processes;
6. The right to notify law enforcement as well as the right not to notify law enforcement;
7. The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Campus Safety or local law enforcement in preserving evidence;
8. For cases of California Sexual Violence, the role of victim advocates and a student's right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. An attorney may serve as a support person or advisor.
9. The identification and location of witnesses;
10. The right to an advisor of choice, if applicable, during SFCM proceedings under this Policy including the initial meeting with the Title IX Coordinator;
11. A statement that retaliation for filing a complaint, or participating in the complaint process, is prohibited; and
12. Information on how to initiate the Investigation or Resolution-Based Agreement process and how those procedures work, including contacting and interviewing Respondent and seeking identification and location of witnesses.

B. Initial Intake & Assessment

The Initial Assessment process seeks to gather information about the nature and circumstances of the report to determine whether this Policy applies to the report and, if so, which resolution process may be appropriate, as well as which section of the grievance procedures apply based on the conduct and the status of the parties. The primary concern shall be safety. For cases of California Sexual Violence, a victim-centered interview protocol shall be used.

The Title IX Coordinator may also determine that the provision of supportive measures only is the appropriate response under the Policy. If the initial complaint was not reported by the actual Complainant, the Title IX Coordinator will limit communication to general information on policies and processes.

Should the Complainant wish to initiate a resolution process, the Title IX Coordinator will determine whether this Policy applies and, if so, the appropriate process under this Policy. The Title IX Coordinator will communicate to the Complainant this determination. If the Complainant does not wish to initiate a resolution process, the Title IX Coordinator will assess whether to proceed as set forth below.

If the information provided does not suggest a potential violation of this Policy, the Title IX Coordinator will provide the Complainant written notice that the matter is being referred for handling under a different policy, and/or to another appropriate office for handling.

C. Requests for Confidentiality or No Further Action

When a Complainant requests that the SFCM not use their name as part of any resolution process, or that SFCM not take any further action, SFCM will generally try to honor those requests. However, there are certain instances in which SFCM has a broader obligation to the community and may need to act against the wishes of the Complainant. In such circumstances, the Title IX Coordinator will notify the Complainant in writing of the need to take action. The factors the Title IX Coordinator will consider when determining whether to act against the wishes of a Complainant include:

1. The Complainant's request not to proceed with initiation of a complaint;
2. The Complainant's reasonable safety concerns regarding initiation of a Complaint;
3. The risk that additional acts of Prohibited Conduct would occur if a Complaint is not initiated;
4. The severity of the alleged Prohibited Conduct, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
5. The age and relationship of the parties, including whether the Respondent is an employee of SFCM;
6. The scope of the alleged discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals;

7. The availability of evidence to assist a Decisionmaker in determining whether sex discrimination occurred;
8. Whether SFCM could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures under this Policy; and
9. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other persons, or that the conduct as alleged prevents SFCM from ensuring equal access on the basis of sex to its education program or activity.

D. Requests for Confidentiality or No Further Action for California Sex-Based Harassment in Programs and Activities and California Sexual Violence

California has specific requirements for SFCM's duty to respond to reports of California Sex-Based Harassment in Programs and Activities and/or California Sexual Violence and Sexual Exploitation where the conduct is not governed by Title IX ("California Misconduct"), regardless of whether or not a complaint has been filed under SFCM's grievance procedures, if SFCM knows, or reasonably should know, about possible California Misconduct against a student, involving individuals subject to SFCM's policies at the time, SFCM shall promptly investigate (as set forth in this Policy) to determine whether the alleged conduct more likely than not occurred, or otherwise respond if SFCM determines that an investigation is not required. If SFCM determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects.

For California Misconduct, if Complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential Respondent, or that no investigation or disciplinary action be pursued to address alleged California Misconduct, SFCM shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for Complainant. SFCM shall generally grant the request. In determining whether to disclose Complainant's identity or proceed to an investigation over the objection of Complainant, SFCM may consider whether any of the following apply:

(I) There are multiple or prior reports of sexual misconduct against Respondent.
(II) Respondent reportedly used a weapon, physical restraints, or engaged in battery.
(III) Respondent is a faculty or staff member with oversight of students.
(IV) There is a power imbalance between Complainant and Respondent.
(V) Complainant believes that the Complainant will be less safe if Complainant's name is disclosed or an investigation is conducted.
(VI) SFCM is able to conduct a thorough investigation and obtain relevant evidence in the absence of Complainant's cooperation.

If SFCM determines that it can honor the student's request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged California Misconduct and prevent its recurrence without initiating formal action against the alleged Respondent or revealing the identity of Complainant. These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. SFCM shall also take immediate steps to provide for the safety of Complainant while keeping Complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. Complainant shall be notified that the steps SFCM will take to respond to the complaint will be limited by the request for confidentiality.

If SFCM determines that it must disclose Complainant's identity to the Respondent or proceed with an investigation, it shall inform Complainant prior to making this disclosure or initiating the investigation. SFCM shall also take immediate steps to provide for the safety of Complainant where appropriate. In the event Complainant requests that SFCM inform Respondent that the student asked SFCM not to investigate or seek discipline, SFCM shall honor this request.

E. Emergency Removal

For sex discrimination and sex-based harassment, SFCM retains the authority to remove a Respondent from SFCM's education program or activity on an emergency basis, where SFCM:

1. Undertakes an individualized safety and risk analysis;
2. Determines that an immediate and serious threat to the health or safety of a Complainant or any student, employee, or other individual arising from the allegations of sex discrimination justifies a removal; and
3. Provides the Respondent with notice of and an opportunity to challenge the decision immediately following the removal.

The Respondent may challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. SFCM will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable. For all other Prohibited Conduct, SFCM may defer to its interim suspension policies for students and administrative leave for employees.

F. Administrative Leave

The San Francisco Conservatory of Music retains the authority to place an employee Respondent on administrative leave during a pending complaint process under this Policy, with or without pay, as appropriate. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

G. Student Withdrawal or Employee Resignation While Matters Are Pending

If a student or employee Respondent permanently withdraws or resigns from SFCM with unresolved allegations pending, SFCM will consider whether and how to proceed with the resolution process. SFCM will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A student Respondent who withdraws or leaves while the process is pending may not return to SFCM without first resolving any pending matters. Such exclusion applies to all SFCM campuses and programs.

An employee Respondent who resigns with unresolved allegations pending is not eligible for rehire with SFCM and the records retained by the Title IX Coordinator will reflect that status. All SFCM responses to future inquiries regarding employment references for that individual may include that the former employee resigned during a pending disciplinary matter.

H. Dismissal of a Complaint

Before dismissing a complaint, SFCM will make reasonable efforts to clarify the allegations with the Complainant.

Except for cases of California Misconduct or California Sex-Based Harassment in Employment, SFCM may dismiss a complaint if:

1. SFCM is unable to identify the Respondent after taking reasonable steps to do so;
2. The Respondent is not participating in SFCM's education programs or activities and/or is not employed by SFCM;
3. The Complainant voluntarily withdraws their complaint in writing and the Title IX Coordinator declines to initiate a complaint;
4. The Complainant voluntarily withdraws some but not all allegations in a complaint in writing, and SFCM determines that~~,~~ the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this Policy; or

5. SFCM determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under this Policy.

Upon dismissal, SFCM will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then SFCM will notify the parties simultaneously, in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification.

SFCM will notify the Complainant that a dismissal may be appealed on the basis outlined in the Appeals section. If dismissal occurs after the Respondent has been notified of the allegations, then SFCM will also notify the Respondent that the dismissal may be appealed on the same bases. If a dismissal is appealed, SFCM will follow the procedures outlined in the Appeals section of these procedures.

When a complaint is dismissed, SFCM will, at a minimum:

1. Offer supportive measures to the Complainant, as appropriate;
2. If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
3. Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within SFCM education program or activity.

A Complainant who decides to withdraw a complaint or any portion of it may later request to reinstate it or refile it.

Complaints of California Misconduct and California Sex-Based Harassment in Employment must be processed unless a Complainant's request for confidentiality pertaining to California Misconduct can be honored, as set forth above in Section D.

IX. Referrals for Other Misconduct

The San Francisco Conservatory of Music has the discretion to refer complaints of misconduct not covered by this Policy for handling under any other applicable SFCM policy or code. As part of any such referral for further handling, SFCM may use evidence already gathered through any process covered by this Policy.

X. Consolidation of Complaints

SFCM may consolidate Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of

the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular ‘‘party,’’ ‘‘Complainant,’’ or ‘‘Respondent’’ include the plural, as applicable. Where multiple policies may be implicated by the same set of facts or circumstances, SFCM may bifurcate the proceedings in accordance with the requirements of the individual policies.

SFCM also reserves the right to use this Policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this Policy in instances when the conduct is associated with an alleged issue of prohibited conduct under this Policy. The Title IX Coordinator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Student Services and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this Policy.

XI. Options for Resolution

There are multiple ways to resolve a complaint or report of sex discrimination. During the resolution of a complaint, the Title IX Coordinator will determine whether to implement reasonable supportive measures designed to assist all parties (Complainants and Respondents) and community members in maintaining access to and participation in SFCM’s educational programs, services and activities during the resolution of the complaint.

A. Support-Based Resolution

A support-based resolution is an option for a Complainant who does not wish SFCM to take any further steps to address their concern, and when the Title IX Coordinator determines that another form of resolution, or further action, is not required. Some types of support that may be appropriate include but are not limited to: adjustments or changes to class schedules; moving from one residence hall room to another; adjusted deadlines for projects or assignments; adjustments to work schedule or arrangements; escorts to and around campus; and/or counseling.

A support-based resolution does not preclude later use of another form of resolution, for example if new information becomes available to SFCM and the Title IX Coordinator determines there is need for additional steps to be taken, or the Complainant later decides to pursue a Resolution Agreement or investigation and decision making.

B. Agreement-Based Resolution

Agreement-Based Resolution is an alternative where the Parties each voluntarily agree to resolve the complaint in a way that does not include an investigation and does not include

any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If SFCM offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Title IX Coordinator must still take other prompt and effective steps as needed to ensure that sex discrimination does not continue or recur within the education program or activity.

Any party may design the proposed agreement between the parties. The Title IX Coordinator must approve of the use of the Agreement-Based Resolution process and approve the final agreement between the parties. Although not generally a part of Agreement-Based Resolution, under California law mediation is not permitted for California Misconduct. The Title IX Coordinator must specifically determine that it is permissible for resolving California Sex-Based Harassment in Employment. Agreement-Based Resolution may be initiated at any time prior to the release of the final determination. Because Agreement-Based Resolution does not involve an investigation, there is not any determination made as to whether a Respondent violated this Policy.

The Title IX Coordinator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through an alternate process.

Initiating the Agreement-Based Resolution Process

Prior to the initiation of Agreement-Based Resolution, the Title IX Coordinator will provide the Parties written notice that includes:

1. The specific allegation and the specific conduct that is alleged to have occurred;
2. The requirements of the Agreement-Based Resolution process;
3. Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be maintained or could be shared, and whether SFCM could disclose such information for use in a future SFCM grievance process, including an investigation and resolution process arising from the same or different allegations, as may be appropriate;
4. Notice that an agreement resulting from the Agreement-Based Resolution process is binding only on the parties and is not subject to appeal;
5. Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
6. A statement indicating that the decision to participate in the Agreement-Based Resolution process does not presume that the conduct at issue has occurred;
7. A statement that the Respondent is presumed not responsible for violating this Policy, unless Respondent admits to violations of this Policy;

8. An explanation that all parties may be accompanied by an advisor of their choice, who may be a parent, colleague, friend, or attorney;
9. A statement that any party has the right to withdraw from the Agreement-Based Resolution process and initiate or resume grievance procedures at any time before agreeing to a resolution;
10. The date and time of the initial meeting with staff or the Title IX Coordinator, with a minimum of 3 days' notice;
11. Information regarding Supportive Measures, which are available equally to the parties; and
12. The potential terms that may be requested or offered in an Agreement-Based Resolution agreement.

Facilitating an Agreement

If all Parties are willing to explore Agreement-Based Resolution, the Title IX Coordinator will then meet separately with each party to discuss the Agreement-Based Resolution process and facilitate an agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Agreement-Based Resolution process, or the Title IX Coordinator does not believe that the terms of the agreement or continuing the Agreement-Based Resolution process is appropriate, the Title IX Coordinator may decide that the reported conduct will instead be addressed through the investigation and decision-making process. The Title IX Coordinator will inform the parties of such decision, in writing.

Agreement-Based Resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. The Investigator or Decisionmaker for the matter may not facilitate an Agreement-Based Resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

1. An agreement that the Respondent will change classes or housing assignments;
2. An agreement that the Parties will not communicate or otherwise engage with one another;
3. An agreement that the Parties will not contact one another;
4. Completion of a training or educational project by the Respondent;
5. Completion of a community service project by the Respondent;
6. An agreement to engage in a restorative justice process or facilitated dialogue; and/or
7. discipline agreed upon by all parties.

To facilitate Agreement-Based Resolution, information shared by any party will not be used in any related resolution process of the same complaint under this policy. No evidence concerning the allegations obtained within the Agreement-Based Resolution process may be disseminated to any outside person, provided that any party to the Agreement-Based Resolution process may generally discuss the allegations under investigation with a parent, advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an Agreement-Based Resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

Finalizing the Resolution Agreement

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Title IX Coordinator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The Agreement-Based Resolution process is generally expected to be completed within thirty (30) days and may be extended by the Title IX Coordinator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate.

Any violations of the terms of the Resolution Agreement may result in disciplinary action.

XII. Investigation & Decision-Making Resolution

This Policy includes two types of investigation and decision-making procedures.

1. Procedures covering all Prohibited Conduct matters **except for** sex-based harassment involving a student as a party (106.45 Procedures); and
2. Procedures covering sex-based harassment involving a student as a party (106.46 Procedures).

The following information applies to both types of the investigation and decision-making procedures:

Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the Title IX Coordinator or designated sanctioning officer will issue an appropriate sanction or

responsive action as to those violation(s) and continue processing remaining allegations of Prohibited Conduct, if any.

Assignment of the Investigator and/or Decisionmaker

SFCM will assign a trained Investigator and/or Decisionmaker to conduct an adequate, reliable, and impartial investigation and determination, as applicable, in a reasonably prompt timeframe. SFCM reserves the right to utilize internal or external Investigators and Decisionmakers. As required by California law, those involved in the process shall have undergone a comprehensive, trauma-informed training program for campus officials involved in investigating and adjudicating sexual assault, domestic violence, dating violence, and stalking cases.

All parties have the option to participate in the investigation, and each have the same rights during the resolution process including the right to an advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the Investigator prior to the Investigator providing the final report to the Decisionmaker.

The Investigator will establish deadlines for submission of names of relevant witnesses and submission of evidence and communicate those deadlines to the parties in writing.

Conflict of Interest or Bias

After a Notice of Investigation, as described below, is issued to all parties, any party may object to the participation of the Title IX Coordinator or designated Investigator on the grounds of a demonstrated bias or actual conflict of interest. All parties will have three (3) days from the date of the Notice of Investigation to object to the selection of the Investigator or the Title IX Coordinator. Objections to the Title IX Coordinator are to be made, in writing, to the Associate Vice President of Human Resources and Administration or the Associate Dean for Student Affairs. Objections to the appointment of the Investigator are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Title IX Coordinator or the Investigator, that individual shall be replaced. Any change will be communicated in writing.

Nature of Process

The investigation and adjudication of alleged Prohibited Conduct under this Policy is not an adversarial process between a Complainant, a Respondent, and the witnesses, but rather a process for SFCM to comply with its obligations under existing law. The investigation and adjudication shall provide all parties with appropriate due process and reach reasonable conclusions based on the evidence collected.

Timeline

SFCM strives to complete the investigation process within ninety (90) days from the date of the Notice of Investigation and shall communicated with the Parties regarding the anticipated timeline. The communicated timeline information shall include:

(I) The period during which the institution shall conduct any investigation.

(II) The date by which the parties shall be notified of the outcome of any investigation.

(III) The deadlines and process for parties to appeal, if the institution's grievance procedures include an appeals process.

The Investigator and/or Title IX Coordinator shall provide the Parties with periodic status updates, in writing.

Timeline Extensions

The timeline for any part of the resolution process may be extended for good cause by the Title IX Coordinator, who shall provide for the prompt communication of that information to the Parties. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the new anticipated timeframes for the major stages of the complaint process, including the anticipated date(s) of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

SFCM shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

Burden of Evidence

SFCM has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. Complainant does not have the burden to prove, nor does Respondent have the burden to disprove, the underlying allegation or allegations of Prohibited Conduct. Any party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from SFCM and does not indicate responsibility.

Standard of Proof

The standard of proof used in any investigation and decision-making process is the preponderance of the evidence standard, which means that the allegation(s) are more likely than not to have occurred.

Written Notice of Meetings

SFCM will provide to a party or witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

Evidence Gathering

A. Interviews

The Investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person, or via video conference. When a party meets with an Investigator, the Investigator will ask questions related to the allegations in the complaint and a party is given the opportunity speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This will include inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The Investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

B. Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible. This means this information will not be accessed or considered, except by SFCM to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Evidence provided to an employee designated by SFCM as exempt from internal reporting under this Policy, unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure;
3. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless SFCM obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged

sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

5. For cases of California Misconduct and California Sex-Based Harassment in Employment, an investigator or decisionmaker shall not consider the past sexual history of Complainant or Respondent except in the limited circumstances. Specifically, they shall not consider:

   i. Prior or subsequent sexual history between Complainant and anyone other than Respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by Respondent were inflicted by another individual.

   ii. The existence of a dating relationship or prior or subsequent consensual sexual relations between Complainant and Respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations. Where the investigator or decisionmaker allows consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between Complainant and Respondent pursuant to this paragraph, the mere fact that Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient, by itself, to establish that the conduct in question was consensual.

Before allowing the consideration of any evidence proffered pursuant to this section, the investigator or decisionmaker shall provide a written explanation to the parties as to why consideration of the evidence is consistent with this paragraph.

XIII. Investigation & Decision-Making Procedures for All Prohibited Conduct Under this Policy Except Sex-Based Harassment Involving a STudent Party (106.45 Procedures)

This procedure is for all allegations of Prohibited Conduct being investigated and determined under this Policy, except for sex-based harassment involving a student as a party.

A. Notice of Allegations and Investigation

Prior to the start of an investigation, the Parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Investigation shall be provided to all parties.

The Notice shall include, at a minimum:

1. SFCM's resolution procedures, including the applicable determination procedure, and any alternative resolution process, with a link to the full procedures;
2. The specific allegations, including the identity of the parties, and dates and location if known;
3. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
4. A statement that Retaliation is prohibited;
5. Contact information for the assigned Investigator and Decisionmaker, as well as the process for raising a challenge to the appointed Investigator, Decisionmaker, or Title IX Coordinator, and the deadline for doing so;
6. A statement indicating the expected length of the major stages of the resolution process, as well as any applicable deadlines;
7. Whether the Investigator, or another individual, shall serve as the Decisionmaker;
8. A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the investigation and decision-making procedures. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
9. A statement indicating that the parties may have an advisor of their choice who may be a friend, colleague, therapist, or attorney;
10. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response;
11. A statement that SFCM prohibits knowingly making false statements or knowingly submitting false information during grievance procedures, with a link to the relevant policy(ies); and
12. The date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

B. Individual Interviews

The Investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Only the Investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described above in this Policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not

discuss or otherwise share any information learned as part of those proceedings, and may be subject to further SFCM discipline for failure to do so.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at SFCM's discretion, with all participants joining virtually through a video conferencing option.

The SFCM may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties. SFCM will share expectations of decorum to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all parties and advisors. SFCM has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable SFCM rules.

C. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each party and their advisor, if any, the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence, or names of witnesses. Given the sensitive nature of the information provided, SFCM will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of 5 days to inspect and review the evidence and submit a written response in writing to the Investigator. SFCM will provide access to copies of the parties' written responses to the Investigator to all parties and their advisors, if any. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the Investigator, the Investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their advisors. The parties shall have 5 days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the Investigator shall have the discretion to accept relevant

evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the parties' written responses before finalizing the investigation report.

The Parties may each submit a written impact statement prior to the conclusion of the resolution process. The impact statement is not evidence and will be reviewed only after a determination of responsibility is reached.

D. Investigation Report

The Investigator, who may also serve as the Decisionmaker, shall evaluate the relevant and not impermissible evidence and make a factual determinations regarding each allegation, and also determine whether a violation of the Policy occurred. The Investigator may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible, or declined to participate. The Investigator will not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to questions. The Investigator shall prepare a report which shall include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
5. Findings of fact for each allegation, with rationale; and
6. Conclusions regarding which section of this Policy or other SFCM policy, if any, the Respondent has or has not violated, with rationale.

This report shall be provided to the Title IX Coordinator. In the event that the Decisionmaker has determined that a violation of SFCM policy has occurred, the Title IX Coordinator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Title IX Coordinator shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

The Title IX Coordinator shall then provide the parties and their advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

1. A statement of, and rationale for, any disciplinary sanctions SFCM imposed on the Respondent;
2. A statement as to whether remedies will be provided to the Complaint;
3. For the Complainant, a description of any remedies that apply to the Complainant;
4. SFCM 's procedures and the permitted reasons for the parties to appeal, including identifying the Appeals Officer; and
5. How to challenge participation by the Appeals Officer for bias or conflict of interest, which the Title IX Coordinator will resolve in their sole discretion.

The determination regarding responsibility becomes final either on the date that SFCM provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

XIV. Investigation & Decision-Making Procedures in Cases of Sex-Based Harassment Involving a Student (106.46 Procedures)

This procedure is for all allegations of sex-based harassment involving a student as a party including Quid Pro Quo, Hostile Environment, California Sex-based Harassment in Employment (if a student is a party), Sexual Assault, Dating Violence, Domestic Violence, Stalking, California Sexual Violence, California Sexual Exploitation, regardless of the status of the other party. This section shall refer to this collectively as "Sex-Based Harassment Involving a Student."

A. Notice of Investigation

Prior to the start of an investigation, the Parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Investigation shall be provided to all parties.

The Notice shall include, at a minimum:

1. SFCM's investigation procedures, including the applicable determination procedure that will be used in this investigation and resolution, and a link to the relevant policies;
2. Information about the agreement-based resolution procedures, with a link to the full procedures;
3. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
4. A statement that retaliation is prohibited;

5. A statement indicating whether the Investigator, or another individual, shall serve as the Decisionmaker;
6. At the discretion of SFCM, the Investigator may serve as the Decisionmaker;
7. A statement indicating the expected length of the major stages of the resolution process, as well as any applicable deadlines;
8. A statement informing the parties that the Investigator will establish and communicate, in writing, all investigation deadlines, including the final deadlines for submitting names of witnesses, evidence, and relevant questions to ask a party or witness. These deadlines may be extended by the Title IX Coordinator for good cause, and any changes will be provided, in writing, to the parties, along with the rationale for the revised deadline(s);
9. A statement explaining the process for raising a challenge to the appointed resolution officer or Title IX Coordinator, and the deadline for doing so;
10. A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process. Prior to such a determination, the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decisionmaker;
11. A warning that the Decisionmaker may exclude evidence at the hearing if it was not presented during the investigation.
12. A statement that the parties may have an advisor of their choice who may be a friend, parent, therapist, colleague, or attorney;
13. A statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigation report that accurately summarizes this evidence. The identification of the Decisionmaker; and
14. The date and time of the initial interview with the Investigator, with a minimum of five (5) days' notice.

The Decisionmaker shall then determine, based upon the factual findings, whether a violation of this Policy occurred. The Decisionmaker shall prepare a report which shall include:

B. Individual Interviews

The Investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility, and to request of the parties the names of relevant witnesses and relevant evidence. Only the Investigator and the party or witness may attend each individual interview. A party's advisor may attend these meetings, subject to the rules described above. Additional attendees may be permitted at the discretion of the Title IX Coordinator in connection with an approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are

expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of the grievance process and may be subject to further discipline for failure to do so.

The Investigator will then gather from parties, witnesses, and other sources, all relevant evidence.

At the initial interview with each party, the Investigator will invite the parties to provide, in writing and in advance of the individual interviews, questions to ask of the parties and witnesses that are relevant and not otherwise permissible, including questions exploring credibility. Upon receiving the question list, the Investigator will determine whether a proposed question is relevant and not otherwise impermissible and will explain, in writing in advance of the individual interview, any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Investigator must give a party an opportunity to clarify or revise any question that the Investigator has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, the question will be asked.

An Investigator will not permit questions that are unclear or harassing of any party or witness being questioned.

SFCM will share expectations of decorum to be observed at all times in any meeting or proceeding under this Policy. These expectations are applied equally to all parties and advisors. SFCM has the discretion to remove, with or without prior warning, from any meeting or proceeding an involved party, witness, or advisor who does not comply with these expectations and any other applicable SFCM rules.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at SFCM's discretion, with all participants joining virtually through a video conferencing option. All interviews will be recorded.

The Investigator will determine, in their sole discretion, whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to an interview. The Investigator may conduct follow-up interviews as they deem appropriate.

C. Investigator Determination of Relevance

The Investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the sole discretion to determine which parties and witnesses to call to individual follow-up meetings.

The Investigator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance. Character evidence is not relevant evidence, and therefore will not be considered. If the Decisionmaker is not the Investigator, the Decisionmaker is not bound by the Investigator's determinations about relevance.

D. Evidence Review

At the conclusion of all fact-gathering, the Investigator will provide each party and their advisor the opportunity to review all relevant and not otherwise impermissible evidence gathered. In the event that an audio or audiovisual recording is shared, the recording will only be made available at an in-person and monitored meeting on campus, and will not otherwise be transmitted for review, so as to maintain the privacy of those participating in the process.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence or names of witnesses. Evidence not provided during the investigation process will not be considered by the Decisionmaker. Given the sensitive nature of the information provided, SFCM will facilitate this review in a secure manner. None of the parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have a minimum of 5 days to inspect and review the evidence and submit a written response in writing to the Investigator. The Title IX Coordinator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence.

When deemed appropriate by the Investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence was submitted as part of evidence review, or is gathered during this second fact-gathering period, the new relevant evidence will be made available for review by the parties and their advisors. The parties shall have 5 days to provide a response to the newly-gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The Investigator will consider the parties' written responses before finalizing the investigation report. The Investigator shall prepare a report which shall include:

1. A description of the allegations of Prohibited Conduct;
2. Information about the policies and procedures used to evaluate the allegations;
3. A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, and methods used to gather other evidence;
4. An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation; and
5. Summaries of facts gathered for each allegation.

F. Hearing Procedures

The purpose of a hearing is for a Hearing Officer to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this policy. SFCM expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via videoconferencing. The Title IX Coordinator may determine that the hearing will continue in the absence of any party or any witness.

SFCM will appoint a Hearing Officer, who may be the same person as the Title IX Coordinator or Investigator, who will determine whether a violation of SFCM policy has occurred. The Hearing Officer shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The Hearing Officer shall not draw an inference about the determination regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions posed.

Each hearing shall be recorded by SFCM and this recording will be considered the only official recording of the hearing. No other individual is permitted to record while the hearing is taking place. The recording is the property of SFCM but shall be available for listening until the conclusion of the appeals process to Complainant, Respondent, their respective advisors, Hearing Officer, and Appeal Officer by contacting the Title IX Coordinator.

<u>Prior to the Hearing</u>

The parties and the Hearing Officer all have the right to call witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call witnesses must submit the name of the witness at least five (5) days in advance of the hearing.

Only witnesses who participated in the investigation will be permitted to participate in the hearing, unless the witness was otherwise unknown or not known to have

relevant information during the course of the investigation. If the witness did not participate in the investigation, the party must also provide the reason the witness was not interviewed by the investigator, and what information the witness has that is relevant to the allegations. The Hearing Officer will then determine whether the witness has relevant information and if there is sufficient justification for permitting the witness to participate. The Hearing Officer may instead send the case back to the investigator to interview the newly proffered witness prior to the hearing taking place.

A list of witnesses approved by the Hearing Officer will be provided to the parties at least three (3) days prior to the hearing.

Three (3) days prior to the hearing, each party shall submit to the Hearing Officer a preliminary list of questions they wish to pose to the other party, or to a witness. If the Hearing Officer determines that any questions are not relevant or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The Hearing Officer must give a party an opportunity to clarify or revise any question that the Hearing Officer has determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

Advisor

Each Party is entitled to be accompanied by one Advisor at the hearing. The role of the Advisor is to assist the party with understanding and navigating the proceedings. The Advisor may not advocate for, respond for, or otherwise speak on behalf of, a party during the hearing. In the event that a party does not appear for the Hearing, the Advisor for that party may not participate in the hearing or submit questions to be asked on behalf of the party.

Hearing Participation Guidelines

The Hearing Officer shall have the authority to maintain order and decorum at the hearing, including responding to disruptive or harassing conduct, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the Hearing Officer removes an Advisor, the Hearing Officer will have the discretion to appoint another Advisor for the remainder of the hearing. The Hearing Officer also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing.

Statements, Questioning and Presentation of Evidence

During the hearing, each party will be permitted to provide an introductory statement. Following introductory statements, the Hearing Officer will call parties and witnesses for questioning. The order of questioning shall be determined by the Hearing Officer. The Hearing Officer will pose questions to the parties and witnesses including the questions the Hearing Officer approved to be asked that were submitted by each party prior to the hearing. Each party will then be provided an opportunity to submit follow-up written questions to the Hearing Officer for the Hearing Officer to pose to the other party or witnesses. If the Hearing Officer determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the Hearing Officer shall exclude the question and explain the reason for the exclusion of the question at the hearing and offer an opportunity to the party to reframe or resubmit the question. Questions that are unclear or harassing of the party or witness being questioned will not be permitted.

Only the Hearing Officer is permitted to ask questions of parties and witnesses. Neither party may directly question the other party or witness. Advisors are not permitted to directly or indirectly question the other party or witness.

Following the questioning of parties and witnesses, each party will be permitted to provide a closing statement. An advisor is not permitted to provide a closing statement on behalf of their party.

G. Hearing Officer's Report

Following the hearing, the Hearing Officer shall prepare a determination report. All findings shall be made by a preponderance of the evidence, meaning more likely than not. To the extent credibility determinations need to be made, such determinations shall not be based on a person's status as complainant, respondent, or witness.

The determination report will include:

1. A description of the sex-based harassment and other allegations if applicable;
2. A reference to the policies and procedures used to evaluate the allegations;
3. Description of all procedural steps taken to date;
4. The Hearing Officer's evaluation of the relevant and not otherwise impermissible evidence along with the finding of facts;
5. Determinations for each allegation of any policy violation(s), with the rationale;
6. Sanction determination (if applicable);
7. Whether remedies will be provided; and
8. The procedures for an appeal.

The Hearing Officer's report shall be provided to the Title IX Coordinator. If the Hearing Officer determines that there is no finding of responsibility, the Title IX Coordinator shall communicate the findings to each party, and their advisor should the party wish the

advisor to receive it, a written Notice of Outcome along with a copy of the Hearing Officer's report, to the parties, together with procedures for appeal.

If there is a finding of responsibility, the Title IX Coordinator shall contact the appropriate sanctioning officer who will determine the sanction and notify the Title IX Coordinator of the sanctioning determination. The Title IX Coordinator will then provide each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome regarding the Hearing Officer's decision, including the Hearing Officer's report. The Title IX Coordinator will also provide written communication to the complainant regarding any appropriate remedies.

In the event that the Decisionmaker has determined that a violation of SFCM policy has occurred, the Title IX Coordinator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Title IX Coordinator shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

1. *Sanctioning Officer or Designee for Student Respondents*: Associate Dean of Student Affairs;[TD1] [TD2] [TD3]
2. *Sanctioning Officer or Designee for Staff Respondents:* Associate VP of Human Resources & Administration; or
3. *Sanctioning Officer or Designee for Faculty:* Dean.

The Title IX Coordinator shall then provide the parties and their advisors, if any, with a written Notice of Outcome and a copy of the Decisionmaker's report.
The Notice of Outcome shall include:

1. Any disciplinary sanctions for the Respondent;
2. Whether remedies will be provided;
3. And the procedures for appeal.

In addition, the Complainant shall be informed of any remedies that apply to the Complainant.

The Title IX Coordinator will provide each party, and their advisor, written communication regarding the decision, the sanction determination, and the procedures for appeal, along with a copy of the Investigation Report. The Title IX Coordinator will also provide written communication to the Complainant regarding any appropriate remedies.

XV. Remedies & Sanctions for All Prohibited Conduct

Remedies must be designed to restore or preserve equal access to SFCM's education program or activity. *List the possible disciplinary sanctions and remedies that* SFCM *may implement following any determination of responsibility.*

A Respondent found responsible for a violation of this Policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident are underway or anticipated.

Possible sanctions and remedies that SFCM may implement following any determination of responsibility include: expulsion, withdrawal of an awarded degree, a no contact order, written warning, suspension, a fine, restitution, community service, probation, reference to counseling, termination of employment, and notation in the Respondent's official student or personnel file of the fact of a violation and the sanction.

The Title IX Coordinator is responsible for effective implementation of any remedies.

Failure to Complete Sanctions/Comply with Responsive Actions

All responding parties are expected to comply with conduct sanctions/responsive actions/ corrective actions within the timeframe specified by SFCM. Responding parties needing an extension to comply with their sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions, such as suspension, expulsion, termination, or a transcript notation. Students who fail to comply will be referred to the Office of Student Affairs in accordance with the policies contained in the SFCM's Collegiate Student Handbook. Employees who fail to comply will be referred to Human Resources in accordance with policies contained in the Employee Handbook.

XVI. Appeals

Determinations may be appealed in writing by either party. Appeals will be sent to the Title IX Coordinator, who will then send the appeal to the designated Appeals Officer assigned to conduct a written review of the appeal(s) and to make a final determination. Appeals must be in writing and filed within ten (10) days following the issuance of the Notice of Outcome.

When an appeal is filed, the other party shall be notified and provided with a copy of the filed appeal within one (1) day and have five (5) days to respond to the appeal in writing. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.

Within three (3) days of an Appeal Officer being assigned, either party may provide written objection to the Appeal Officer on the basis of an actual bias or conflict of interest. Any objection is to be sent to the Title IX Coordinator. Should the Title IX Coordinator determine

that there is an actual bias or conflict of interest, the Title IX Coordinator will appoint another Appeal Officer.

Appeals may be filed only on the following three grounds:

1. **Procedural Error**: A procedural error occurred would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal; or
2. **New Evidence**: New evidence or information has arisen that was not available or known to the party during the investigation, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal; or
3. **Actual Conflict of Interest or Demonstrated Bias**: The Title IX Coordinator, Investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

The Appeal Officer will make a determination regarding the appeal and communicate that decision, along with a rationale for the decision to the Title IX Coordinator who will communicate the Appeal Officer's decision to the parties. The decision of the Appeals Officer is final.

XVII. Prohibition Against Retaliation

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

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

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination above (106.45 procedures).

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

XVIII. Record Retention

In implementing this Policy, records of all reports and resolutions will be kept by the Title IX Coordinator in accordance with the applicable SFCM records retention schedule. All records will be afforded the confidentiality protections required by law, including but not limited to the Family Educational Rights and Privacy Act governing confidentiality of student information. This means that SFCM will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know and in order to process complaints under this Policy.

XIX. Additional Enforcement Information

Any person may report conduct prohibited by this Policy to the Title IX Coordinator or to the Depurty Title IX Coordinator for Employes or the Deputy Title IX Coordinator for Students. A complaint about the Title IX Coordinator may be made to:

Jonas Wright
Dean and VP of Academic Affairs
(415) 503-6212
Ann Getty Center
50 Oak Stree,
San Francisco, CA 94102
Suite 208

Employees are not required to report concerns directly to their immediate supervisors. Concerns about violations of this Policy may be reported to:
The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

Questions about Title IX may be referred to the Title IX Coordinator or to the assistant secretary for civil rights:

Office of Civil Rights
https://www2.ed.gov/about/offices/list/ocr/index.html

San Francisco Office
U.S. Department of Education
50 United Nations Plaza
Mail Box 1200, Room 1545
San Francisco, CA 94102[

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment, discrimination, and retaliation, including sex-based harassment, in employment.

U.S. Equal Employment Opportunity Commission (EEOC)
https://www.eeoc.gov/contact-eeoc
Phillip Burton Federal Building & U.S. Courthouse
450 Golden Gate Avenue
San Francisco, CA 94102
(800) 669-4000
California Civil Rights Division (formerly DFEH)
https://calcivilrights.ca.gov/
555 12th Street, Suite 2050
Oakland, CA 94607
(800) 884-1684

XX. Policy Review & Revision

These policies and procedures will be reviewed and updated regularly by the Title IX Coordinator. The Title IX Coordinator will submit modifications to this Policy in a manner consistent with institutional policy upon determining that changes to law, regulation or best practices require policy or procedural alterations not reflected in this Policy and procedure. Procedures in effect at the time of its implementation will apply. The Policy definitions in effect at the time of the conduct will apply even if the Policy is changed subsequently, unless the parties consent to be bound by the current Policy.

This Policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to SFCM website.

XXI. Key Definitions

Advisor: Each party has the right to choose and consult with an advisor of their choice at their own expense. The advisor may be any person, including a friend, family member, therapist, union representative, or an attorney. SFCM will not limit their choice of advisor. Parties in this process may be accompanied by an advisor of choice to any meeting or proceeding to which they are required or are eligible to attend. Except where explicitly stated by this Policy,

advisors shall not participate directly in the process. SFCM will provide the parties equal access to advisors; any restrictions on advisor participation will be applied equally.

An Advisor may not represent, advocate, or speak on behalf of a Complainant or Respondent. An Advisor may not disrupt or impede any resolution proceeding.

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

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

It shall not be a valid excuse that the alleged lack of affirmative consent that Respondent believed that Complainant consented to the sexual activity under either of the following circumstances:

(A) Respondent's belief in affirmative consent arose from the intoxication or recklessness of Respondent;

(B) Respondent did not take reasonable steps, in the circumstances known to Respondent at the time, to ascertain whether Complainant affirmatively consented.

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

(A) Complainant was asleep or unconscious.

(B) 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.

(C) Complainant was unable to communicate due to a mental or physical condition.

Optional: Affirmative Consent cannot be given if any of the following are present: Incapacitation, Force, or Coercion.

Coercion/Force: Consent cannot be procured by the use of physical force, compulsion, threats, intimidating behavior, or coercion. Sexual activity accompanied by coercion or force is not consensual.

1. Coercion refers to unreasonable pressure for sexual activity. When someone makes it clear that they do not want to engage in sexual activity or do not want to go beyond a certain point of sexual interaction, continued pressure beyond that point can be considered coercive. The use of coercion can involve the use of pressure, manipulation, substances, or force. Ignoring objections of another person is a form of coercion.

2. Force refers to the use of physical violence or imposing on someone physically to engage in sexual contact or intercourse. Force can also include threats, intimidation (implied threats), or coercion used to overcome resistance.

Complaint: A complaint means an oral or written request to Title IX Coordinator that objectively can be understood as a request for SFCM to investigate and make a determination about alleged sex discrimination under this Policy. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email), by using the contact information listed on the Title IX/Equal Opportunity website (LINK), or as described in this Policy. Individuals who would like more information about filing a complaint are invited to contact the Title IX Coordinator for additional information.

Complainant: Any individual who has reported being or is alleged to be impacted by Prohibited Conduct as defined by this Policy, and who was participating in a SFCM program or activity (or attempting to participate) at the time of the alleged misconduct.

Confidential Resources: any individual identified by SFCM who receives information about conduct prohibited under this Policy in their confidential capacity and who are privileged under state law will not report prohibited conduct disclosed to them without written consent. Designation as a confidential resource under this Policy only exempts such individuals from disclosure to the Title IX Coordinator. It does not affect other mandatory reporting obligations under state child abuse reporting laws, the Clery Act as a campus security authority, or other laws that require reporting to campus or local law enforcement.

Decisionmaker: Trained professional designated by SFCM to decide responsibility, sanction, or appeals. A Decisionmaker may be one person or a panel of multiple people as determined by SFCM. When there is no hearing, the Investigator may be appointed as the Decisionmaker.

Disclosure or Report: A disclosure or report may be made by anyone, whether they learned about conduct potentially constituting sex discrimination under this Policy, or whether they

personally experienced such conduct. A person making a disclosure or report may or may not be seeking to initiate an investigation.

Education Program or Activity: SFCM's "education program or activity" includes all campus operations, including off-campus settings that are operated or overseen by SFCM: including, for example, field trips, online classes, and athletic programs; conduct subject to SFCM's disciplinary authority that occurs off-campus; conduct that takes place via SFCM-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, SFCM. Conduct that occurs outside of the education program or activity may contribute to a hostile environment within the program or activity.

Finding: a written conclusion by a preponderance of the evidence, issued by an Investigator, that the conduct did or did not occur as alleged.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, or being under the influence of drugs or alcohol. This Policy also covers a person whose incapacity results from temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs, or who are sleeping.

No-Contact Directive: A No Contact Directive is a document issued by SFCM administrator that is designed to limit or prohibit contact or communications between the parties. A No-Contact Directive may be mutual or unilateral, with the exception that a No-Contact Directive issued as either a sanction or remedy shall be unilateral, directing that the Respondent not contact the Complainant.

For cases of Sex-Based Harassment Involving a Student:

(i) when requested by a Complainant or otherwise determined to be appropriate, SFCM shall issue an interim, unilateral no-contact directive prohibiting the Respondent from contacting the complaint during the pendency of the decision-making process under this Policy, including any appeal.

(ii) SFCM shall not issue an interim mutual no-contact directive automatically, but instead shall consider the specific circumstances of each case to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. Upon issuance of an interim mutual no-contact directive, SFCM shall provide the Parties with a written justification for the directive and an explanation of the terms of the directive, including

the circumstances, if any, under which a violation could be subject to disciplinary action.

Notice: All notices under this Policy are written and sent to the student or employee's assigned SFCM email address or delivered via Certified Mail to the local or permanent address(es) of the parties as indicated in official SFCM records, or personally delivered to the intended recipient.

Remedies: Remedies means measures provided, as appropriate, to a Complainant or any other person SFCM identifies as having had their equal access to SFCM 's education program or activity limited or denied by sex discrimination or other prohibited conduct covered by this Policy. These measures are provided to restore or preserve that person's access to the education program or activity after a SFCM determines that sex discrimination occurred. Only the Complainant will be informed of any remedies pertaining to them. Some examples are academic support and/or opportunity to retake a class or resubmit work or time extensions on course or degree completion, or non-academic support such as counseling, or changes to work assignments or locations. The Title IX Coordinator is responsible for implementation of remedies.

Respondent: an individual, or group of individuals such as a student organization, who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct under this policy; or retaliation for engaging in a protected activity.

Sanctions: One or more of the sanctions or disciplinary steps listed here may be imposed on a Respondent who is found responsible for a violation of SFCM's policies. Sanctions or disciplinary steps not listed here may be imposed in consultation with the Title IX Coordinator.

The form of sanction or discipline used will depend on the nature of the offense, as well as any prior disciplinary history. Such discipline or sanction will be imposed pursuant to and in accordance with any and all applicable SFCM rules, policies, and procedures. Factors considered when determining a sanction/responsive action may include:

1. The nature, severity of, and circumstances surrounding the violation;
2. An individual's disciplinary history;
3. Previous grievances or allegations involving similar conduct;
4. The need for sanctions/responsive actions to bring an end to the sex discrimination or retaliation;
5. The need for sanctions/responsive actions to prevent the future recurrence of sex discrimination or retaliation;
6. The need to remedy the effects of the sex discrimination or retaliation on the victim and the campus community.

Student sanctions imposed are implemented when the decision is final (after an appeal, or, if there was no appeal, after the appeals period expires).

Faculty found responsible for violating this Policy may be referred to the appropriate academic official for any other applicable processes.

Possible sanctions and disciplinary steps for student Respondents include, but are not limited to the following:

1. Community Restitution, which may require individuals or groups to write a letter of apology, participate in a designated service project, or give an identified community (on- or off-campus) a number of service hours to be completed within a specified time period. When appropriate, the individual or group may be required to devise its own community restitution plan to be approved by the Associate Dean for Student Affairs or their designee.
2. Counseling Intervention which may be recommended and in some cases required when behavior indicates that the counseling may be beneficial to the student. Specific circumstances will determine an appropriate mental health service referral, which may include drug, alcohol, and other educational workshops. Such mandated interventions may be at the student's cost.
3. Financial Restitution, which may require individuals or groups to restore or replace within a specified time, property which has been damaged, defaced, lost, or stolen.
4. Revocation or Restriction of Privileges, for the use of designated SFCM facilities or programs.
5. Disciplinary Warning, including an official letter of reprimand to the student stating that the student's behavior is in violation of SFCM policy and may not recur.
6. Disciplinary Probation, which normally consists of an official notice that any further code violation may result in dismissal of the student or other serious penalty, or loss of privileges of the group. This is a serious warning which serves as a check on the student's or group's future behavior. Probation is given for a period of time and can limit the activities or privileges of a student or group.
7. Suspension from SFCM housing, which involves revocation of the privilege of living in SFCM housing for a certain period of time. Students or groups who have their housing contracts or leases terminated for disciplinary reasons are not entitled to a reimbursement.
8. Suspension, which generally involves the revocation of the privilege of attending SFCM and using its facilities for a certain period of time. Conditions for re-entry may be specified.
9. Dismissal, which means the student is permanently separated from SFCM. The student may not apply for readmission to any program.
10. Other common sanctions may include alteration of housing selection privileges; research assignments; project, program, and presentation requirements; revocation of

other SFCM privileges (e.g., access to computer systems, practice rooms, etc.); mandated follow-up meetings with SFCM officials; mandated supervised study hours. Once a sanction is issued, it is the responsibility of the respondent to ensure that the sanction is completed in a timely fashion. Failure to complete an assigned sanction will result in a supplemental sanction and will be handled administratively by the Associate Dean for Student Affairs or their designee. Students failing to complete judicial sanctions normally have their student accounts placed on hold (making them unable to register for classes or receive transcripts) until such sanction is completed.

Possible sanctions and disciplinary steps for staff and faculty Respondents include, but are not limited to:

- A Written Warning in the Employee File
- Demotion and/or removal of supervisory responsibilities
- Suspension of work without pay
- Termination of employmnent

Student: Any person who has (or will have) attained student status by way of:

1. Admission, housing or other service that requires student status.
2. Registration for one or more credit hours.
3. Enrollment in any non-credit, certificate or other program offered by SFCM.

Supportive Measures: Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

1. Restore or preserve that party's access to SFCM 's education program or activity, including measures that are designed to protect the safety of the parties or SFCM's educational environment; or
2. Provide support during SFCM's grievance procedures or during an alternative resolution process.

Supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; no-contact directives (which may be mutual or unilateral at the discretion of the Title IX Coordinator); and training and education programs related to sex-based harassment. Supportive measures are non-disciplinary and non-punitive. Supportive Measures will also be offered to Respondents when they are notified of the allegations.

Any Supportive Measures put in place will be kept confidential, except when doing so impairs the ability of SFCM to provide the Supportive Measures.
SFCM will offer and coordinate supportive measures as appropriate for the parties as applicable to restore or preserve their access to SFCM's program or activity or provide support during SFCM's alternative resolution process or grievance procedures. Prohibited Conduct under this Policy have the right to request supportive measures from SFCM regardless of whether they desire to make a complaint or seek alternative resolution.

A party may challenge SFCM 's decision to provide, deny, modify, or terminate supportive measures when such measures are applicable to them. An impartial employee will be designated to consider modification or reversal of SFCM 's decision to provide, deny, modify, or terminate supportive measures. When the individual providing Supportive Measures is a Deputy Title IX Coordinator or other individual identified by the Title IX Coordinator to provide Supportive Measures, the Title IX Coordinator will be designated to consider the challenge regarding supportive measures. The impartial employee will typically respond to the challenge within five (5) days.

The Title IX Coordinator has the discretion to implement or modify supportive measures. Violation of the parameters of supportive measures may violate existing codes or handbooks.

XXII. Resources

Privileged & Confidential Resources for Students

Health & Wellness

On Campus Counseling
https://sfcm.edu/discover/campus-life/health-and-wellness/counseling-services
Revi Airborne-Williams
Director of Counseling Services
Bowes Center for Performing Arts
200 Van Ness, Ste. 302
San Francisco, CA 94102
rawilliams@sfcm.edu
(415) 503-6325

GoHealth Urgent Care
https://www.gohealthuc.com/
415-746-1812

SFCM has partnered with GoHealth Urgent Care to provide easy, convenient access to health care for students, faculty and staff.

SHIP Benefits
812-360-2313
With its inclusive benefits and comprehensive coverage, the SFCM SHIP plan ensures that students have access essential healthcare services, including vision care, emergency assistance, preventive vaccines and mental health support. Additionally, the SFCM SHIP plan includes benefits such as telemedicine and telehealth services provided by HealthiestYu from Teladoc. All members have online access to licensed medical professionals 24/7 with no fees associated with the services.

Academic Supportive Measures

Ryan Brown
Dean
rbrown@sfcm.edu
(415) 503-6217[TD1]

Housing Arrangements, On and Off Campus
Timothy Dunn
Associate Dean for Student Affairs
tdunn@sfcm.edu
(415) 503-6281

Outside Reporting & Crisis Support
Rape & Trauma Services 24 Hour Helpline
(415) 206-8256

National Domestic Violence Hotline
(800) 799-7233

National Sexual Assault Hotline
(800) 656-4673

San Francisco Women Against Rape (Legal)
(415) 861-2024

Employees Exempt from Reporting, for Students
Revi Airborne-Williams, LMFT
Director of Counseling Services
Bowes Center for Performing Arts
200 Van Ness, Ste. 302
San Francisco, CA 94102
(415) 503-6325

Privileged & Confidential Resources for Employees
Employee Assistance Program

(800) 316-2796
mutualofomaha.com/eap

XXIII. Policy Dissemination

Shall disseminate this policy to:

(A) Each employee of the postsecondary institution.

(B) Each volunteer who will regularly interact with students.

(C) Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.