



SOUTHWESTERN LAW SCHOOL

# **Sexual Misconduct Policy**

Effective Date: August 14, 2020

# Southwestern Law School Sexual Misconduct Policy

## Table of Contents

I.	Introduction: Institutional Values, Community Expectations, and Notice of Non-Discrimination .....	2
II.	Scope of Policy .....	3
III.	Prohibited Conduct and Definitions .....	4
IV.	Confidentiality and Privacy .....	7
V.	Reporting .....	8
VI.	Care and Support Resources .....	11
VII.	Clery Act Compliance .....	14
VIII.	Title IX and Deputy Title IX Coordinators .....	14
IX.	Sanctions.....	15
X.	Additional Provisions .....	17
XI.	Records .....	19
Appendix A.	Resolution of Grievance Against Student .....	20
Appendix B.	Resolution of Title IX Grievance .....	38

## **I. Introduction: Institutional Values, Community Expectations, and Notice of Non-Discrimination**

It is the policy of Southwestern Law School (“Southwestern” or the “Law School”) to maintain an environment for students, faculty, administrators, staff, and visitors that is free of all forms of discrimination and harassment, including sexual misconduct. The Law School has enacted this Sexual Misconduct Policy (the “Policy”) to reflect and maintain its institutional values and community expectations, to provide for fair and equitable procedures for determining when this Policy has been violated, and to provide recourse for individuals and the community in response to violations of this Policy.

This Policy prohibits all forms of sexual or gender-based discrimination, harassment, and misconduct, including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation, and stalking. This Policy also prohibits retaliation against a person who reports, complains about, or who otherwise participates in good faith in, any matter related to this Policy. All of the foregoing conduct shall be referred to as “Prohibited Conduct.”

Southwestern does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title IX, Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, and other applicable statutes, as well as by this Policy. This Policy prohibits sexual harassment against Southwestern community members of any sex, sexual orientation, gender identity, or gender expression in the context of education or employment. This Policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

The Law School strongly encourages all members of our community to take action to maintain and facilitate a safe, welcoming, and respectful environment on campus. In particular, the Law School expects that all Southwestern community members will take reasonable and prudent actions to prevent or stop Prohibited Conduct. The Law School strongly supports individuals who choose to take such action and will protect such individuals from retaliation.

The Law School will respond to all reports of harassment or discrimination that fall under the scope of this policy. In addition, the Law School will fulfill its obligations under the Violence Against Women Reauthorization Act of 2013 (“VAWA”) amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) in response to reported Prohibited Conduct. The Law School’s process for investigating and responding to reported Prohibited Conduct are contained in the following appendices: Appendix A (Resolution of Grievance Against Student), and Appendix B (Resolution of Title IX Grievance). Students who are found to have violated this Policy, including its appendices, may face disciplinary action up to and including expulsion.

Southwestern also prohibits other forms of discrimination and harassment, including discrimination and harassment on the basis of race, color, national origin, ancestry, age, religious belief, marital status, physical or mental disability, medical condition, veteran status, or any other characteristic protected by federal, state, or local law. Such prohibited conduct is addressed in other Law School policies prohibiting discrimination, harassment and retaliation based on protected status (other than sex or gender).

### *The Law School's Commitment to Academic Freedom and Free Speech*

This Policy is consistent with the Law School's commitment to academic freedom and free speech. This commitment requires that the Law School protect community members' expression of ideas in their teaching, learning, and research, including advocacy that may be controversial, provocative, or unpopular. This protection extends to the expression of ideas, however controversial, in the classroom, residential life, and other campus-related activities.

It must be recognized, however, that this protection has its limits. This Policy defines those limits, and conduct which is found to be "harassing" is not consistent with the Law School's commitment to academic freedom and free speech. No member of the Law School community may escape responsibility for engaging in harassing conduct merely by labeling the conduct as "speech" or other expressive activity.

## **II. Scope of Policy**

This Policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this Policy. Where the date of the reported Prohibited Conduct precedes the effective date of this Policy, the definitions of misconduct in existence at the time of the report will be used. The Grievance Processes under this Policy, however, will be used to investigate and resolve all reports made or that are pending on or after the effective date of this Policy, regardless of when the incident(s) occurred.

When used in this Policy, "Complainant" refers to the individual who is identified as the subject of Prohibited Conduct. "Respondent" refers to the individual alleged to have engaged in Prohibited Conduct. A "Third-Party" refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a Complainant.

### **A. Persons Covered**

Appendix A (Resolution of Grievance Against Student) applies to students of the Law School whether applicants, admitted or currently enrolled. Appendix B (Resolution of Title IX Grievance) applies to 1) students of the Law School whether applicant, admitted, or currently enrolled and; 2) employees whether applicant, hired but not yet working, or employed, or another individual over whom the Law School exercises substantial control.

The Law School strongly encourages reports of Prohibited Conduct regardless of who engaged in the conduct. Even if the Law School does not have jurisdiction over the Respondent, the Law School will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

## B. Locations Covered

Appendix A (Resolution of Grievance Against Student) applies to all on-campus conduct and some off-campus conduct, described below. The Law School strongly encourages reports of Prohibited Conduct regardless of location. Even if the Policy does not apply to the conduct because of its location, the Law School will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

*On-Campus Conduct.* This Policy applies to conduct that occurs on-campus, including conduct which occurs on property owned or controlled by the Law School.

*Law School Programs.* This Policy applies to conduct that occurs in the context of Law School employment or education programs or activities, including, but not limited to, Southwestern study abroad or internship programs.

*Off-Campus Conduct.* This Policy also applies to conduct that occurs off-campus and has continuing adverse effects on, or creates a hostile environment for, any member of the Southwestern community on-campus or in any Law School employment or education program or activity.

Appendix B (Resolution of Title IX Grievance) applies to: 1) incident(s) that occurred on the Law School's campus, within the United States or; 2) incident(s) that occurred in a building owned or controlled by a student organization that is officially recognized by the Law School or; 3) incident(s) that were part of one of the Law School's programs or activities, such as part of a field trip or academic competition, and within the United States.

## III. **Prohibited Conduct**

This policy prohibits sex or gender-based discrimination, sexual or gender-based harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Non-Consensual Sexual Contact, and Sexual Exploitation. The specific definitions applicable to Appendix A are set forth therein. The specific definitions applicable to Appendix B are set forth therein.

### Definitions Of Key Terms

To provide clarity to all individuals as to the kinds of behavior that constitute Sexual Misconduct and/or Intimate Partner Violence under both this policy, including Appendix A and Appendix B, the Law School defines key terms which the Law School will use in evaluating whether Prohibited Conduct has occurred.

#### ***Affirmative Consent:***

“Affirmative Consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. Affirmative consent is required for any sexual activity to occur between two or more individuals. It is the responsibility of each person involved in the sexual activity to ensure that the person has the affirmative consent of the other(s) to engage in the sexual activity.

**It shall not be a valid excuse to allege lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances: (a) The Respondent's belief in affirmative consent arose from the**

**intoxication or recklessness of the Respondent, or (b) the Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.**

The following are essential elements of affirmative consent:

*Informed and reciprocal:* All Parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

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

*Mutually understandable:* Communication regarding consent consists of mutually understandable words and/or actions that indicate a mutually unambiguous willingness to engage in sexual activity. Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. **An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.**

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

*Not unlimited:* Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant. Even in the context of a current or previous intimate relationship, each Party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

*Age:* The state of California considers sexual intercourse with a minor to be unlawful. A person who engages in felony “unlawful” sexual intercourse as described in the California Penal Code does so without effective consent as defined by the Law School’s Sexual Misconduct Policy. Specifically, there is no effective consent under the Law School’s Sexual Misconduct Policy where one Party (the “minor”) is under the age of eighteen, and the other Party is more than three years older than the minor.

**Force:** The use or threat of physical violence to overcome an individual’s freedom of will to choose

whether or not to participate in sexual activity or provide consent. Consent obtained by force is not valid. For the use of force to be demonstrated, there is no requirement that a Complainant resist the sexual advance or request. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.

**Intimidation:** The use of implied threats to overcome an individual's freedom of will to choose whether or not to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

**Coercion:** The improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. Consent obtained through coercion is not valid. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other Party does not engage in the sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point can be coercive. The Law School will evaluate the following in determining whether coercion was used: (a) the frequency of the application of pressure, (b) the intensity of the pressure, (c) the degree of isolation of the person being pressured, and (d) the duration of the pressure.

**Incapacitation:** A state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. For example, an individual is incapacitated, and therefore unable to give consent, if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition.

Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's:

- (1) decision-making ability;
- (2) awareness of consequences;
- (3) ability to make informed judgments; or
- (4) capacity to appreciate the nature and the quality of the act.

**It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances: (a) the Complainant was asleep or unconscious; (b) the Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity; (c) the Complainant was unable to communicate due to a mental or physical condition.**

Whether the Respondent reasonably should have known that the Complainant was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Complainant's incapacity is irrelevant to this analysis, particularly where the Respondent's failure to appreciate the Complainant's incapacitation resulted from the Respondent's failure to take reasonable steps to determine the Complainant's incapacitation or where the Respondent's own incapacitation (from alcohol or drugs) caused the Respondent to misjudge the Complainant's incapacity.

It is the responsibility of each Party to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

#### F. Retaliation:

Retaliation includes materially adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy. Adverse action includes conduct that threatens, intimidates, harasses, coerces or in any other way seeks to discourage a reasonable person from engaging in activity protected under this Policy. Retaliation can be committed by or against any individual or group of individuals, not just a Respondent or Complainant. Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct. Retaliation may be present even where there is a finding of "no responsibility" on the allegations of Prohibited Conduct.

The Law School will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. An individual reporting Prohibited Conduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven.

## IV. **Confidentiality and Privacy**

### A. Privacy and Confidentiality: Understanding The Differences

The Law School is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Policy. The Law School also is committed to assisting students and third parties in making informed choices. With respect to any report under this Policy, the Law School will make reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. All Law School employees who are involved in the Law School's Sexual Misconduct response receive specific instruction about respecting and safeguarding private information.

Privacy and confidentiality have distinct meanings under this Policy.

#### *I. Privacy*

"Privacy" generally means that information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who "need to know" in order to assist in the



assessment, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the Law School’s FERPA policy. The privacy of an individual’s medical and related records may be protected by the Health Insurance Portability and Accountability Act (“HIPAA”), excepting health records protected by FERPA and by the California Confidentiality of Medical Information Act (“CMIA”), Cal. Civ. Code § 56.05 *et seq.* Access to an employee’s personnel records may be restricted by applicable California and federal law.

While there are certain limitations on privacy, the Law School generally will not release the names of the Complainant or Respondent to the general public without express written consent or absent another exception consistent with the law. The release of names will be guided by applicable law, including the Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

In addition, no information shall be released from a proceeding to enforce this Policy except as required or permitted by law and Law School policy.

## 2. Confidentiality

“Confidentiality” generally means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual.

The confidentiality of information shared by an individual with designated campus or community professionals generally is governed by California law, including California Evidence Code restrictions on disclosure of information by mental health providers, ordained clergy, rape crisis counselors, and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others.

An individual who seeks confidential assistance may do so by speaking with professionals who have a legally protected confidentiality. The confidential resources available to individuals on campus are listed in Section VII, below. Note, however, that these confidential resources are required by state law to notify child protective services and/or local law enforcement of any report which involves suspected abuse of a minor under the age of 18.

## V. Reporting

### A. Employee Obligation to Report Violations of this Policy to the Title IX Coordinator

All Law School employees who do not have legally protected confidentiality (e.g. the on-campus psychologist or any other individuals who are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others) are required to report potential violations of this policy of which they become aware to the Title IX or to a Deputy Title IX Coordinator. Those who have this obligation include all employees with supervisory or leadership responsibilities on-campus, including, but not limited to, faculty, coaches,

administrators, and staff members. The purpose of this requirement is to permit the Law School to take immediate and corrective action to respond to allegations of Prohibited Conduct.

Law School employees with authority to institute corrective measures on behalf of the Law School include Deans and Department Chairs, directors. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the Law School.

#### B. Requests for Confidentiality

A student may desire to report Prohibited Conduct to the Law School but to maintain confidentiality; if so, the Title IX Coordinator will evaluate such requests. Where a Complainant requests that the Complainant's name or other identifiable information not be shared with the Respondent or that no formal action be taken, the Title IX Coordinator, in conjunction with the Title IX team, will balance the Complainant's request with its dual obligation to provide a safe and non-discriminatory environment for all Law School community members and to remain true to principles of fundamental fairness that ordinarily provide for notice and an opportunity to respond before action is taken against a Respondent. In making this determination, the Law School may consider the seriousness of the conduct, the respective ages and roles of the Complainant and Respondent, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the Respondent to receive notice and relevant information before disciplinary action is sought.

The Law School will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. Where the Law School is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or a member of the Title IX team will inform the Complainant about the chosen course of action, which may include the Law School seeking disciplinary action against a Respondent. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

#### C. How to Make a Report to Southwestern Law School

**The Law School strongly encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual violence. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.**

The Law School also strongly encourages all individuals to make a report to the Law School and to local law enforcement, although neither is required. These reporting options are not mutually exclusive. Both internal and criminal reports may be made simultaneously.

The Law School has a strong interest in supporting survivors of sexual harassment, sexual violence, stalking, and intimate partner violence and strongly encourages all individuals or third party witnesses to report any incident to the Law School.

Reporting Parties and third party witnesses are encouraged to report Prohibited Conduct as soon

as possible in order to maximize the Law School's ability to respond promptly and effectively. The Law School does not, however, limit the timeframe for reporting. If the Respondent is not a member of the Southwestern community, the Law School will still seek to take steps to end the harassment, prevent its recurrence, and address its effects, but its ability to take disciplinary action against the Respondent will, of course, be limited.

Reports can be made to the following individuals:

The Title IX Coordinator:

Jessica E. Johnson

[jjohnson@swlaw.edu](mailto:jjohnson@swlaw.edu)

(213) 738-6705

Deputy Title IX Coordinator:

Marcie Canal

[mcanal@swlaw.edu](mailto:mcanal@swlaw.edu)

(213) 738-6847

At the time a report is made, a Complainant does not have to request any particular course of action, nor does a Complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The Law School provides support that can assist each individual in making these important decisions, and will respect an individual's autonomy in deciding how to proceed to the extent legally possible. In this process, the Law School will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the Law School community.

The Law School will respond to all reports of Prohibited Conduct in a fair and impartial manner. A Complainant, a Respondent, and all individuals involved will be treated with dignity and respect. In response to all reports of Prohibited Conduct, the Law School will make an immediate assessment of any risk of harm to the Complainant, Respondent, or to the broader campus community and will take steps necessary to address those risks. These steps may include supportive measures to provide for the safety of the individual and the campus community.

#### Emergency and External Reporting Options

The Complainant has the right to notify or decline to notify law enforcement. The Law School strongly encourages all individuals to seek assistance from law enforcement immediately after an incident of Sexual Misconduct, Intimate Partner Violence, or any other Prohibited Conduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. Police have unique legal authority, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking emergency protective orders. The Law School will help any Southwestern community member to get to a safe place and will provide transportation to the hospital, coordination with law enforcement, and information about on- and off-campus resources and options for resolution.

#### Coordination with Law Enforcement

The Law School strongly encourages Reporting Parties to pursue criminal action for incidents of

sexual harassment, sexual violence, and intimate partner violence that may also be crimes under California law. The Law School will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

The Law School's Policy, definitions, and burden of proof may differ from California criminal law. A Complainant may seek recourse under this Policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this Policy has occurred. Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus.

The Law School may not delay conducting its own investigation unless specifically requested by the law enforcement (e.g., LAPD). In the event of such specific request, the Law School shall defer its investigation only during the time that law enforcement is gathering evidence, which should not exceed ten (10) days absent extenuating circumstances. The Law School will nevertheless communicate with the Complainant and Respondent (if appropriate) regarding Title IX rights, procedural options, and the implementation of supportive measures to assure safety and well-being. The Law School will promptly resume fact-gathering as soon as it is informed that law enforcement has completed its initial investigation.

**[Los Angeles Police Department \(LAPD\)](#) – Please call 911 for all emergencies.**

In addition to reporting to law enforcement or the Law School, students, faculty, and staff should be aware of the following external governmental agencies that investigate and prosecute complaints of prohibited discrimination and harassment:

Title IX Compliance. Inquiries or complaints concerning the Law School's compliance with Title IX may be referred to the [U.S. Department of Education Office for Civil Rights](#).

## **VI. Care and Support Resources**

The Law School is committed to treating all members of the community with dignity, care, and respect. Any student who experiences or is affected by violations under this Policy, whether as a Complainant, a Respondent, or a third party, will have equal access to support and counseling services through the Law School.

The Law School strongly encourages individuals to report Prohibited Conduct. The Law School recognizes, however, that the decision to report Prohibited Conduct (to the Law School and/or law enforcement) can be difficult. The Law School strongly encourages individuals who are considering whether to report Prohibited Conduct to seek the support of confidential campus and community resources. These trained professionals can provide guidance in making decisions, information about available resources and procedural options, and assistance to either Party in the event that a report and/or resolution under this Policy is pursued. These resources are available regardless of when or where the incident occurred.

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources, which by law cannot share information without the consent of the individual seeking assistance (in most circumstances). These resources will

maintain the privacy of an individual's information within the limited circle of those involved in the resolution of a complaint under this Policy.

### Confidential Medical Resources

**\*In California, medical providers who treat a physical injury sustained from an assault, physical or sexual, are required by state law to report the assault to law enforcement.**

However, the patient has the right to request that a survivor advocate be present when the patient speaks with law enforcement and to request that law enforcement not pursue a criminal charge at that time. Further, the disclosure of private information contained in most medical records is generally protected by HIPAA, and community medical providers will not notify the Law School (or anyone else, other than law enforcement).

A medical provider can provide emergency and/or follow-up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence, although it may be possible to obtain evidence from towels, sheets, clothes, and other items for longer periods of time. It is best to gather evidence prior to washing a person's body or changing clothing. If clothes have been changed, the clothes worn at the time of the incident should be brought to the examination in a clean, sanitary container such as a paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe and may render evidence useless). A change of clothing should also be brought to the hospital, as the clothes worn at the time of the incident will likely be kept as evidence.

Taking the steps to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this Policy or through the pursuit of criminal prosecution, and may be helpful in obtaining protective orders.

### Supportive Measures

Upon receipt of a report of alleged sex-based discrimination, sexual harassment and/or retaliation, non-disciplinary, non-punitive, free of charge individualized services will be offered to the Complainant and/or the Respondent by the Law School as appropriate and reasonably available. Such measures are designed to restore or preserve equal access to the Law School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Law School's educational environment, or deter sexual harassment, discrimination and/or retaliation.

A Complainant or Respondent may request a No Contact Order or other protection, or the Law School may choose to impose supportive measures at its discretion to ensure the safety of all Parties, the broader Law School community, and/or the integrity of the process.

The Law School will maintain the privacy of any remedial and protective measures provided under this Policy to the extent practicable and will promptly address any violation of the protective measures. All individuals are encouraged to report concerns about failure of another individual to

abide by any restrictions imposed by a supportive measure. The Law School will take immediate and responsive action to enforce a previously implemented restriction if such restriction was violated.

#### A. Range of Supportive Measures

Supportive measures will be implemented at the discretion of the Law School. Potential remedies that may be applied include:

- Access to counseling services and assistance in setting up initial appointment, both on and off campus;
- Imposition of mutual campus “No Contact Order;”
- Rescheduling of exams and assignments (in conjunction with appropriate faculty and deans as necessary);
- Providing alternative course completion options (with the agreement of the appropriate faculty);
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty);
- Change in work schedule or job assignment;
- Change in on-campus housing;
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies;
- Limiting an individual or organization’s access to certain Law School facilities or activities pending resolution of the matter\*;
- Voluntary leave of absence;
- Providing an escort to ensure safe movement between classes and activities;
- Providing medical services;
- Providing academic support services, such as tutoring;
- Interim suspension or Law School-imposed leave\*;
- Any other remedy that can be tailored to the involved individuals to reasonably achieve the goals of this Policy.

\*Note: These measures are not applicable in cases covered by conduct set forth in Appendix B.

#### B. Interim Suspension or Separation

Where the reported conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal

Law School functions, the Law School may place a student on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities, and/or all other Law School activities or privileges for which the student might otherwise be eligible, as the Law School determines appropriate. When interim suspension or leave is imposed, the Law School will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

A student Respondent who has been put on interim suspension has the right to a meeting within three (3) days with the Dean of Students or designee to appeal the interim suspension. The Dean of Students (or designee) reviews the appeal to determine whether the decision to put a student on interim suspension was arbitrary or capricious. A decision is arbitrary and capricious where there is no rational connection between the facts presented and the decision made.

## **VII. Disclosures Required by the Clery Act**

### *1. Timely Warnings*

A “Timely Warning” is a campus-wide notification of a serious or continuing threat to the Southwestern community. The Timely Warning does **not** include identifying information about the Complainant. If a report of misconduct discloses a serious or continuing threat to the Southwestern community, the Law School may issue a campus wide timely warning (which can take the form of an email to campus) to protect the health or safety of the community.

### *2. Annual Reporting Responsibilities*

All higher education institutions that receive federal funding, including the Law School, are obligated to issue publicly an Annual Security Report (“ASR”) which identifies the number of particular reported crimes on campus or campus property, or adjacent to campus. The ASR does **not** include identifying information about the Complainant or Respondent.

### *3. Crime Log*

All higher education institutions that have campus police forces or security departments must maintain a daily crime log that includes entries for all crimes that occur within both the Clery geography and the campus safety force’s regular patrol route. The crime log does **not** include identifying information about the Complainant or Respondent.

## **VIII. Southwestern’s Title IX Coordinator and Deputy Coordinator**

### A. Notice Of Designated Title IX Coordinator And Deputy Coordinator

The Law School has designated Jessica E. Johnson, Director of Institutional Compliance, to serve as the Law School’s Title IX Coordinator. The Law School has designated Marcie Canal, Associate Dean of Operations and Risk Management, as Deputy Title IX Coordinator. The Title IX Coordinator and Deputy Coordinator can be contacted by telephone, email, or in person during regular office hours:

**Jessica E. Johnson**

Title IX Coordinator

(213) 738-6705 | [jjohnson@swlaw.edu](mailto:jjohnson@swlaw.edu)

**Marcie Canal**

Deputy Title IX Coordinator

(213) 738-6847 | [mcanal@swlaw.edu](mailto:mcanal@swlaw.edu)

**B. Role Of The Title IX Coordinator and Deputy Coordinator**

The Title IX Coordinator monitors the Law School’s overall compliance with Title IX, ensures appropriate training and education, and oversees the Law School’s investigation, response, and resolution of reports made under this Policy. Upon receiving reports of Prohibited Conduct, the Title IX Coordinator ensures that appropriate action is taken to eliminate that conduct, prevent its recurrence, and remedy its effects. The Title IX Coordinator is available to advise all individuals—including individuals who have experienced misconduct, individuals who are alleged to be responsible for misconduct, and third parties - on this Policy and the appended Grievance Processes.

The Title IX Coordinator is supported and assisted by a Deputy Coordinator. In addition, based on the relationship of the Complainant and/or the Respondent to the Law School, the Title IX Coordinator may be supported by the Vice Dean of the Law School, faculty members, a representative from the Dean of Students Office and/or Administrative Services. Collectively, the Title IX Coordinator and the individuals supporting the Coordinator are the “Title IX Team.” The Title IX Team is a small circle of individuals who have a need to know of any alleged Prohibited Conduct to effectuate this Policy. The foregoing individuals have received appropriate training to discharge their responsibilities.

**IX. Possible Sanctions for Violations of this Policy**

Any one or more of the sanctions listed here may be imposed on a Respondent who is found responsible for a violation of the Law School’s Sexual Misconduct Policy. Sanctions not listed here may be imposed in consultation with and approval by the Title IX Coordinator. Sanctions are assessed in response to the specific violation(s) and any prior discipline history of the Respondent. **Sanctions are effective immediately. If the Respondent appeals the findings contained in the Final Report, the sanctions will continue in effect during the appeal. The sanctions may be lifted only if, as a result of the final outcome of the appeal, the Respondent is found not responsible for one or more of the original Policy violations submitted to the Review Panel.**

Possible sanctions include, but are not limited to:

1. **Warning:** Notice, in writing, that continuation or repetition of Prohibited Conduct may be cause for additional disciplinary action.
2. **Censure:** A written reprimand for violating the Sexual Misconduct Policy. This conduct status specifies a period of time during which the student’s good standing with the Law School may be in jeopardy. The student or employee is officially warned that continuation or repetition of Prohibited Conduct may be cause for additional conduct action including probation, suspension, administrative leave for employees, expulsion or termination from the Law School.



3. **Disciplinary Probation:** Exclusion from participation in privileged activities for a specified period of time. For students, privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad. Employees may be placed on a performance plan. Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other Law School policy violations may result in further disciplinary action.
4. **Restitution:** Repayment to the Law School or to an affected Party for damages (amount to be determined by the Law School) resulting from a violation of this Code. To enforce this sanction, the Law School reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.
5. **Removal from Campus Housing:** Students may be removed from Law School housing and/or barred from applying for campus housing due to disciplinary violations of this Code.
6. **Suspension:** Exclusion from Law School premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file and will be permanently recorded on the student's academic transcript. Conditions for readmission may be specified in the suspension notice.
7. **Expulsion:** Permanent termination of student status and exclusion from Law School premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.
8. **Termination:** Permanent termination of employment with the Law School.
9. **Revocation of Admission and/or Degree:** Admission to, or a degree awarded by, the Law School may be revoked for fraud, misrepresentation in obtaining the degree or violation of Law School policies, the Student Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.
10. **Withholding Degree:** The Law School may withhold awarding a degree otherwise earned until the completion of the process set forth in this Policy, including the completion of all sanctions imposed, if any.
11. **Other: Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education or research projects may also be assigned.**
12. **Multiple Sanctions:** More than one of the sanctions listed above may be

imposed for any single violation.

Suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript.

## **X. Additional Provisions**

### **Prevention and Awareness Programs**

The Law School is committed to the prevention of Prohibited Conduct through awareness programs. Incoming students receive primary prevention and awareness programming as part of their orientation.

### **Training**

The Law School provides training to students to ensure they understand this Policy and the topics and issues related to maintaining an educational and employment environment free from all forms of Prohibited Conduct.

### **Notifications**

The Coordinator will make reasonable efforts to ensure that the Complainant and the Respondent simultaneously are notified of the status of the Grievance Process, consistent with the processes described herein. Both Parties may, at any time, request a status update from the Coordinator.

### **Modification Of Grievance Process**

The Law School will follow the Grievance Process described herein barring exceptional circumstances. In rare instances, however, the Law School may be required to adapt or modify the Grievance Process (including timelines) to ensure prompt and equitable resolution of a report of Prohibited Conduct. The Law School reserves this right. In such instances, the Law School will notify both Parties of the modification of the Grievance Process and, if appropriate, the exceptional circumstances requiring the Law School to adapt or modify the Grievance Process.

### **Alcohol And Substance Use**

The purpose of this Grievance Process is to resolve reports of discrimination, harassment, and retaliation against individuals because of sex or gender. It is not the purpose of this Grievance Process to subject individuals to disciplinary action for their own personal consumption of alcohol or drugs. Consistent with the purpose of the Grievance Process, the Law School will not subject individuals who participate in the Grievance Process to disciplinary action for information revealed in the course of the Grievance Process, provided that the individual's behavior did not, and does not, place the health and safety of others at risk. In all instances, the Law School may pursue educational initiatives or remedies related to an individual's consumption of alcohol or drugs.

The use of alcohol or other drugs will never function as a defense for engaging in Prohibited Conduct.

### **Past Sexual History**

In general, a Complainant's prior sexual history is not relevant and will not be provided to the Investigator

or Hearing Officer. Where there is a current or ongoing relationship between the Complainant and the Respondent, and the Respondent alleges consent, the prior sexual history between the Parties may be relevant to assess the manner and nature of communications between the Parties. As noted in the Sexual Misconduct Policy, however, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Complainant with other individuals is typically not relevant and will not be permitted.

### **Respondent's Prior Conduct History**

Where there is evidence of a pattern of conduct similar in nature by the Respondent, either prior, or subsequent, to the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to the Hearing Officer's determination of responsibility, and/or the Review Panel's determination of sanction. The Coordinator will make a determination of relevance based on an assessment of whether the previous incident was substantially similar to the conduct cited in the report and indicates a pattern of behavior and substantial conformity with that pattern by the Respondent. Where there is a prior finding of responsibility for a similar act of Prohibited Conduct, there is a presumption of relevance and the finding may be considered in making a determination as to responsibility and/or assigning of a sanction. The Law School, through the Coordinator, may choose to provide this information to the Investigator or Hearing Officer, with appropriate notice to the Parties. Alternatively, a Party may request in writing that information under this section be admitted. A request to admit such information must be submitted to the Coordinator. The Coordinator will assess the relevance of this information and determine if it is appropriate for inclusion in the investigation report.

### **Consolidation of Investigations**

The Coordinator has the discretion to consolidate into one Investigation multiple reports against a Respondent and/or cross-complaints between a Complainant and a Respondent, if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident. Matters may be consolidated where they involve multiple Reporting Parties, multiple Respondents, or related conduct that would regularly have been heard under the Code of Student Conduct.

### **Failure to Comply with Investigation and Disciplinary Process**

If a party fails to comply with the procedures set forth herein, including through a material breach of confidentiality, the Law School reserves the right to bring additional charges of misconduct against the party. The Coordinator is responsible for interpreting and applying this provision. If an Advisor fails to comply with the procedures set forth herein, including through a material breach of confidentiality, the Law School reserves the right to exclude the advisor from further participation in the process.

### **Integrity of Proceeding**

These procedures are entirely administrative in nature and are not considered legal proceedings, but rather procedures designed to address policy violations. Neither Party may audio or video record the proceedings, nor is formal legal representation allowed. Advisors may not speak for, or on behalf of, Parties.

### **False Reports**

The Law School takes the accuracy of information very seriously, as a report of Prohibited Conduct may have severe consequences. **A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated report of Prohibited Conduct.** However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant or third-party witness may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any Policy violation, and it may also violate state criminal statutes and civil defamation laws.

## **XI. Records**

The Coordinator will retain records of all reports and complaints, regardless of whether the matter is resolved by means of Initial Assessment, Informal Resolution or Formal Resolution. Complaints resolved by means of an Initial Assessment or Informal Resolution are not part of a student's conduct file or academic record. For matters handled under Appendix B, records shall be maintained for seven (7) years.

Affirmative findings of responsibility in matters resolved through Formal Resolution are part of a student's conduct record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record.

In addition to records kept by the Coordinator, the conduct files of students who have been suspended or expelled from the Law School are maintained in the Dean of Students Office indefinitely. Conduct files of students who have not been suspended or expelled are maintained in the Dean of Students Office for no fewer than seven years from the date of the incident. Further questions about record retention should be directed to the Title IX Office.

## APPENDIX A

### RESOLUTION OF GRIEVANCE AGAINST STUDENT

**Please see Appendix B for Resolution of Title IX Grievances.** Note: The definitions below do not apply to conduct falling within the scope of Appendix B. The Title IX Coordinator shall have the discretion to consolidate cases in which there are allegations of misconduct involving both prohibited conduct as set forth in Appendix A and Appendix B. In the event that allegations are consolidated, the Title IX Coordinator shall provide written notice to both parties setting for the application allegations, and the processes that shall be applied.

#### PROHIBITED CONDUCT

##### Sex or Gender-Based Discrimination

Sex or gender-based discrimination refers to the disparate treatment of a person or group because of that person's or group's sex, sexual orientation, gender identity, or gender expression.

##### Sexual or Gender-Based Harassment

"Harassment" is conduct that creates an intimidating, offensive, or hostile working or learning environment or that unreasonably interferes with work or academic performance based on a person's protected status, including sex, sexual orientation, gender identity, or gender expression. All such conduct is unlawful.

"Sexual Harassment" is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, physical, graphic, or otherwise.

"Gender-Based Harassment" is harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as Gender-Based Harassment, the conduct need not involve conduct of a sexual nature.

Generally speaking, harassment can be divided into two types of conduct:

*Quid Pro Quo Harassment.* Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any aspect of a Law School program or activity or is used as the basis for the Law School's decisions affecting the individual. Quid pro quo conduct may include direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists; offering educational or employment benefits in exchange for sexual favors; making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation including subtle pressure for sexual activity; or making or threatening reprisals after a negative response to sexual advances.

*Hostile Environment.* A hostile environment exists when the conduct is sufficiently severe, pervasive, or persistent that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the Law School's education or employment programs and/or activities. Whether conduct is sufficiently severe,

pervasive, or persistent is determined both from a subjective and objective perspective.

Examples of conduct that may create a hostile environment include:

- **Verbal conduct**, including making or using derogatory comments, epithets, slurs or humor; verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; or objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes;
- **Visual conduct**, including leering, making sexual gestures, displaying of suggestive objects or pictures, cartoons, or posters in a public space or forum; or severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate;
- **Written conduct**, including letters, notes or electronic communications containing comments, words, or images described above;

Sexual or Gender-Based Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- May be committed by anyone, regardless of gender, age, position or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the Complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur by or against an individual of any sex, sexual orientation, gender identity, or gender expression.
- May occur in the classroom, in the workplace, in residential settings, or in any other setting.
- May be a one-time event or can be part of a pattern of behavior.
- May be committed in the presence of others or when the Parties are alone.
- May affect the Complainant and/or third Parties who witness or observe harassment and are affected by it.

## Sexual Misconduct: Forms

The Law School prohibits the following specific conduct:

1. Sexual Assault
2. Sexual Exploitation
3. Stalking
4. Non-Consensual Sexual Contact
5. Intimate Partner Violence

Each of these is explained in detail below. In instances where Prohibited Conduct constitutes a violation of more than one violation of the Policy, an individual may allege either or all violations of the Policy.

### *1. Sexual Assault*

Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes:

- a) The penetration, no matter how slight, or attempted penetration, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without consent.
- b) Contact, without consent, between the mouth of one party and the genitalia of the other.
- c) The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- d) Causing an individual to touch their own intimate body parts, or disrobing or exposure of another without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

### *2. Sexual Exploitation*

“Sexual Exploitation” occurs when an individual takes non-consensual or abusive sexual advantage of another for one’s own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. Examples of Sexual Exploitation include, but are not limited to:

- surreptitiously observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all Parties involved; non-consensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, or distribution of such without the knowledge and consent of all Parties involved;
- exposing one’s genitals or inducing another to expose their own genitals in non- consensual circumstances;
- knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; and
- inducing incapacitation for the purpose of making another person vulnerable to

non-consensual sexual activity.

### 3. *Stalking*

“Stalking” occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

*A course of conduct* consists of two or more acts, including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

*Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.

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

Cyber-stalking is a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of Stalking include, but are not limited to:

- Non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a person;
- Surveillance and other types of observation, whether by physical proximity or electronic means; and
- Gathering of information about a person from family, friends, co-workers, and/or classmates. To qualify as stalking, the conduct is not required to be sexual in nature.

### 4. *Non-Consensual Sexual Contact*

“Non-Consensual Sexual Contact is having sexual contact with another individual:

- a) By force or threat of force;
- b) Without effective affirmative consent; or
- c) Where that individual is incapacitated.

Sexual Contact includes intentional contact with the intimate parts of another, causing an individual to touch their own intimate body parts, or disrobing or exposure of another without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.



## 5. *Intimate Partner Violence: Forms*

“Intimate Partner Violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent. The Law School will not tolerate Intimate Partner Violence of any form.

Intimate Partner Violence is often referred to as dating violence, domestic violence, or relationship violence. Intimate Partner Violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, psychological and/or emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate Partner Violence may take the form of threats, assault, property damage, violence or threat of violence to one’s self, one’s sexual or romantic partner, or to the family members or friends of the sexual or romantic partner. Intimate Partner Violence affects individuals of all sexes, sexual orientations, gender identities, and gender expressions, races and social and economic backgrounds.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. (i) The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. (ii) For the purposes of this definition— (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence.

Domestic Violence: A crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

### **Procedure for Responding to Complaints**

Appendix A outlines the procedures the Law School follows in resolving allegations that a person has been subjected to Prohibited Conduct (“Complainant”) by a student who engaged in Prohibited Conduct (“Respondent”) in violation of the Law School’s Sexual Misconduct Policy. Complainant and Respondent will be referred to collectively as the “Parties.”

#### **A. Complaint and Initial Assessment**

##### **1. Overview**

An individual who wishes to report Prohibited Conduct by a student (including, but not limited to discrimination, harassment, or retaliation) is encouraged to report directly to the Title IX Coordinator and/or the Deputy Title IX Coordinator.

Jessica E. Johnson, Title IX Coordinator  
(213) 738-6705 | [jjohnson@swlaw.edu](mailto:jjohnson@swlaw.edu)  
W102

Marcie Canal, Title IX Deputy Coordinator  
(213) 738-6847 | [mcanal@swlaw.edu](mailto:mcanal@swlaw.edu)  
W100

The Title IX Coordinator will coordinate resolution of all reports of Prohibited Conduct defined in the Sexual Misconduct Policy, including reports of discrimination, harassment, and/or retaliation (Title IX prohibited conduct).

## **1. Initial Assessment**

### **a. Intake Meeting**

Upon receipt of a report, the Title IX Office (Coordinator or Deputy) will conduct an Intake Meeting as soon as possible after receiving a complaint. At that meeting, the Coordinator will address the following topics, as appropriate:

- Address immediate physical safety and emotional well-being needs;
- Notify the Complainant of the right to contact law enforcement and seek medical treatment (and the right to decline to do so), and the importance of preservation of evidence;
- Notify the Complainant of the right to be assisted by individuals at the Law School in contacting law enforcement;
- Notify the Complainant of confidential and non-confidential reporting options on- and off-campus;
- Provide the Complainant with information about:
  - On- and off-campus resources, including counseling, health, mental health, victim advocacy, and other available services;
  - The range of supportive measures and remedies, including changes to academic, living, transportation, and/or working situations, or other protective measures, which are available to the Complainant regardless of whether the Complainant files a formal complaint with the Law School, Campus Safety or local law enforcement;
  - Provide an overview of the procedural options and process, including Informal Resolution and Formal Resolution;
  - Provide information on how to file a formal Appendix A complaint;

- Assess for pattern evidence or other similar conduct if possible;
- Explain the Law School’s policy prohibiting retaliation;
- Explain that if the complaint involves a Clery crime, the Coordinator will notify the Clery Coordinator of the report to assess the need to (1) enter the report into the Law School’s daily crime log; and (2) issue a timely warning as defined by the Clery Act, and assure the Complainant that any such reports will not include the Complainant’s personally identifying information.

Following the meeting, the Coordinator will provide the Complainant with the above-listed information in writing. As described in the Sexual Misconduct Policy, the Complainant has the right to request that the Coordinator not share the Complainant’s name (or other identifiable information) with the Respondent, or that the Coordinator take no formal action in response to the report. If the Complainant makes such a request, the Coordinator will balance the request with its dual obligation to provide a safe and nondiscriminatory environment for all Law School community members, and to remain true to principles of fundamental fairness that require the Law School to provide the Respondent with notice of the allegations and an opportunity to respond before action is taken against the Respondent. The Coordinator will make this determination consistent with the following considerations, namely (1) the seriousness of the conduct; (2) the respective ages and roles of the Complainant and the Respondent; (3) whether there have been other complaints or reports of Prohibited Conduct against the Respondent; and (4) the right of the Respondent to receive notice and relevant information before disciplinary action is sought. Should the Coordinator determine that, in response to the Complainant’s request, the Law School can satisfy its obligations to the Complainant, the Law School community members, and the Respondent without proceeding through the Grievance Process described herein, the Coordinator has the discretion to do so.

Absent a request for confidentiality as described above, the Coordinator will ask the Complainant questions to get a basic understanding of the reported Prohibited Conduct. The interview will include questions to understand the key facts upon which the Complainant bases the report (i.e., the who, what, where, and when) to appropriately assess how to proceed. At the conclusion of the Intake Meeting, and if the individual wishes to move forward with a complaint, the Coordinator will make an initial threshold determination regarding whether the Complainant’s report states facts that, if true, could constitute a violation of the Law School’s Sexual Misconduct Policy and/or violations of Appendix A. The Coordinator will make this threshold determination within three (3) business days of the Coordinator’s Intake Meeting with the Complainant and communicate that finding in writing to the Complainant.

If the Coordinator determines that the Complainant’s report, if true, could constitute a violation of the Law School’s Sexual Misconduct Policy, the Coordinator will offer the Complainant the option of proceeding through Formal or Informal Resolution.

***b.* Threshold Determination: Does The Complainant’s Report Allege a Potential Violation of the Law School’s Sexual Misconduct Policy?**

If the Coordinator determines that the Complainant’s report does not state facts that, if true, could constitute a violation of the Law School’s Sexual Misconduct Policy, the Complainant may still file a report with the Dean of Students, the Department of Education Office for Civil Rights,

the police, or seek available civil remedies through the judicial system. The Complainant also may re-file the report under the Sexual Misconduct Policy upon discovery of additional facts.

**c. Informal Resolution.**

Participation in Informal Resolution is voluntary. If an informal resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution and will then determine if the Respondent is also willing to engage in informal resolution. Both parties must agree, in writing, to an informal resolution.

Even if the Parties agree to Informal Resolution, it is within the discretion of the Coordinator to determine that a report must proceed through Formal Resolution in certain cases (e.g., where a Respondent is alleged to have violated the Sexual Misconduct Policy on multiple occasions or with multiple Reporting Parties or where the reported conduct, if true, presents a threat to the safety of the Southwestern community).

The nature of Informal Resolution process is flexible, and not all complaints resolved through Informal Resolution will proceed in uniform fashion. Typically, however, the Coordinator will ask the Complainant to prepare a written report, which sets out the factual basis for the grievance and any proposed resolution. The Complainant will be asked to provide the written report to the Coordinator within five (5) business days of conclusion of the Intake Meeting. The Coordinator will share the written report with the Respondent, and will instruct the Respondent to provide a written response to the report within five (5) business days of reviewing the Complainant's report. The Coordinator will then meet separately with both Parties to discuss potential alternative resolutions based on the Parties' statements and (if applicable) other information available. The Coordinator is not a fact-finder; rather, the Coordinator identifies possible alternative resolution(s) to the complaint. Possible alternative resolution(s) may include, but are not limited to:

- Permanent no-contact order between the students
- Academic or residential reassignment
- Written apology and/or explanation of the circumstances surrounding the grievance
- Educational remedies
- Community service

If the Coordinator and the Parties reach agreement, the matter is closed. If not, the Coordinator will proceed with Formal Resolution set forth in Section B, below. Any Party (including the Coordinator) may terminate the Informal Resolution process at any time. In that event, the Title IX Coordinator will so notify the Parties in writing and will describe next steps and timeframes for the Formal Resolution.

Any resolution reached through an informal process will be confirmed in writing and provided to the Parties within five (5) business days of reaching a resolution. If either Party does not voluntarily agree in writing to pursue Informal Resolution, or if the Complainant, Respondent, or Coordinator, at any time, determines that Informal Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through Formal Resolution.

**B. Resolution of Complaint**

**1. Formal Resolution**

If the Coordinator determines that the Complainant's report must proceed through Formal Resolution, the Coordinator will notify both Parties, in writing, that the complaint will proceed through Formal Resolution. The Coordinator's written notification to the Respondent and Complainant will include:

1. Complainant's name
2. Nature of the report
  - Specific policy violation(s) alleged (e.g., sexual assault, sexual harassment, retaliation)
  - Date(s) of alleged policy violation(s)
  - Approximate time(s) of alleged policy violation(s)
  - Brief description of allegation(s)
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the Formal Resolution process.
4. A statement that the Parties have the right to review and inspect all directly related and/or relevant evidence during the Formal Resolution process, consistent with this Policy.
5. Information about the privacy of the process;
6. Information on the right to have an advisor of their choosing;
7. The name of the investigator along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the investigator may have;
8. An instruction to preserve any evidence that is directly related to the allegations.
9. A statement regarding the Law School's policy related to false reports and making knowingly false statements during the Formal Resolution process.
10. A statement explaining the Law School's prohibition against retaliation.

The notice of the complaint shall be accompanied with a request for a meeting with the Coordinator within three (3) business days. If the Respondent does not respond to the meeting request or is unable to meet within three (3) business days, the Coordinator shall provide the following additional information in writing:

- On- and off-campus resources, including counseling, health, mental health, victim advocacy, and other available services.
- The range of supportive measures, including changes to academic, living, transportation, and/or working situations, or other protective measures.
- An overview of the procedural options and process, including Informal Resolution and Formal Resolution.
- The Law School's policy prohibiting retaliation.

The Coordinator will select a trained internal or external investigator or a two- person investigative team, (which may include a combination of one internal and one external

investigator) (the “Investigator”) to conduct a reasonable, impartial, and prompt investigation of the complaint (“Investigation”). The Coordinator will select an Investigator based on several factors, including the Parties involved, the complexity of the complaint, the need to avoid any potential conflict of interest, and who may best conduct a fair and equitable investigation for all Parties involved. The Coordinator will notify the Parties, in writing, of the name of the designated Investigator at the time the Coordinator issues the notice of formal resolution. Both Parties will have three (3) business days to object to the Investigator’s selection on the basis of bias or conflict of interest. If either of the Parties objects, the Coordinator will evaluate whether the objection is substantiated. The Coordinator will remove and replace any Investigator the Coordinator finds to have a bias or conflict of interest against either Party.

The Investigator will commence the investigation once the time for the Parties to object has passed (or, if an objection is made, and the Coordinator determines the objection is not substantiated, from the time the Coordinator notifies the objecting Party of the determination). The Investigator, in consultation with the Coordinator, will establish a timeline and process for conducting the Investigation. The Investigation will be conducted in stages, as follows:

#### *Preliminary Investigation*

The Investigator will begin with a Preliminary Investigation, with a recommended timeline of sixty (60) calendar days. The purpose of a Preliminary Investigation is to identify and gather all relevant facts. Generally, the Investigator will conduct the Preliminary Investigation in the following order:

1. Step One: Initial Fact-Gathering. The Investigator will interview both Parties and relevant witnesses, and gather documentary evidence provided by the Parties and any identified witnesses. The Investigator will provide a copy of their notes to each person interviewed. The interviewee will have the opportunity to correct or comment on any statements made in the notes. If the interviewee has no corrections to, or comments on, the notes, the interviewee will sign an acknowledgement that the interviewee has reviewed and agrees that the Interview notes are accurate. If the interviewee has corrections or comments to the Interview notes, the interviewee may submit a written response within three (3) business days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee’s statement. If no response is received from the interviewee, their Interview Summary may be included in the Summary of Evidence Report and will be presumed to be accurate. In all instances where the Investigator includes the interview notes as an exhibit to a report, the Investigator will also include any response.
2. Step Two: Evidence Review. Once the Initial Fact-Gathering is complete, the Coordinator will provide any directly related evidence gathered to the Parties for review. If either party has an advisor, the advisor will also be provided with all of the directly-related evidence to review. Given the sensitive nature of the information provided, the Coordinator will provide the information in a secure manner (e.g., by providing digital copies of the materials through a protected, “read-only” web portal). Neither the Complainant nor the Respondent (or their advisors, including but not limited to family members and/or legal counsel) may copy, remove, photograph, print, image, videotape, record, or in any manner

otherwise duplicate or remove the information provided. Any party or advisor who fails to abide by this policy may be subject to discipline and/or may be excluded from further participation in the process.

The Parties may respond to the Interview Summaries and any documentary evidence; the Parties will submit any response within ten (10) calendar days of being notified of their opportunity to review the documents. The Parties may respond in one or both of the following ways:

- The Parties may provide a written response. The Investigator will incorporate any written response provided by the Parties in the Summary of Evidence Report.
- The Parties may submit a written request for additional investigation. Such requests may include, but are not limited to, the following:
  - (1) request(s) for follow-up interview(s) with existing witnesses to clarify or provide additional information, including offering questions to the investigator to pose to witnesses;
  - (2) request(s) for interviews with new witnesses; or
  - (3) request(s) to consider new evidence. Any request for additional investigation shall explain the reason for the request.

3. Step Three: Rebuttal Fact-Gathering. The Investigator may conduct follow-up interviews with both Parties and witnesses based upon testimonial and documentary evidence gathered in Step One and the Parties' request for additional investigation, if any. The Parties and witnesses can expect that, in these follow-up interviews, the Investigator will seek responses to specific allegations or evidence (e.g., an Investigator may show one of the Parties a series of text messages between himself or herself and another witness, and ask about the content of the text messages). To the extent additional material, witnesses or evidence are identified during Step Three, the Investigator will conduct additional interviews and gather additional evidence consistent with the procedures outlined in Steps One and Two. Steps One and Two may be repeated as necessary to ensure a complete gathering of evidence.

Any and all information for consideration by the Hearing Officer must be provided to the investigator prior to the hearing and will not be allowed during the hearing itself, unless it can be clearly demonstrated that such information was not reasonably available to the Parties at the time of the investigation, despite the exercise of due diligence.

4. Step Four: Summary of Evidence Report. The Investigator will prepare a Summary of Evidence Report synthesizing the facts and evidence gathered in the course of the Preliminary Investigation. The Investigator will not state factual findings or ultimate findings as to whether the Respondent has, or has not, violated one or more of the Law School's policies in the Summary of Evidence Report. The Investigator will attach as exhibits to the Summary of Evidence Report all relevant Interview Summaries and any relevant documentary evidence

gathered in the Preliminary Investigation, including any written responses to the evidence submitted by the Parties. When the Investigator determines that the Preliminary Investigation is complete, the Investigator will submit the Summary of Evidence Report to the Coordinator. The Coordinator may require the Investigator to conduct additional investigation; if so, the Investigator will conduct additional investigation consistent with the procedures outlined above.

Once the Coordinator has agreed that the Preliminary Investigation is complete, within five (5) business days, the Coordinator will provide the Summary of Evidence Report to the Parties and to each party's advisor. Given the sensitive nature of the information provided, the Coordinator will provide the Summary of Evidence Report in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Neither the Complainant nor the Respondent (or their advisors, including but not limited to family members and/or legal counsel) may copy, remove, photograph, print, image, videotape, record, or in any manner otherwise duplicate or remove the information provided. An advisor who fails to abide by this policy may be subject to discipline and/or may be excluded from further participation in the process.

The Parties will have ten (10) calendar days to review the Summary of Evidence Report and provide a response to the Coordinator. The Coordinator will provide the Parties' response, if any, to the Hearing Officer

### *Hearing*

The hearing is an opportunity for the Parties to address the Hearing Officer in person, to question the other Party and/or witnesses, and for the Hearing Officer to obtain information following the investigation that is necessary to make a determination of whether a Sexual Misconduct Policy violation occurred. The hearing will be conducted as follows:

1. Hearing Officer. The hearing will be conducted by a Hearing Officer, who is selected by the Law School from a pool of qualified candidates. The Hearing Officer will receive annual training regarding the Law School's policies and procedures, the handling of student sexual misconduct cases, and other relevant issues.

The Hearing Officer must be impartial and free from bias or conflict of interest. The Parties will be informed of the identity of the Hearing Officer and vice versa before the pre-hearing meeting. If the Hearing Officer has concerns that he or she cannot conduct a fair or unbiased review, the Hearing Officer must report those concerns in advance of the pre-hearing meeting to the Coordinator and a different Hearing Officer will be assigned. Similarly, the Parties will have three (3) business days to object to the Hearing Officer's selection on the basis of bias or conflict of interest. If either of the Parties objects, the Coordinator will evaluate whether the objection is substantiated. The Coordinator will remove and replace any Hearing Officer the Coordinator finds to have a bias or conflict of interest against either Party.

The Hearing Officer shall conduct a live hearing, at which they shall permit indirect cross-examination of the Parties and witnesses. For purposes of this policy, the term Indirect Cross-Examination means the Hearing Officer will allow the Parties and/or



their advisors to submit proposed questions for the Parties and witnesses, as well as follow-up questions based on testimony provided during the hearing. The Hearing Officer will ask the Parties and witnesses the proposed questions that the Hearing Officer determines are consistent with this Policy and are probative of facts relevant to the adjudication of the matter.

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. During cross-examination, the Hearing Officer has the authority to direct any Party or advisor to refrain from asking questions that are harassing or that seek information that is not relevant under this Policy.

Parties may make requests to the Coordinator related to the format or nature of their participation in the hearing. The Coordinator will work with the Hearing Officer to accommodate reasonable requests, including the option for the hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker and the Parties to simultaneously see and hear the Party answering questions.

2. Scheduling. The Coordinator will forward a copy of the Summary of Evidence Report and the Parties' responses thereto, if any, to the Hearing Officer. The Coordinator will schedule a hearing date, time, and location and notify the Parties of the same. The Hearing Officer will strive to complete a hearing within fourteen (14) business days from receipt of the Summary of Evidence Report and the Parties' responses thereto, if any.
3. Pre-Hearing Meeting. Prior to the hearing, the Coordinator will conduct a pre-hearing meeting with each Party, together with the Party's Advisor. At this pre-hearing meeting, each Party will receive an explanation of the hearing process and have the opportunity to ask any questions. If the Complainant and/or Respondent have elected to have advisors throughout the hearing process, the advisor is encouraged to accompany the Complainant/Respondent to this initial meeting.
4. Witnesses. The Complainant, Respondent, and the Hearing Officer all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. Neither Party will be permitted to call as a witness anyone who was not interviewed by the Investigator as part of the Law School's Investigation.

If either Party wishes to call witnesses the following must be submitted no later than five (5) business days before the hearing to the Hearing Officer and Coordinator via e-mail or in hardcopy format:

- The name of any witness(es)
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing; and

When witnesses are approved to be present, the Respondent and Complainant are

provided with a list of witnesses and any relevant documents related to the witnesses' appearance at the hearing no later than three (3) business days before the hearing.

5. Case Presentation. The hearing is intended to provide a fair and ample opportunity for each side to present their account of the incident and for the Hearing Officer to determine the facts of the case and make a determination as to whether Law School policy was violated. The hearing is not intended to be a repeat of the Investigation. The Hearing Officer will be well-versed in the facts of the case based upon the Summary of Evidence Report and the Parties' responses to the Summary of Evidence Report, if any.

The Complainant and the Respondent, their advisors, and the Hearing Officer will attend the hearing. Other Law School administrators may attend at the request of or with the prior approval of the Hearing Officer, but the Parties will be notified in advance of anyone who will be in attendance. Any individual appearing as a witness will be present only while providing a statement and responding to questions.

The Hearing Officer has absolute discretion to decide upon a format for the hearing and to determine which witnesses are relevant to the outcome determination. A Hearing Officer may decline to hear from a witness where they conclude that the information is not necessary for their outcome determination.

The Hearing Officer also will afford either Party an opportunity at the end of the hearing to offer closing remarks. A decision whether to offer closing remarks is completely voluntary; however closing remarks may only be made by the Parties, and not their advisors.

Advisors may only be present during the hearing if the Party they are advising is also present. Other than cross-examining the witnesses and the other Party, advisors may not participate directly in, or interfere with, the proceedings.

6. Expectations of the Complainant, Respondent, and Witnesses at a Hearing. Students, staff, and faculty have the responsibility to participate fully and truthfully in any proceeding under this Policy. If either Party chooses not to participate in the hearing, they will not be permitted to cross-examine the witnesses or any Party during the hearing. If either Party chooses not to participate in the hearing, the Law School may move forward with the hearing and imposition of findings and sanctions, if any, in absentia. In reaching findings in absentia, the Hearing Officer may rely on: (1) any information in the Summary of Evidence Report; (2) any documentary evidence disclosed to the Investigator; (3) any statements made during the hearing; and (4) any documentary evidence presented at the hearing.

If the Complainant chooses not to participate in the hearing, the Law School's ability to fully investigate and respond to the complaint may be limited.

7. Record of Hearing. The hearing and any pre-hearing meetings or conferences are closed to the public. The Law School shall keep an official transcript of the hearing; any other recording is prohibited. No camera, TV, or other equipment, including

cellphones, will be permitted in the hearing room, except as arranged by the Law School.

8. Standard of Evidence. The Hearing Officer will determine a Respondent's responsibility by a preponderance of the evidence. This means that the Hearing Officer will decide whether it is "more likely than not," based upon all of the evidence, that the Respondent is responsible for the alleged violation(s).
9. Notice of Hearing Outcome. Following the hearing, the Hearing Officer will consider all of the evidence and make a determination, by a preponderance of the evidence, whether the Respondent has violated the Sexual Misconduct Policy. If the Respondent is found responsible for a violation of the Law School's Sexual Misconduct Policy, the Formal Resolution process concludes with Sanctions, described in Section C. If the Respondent is found not to have violated the Law School's Sexual Misconduct Policy, the Formal Resolution has concluded. The Hearing Officer will strive to issue the Final Report within fourteen (14) business days of the hearing. The Report shall include:
  - The allegations
  - A description of all procedural steps
  - Findings of fact
  - Conclusion of application of facts to the policy
  - The rationale for each finding
  - Sanctions and, for the Complainant, appropriate remedies
  - Procedure for appeal

At the conclusion of the Formal Resolution Process, either Party may appeal upon the grounds described in Section D.

### **C. Sanctions**

If the report proceeds through Formal Resolution and the Respondent is found responsible for one or more violations of the Law School's antidiscrimination policies, the Law School will issue sanctions commensurate with the violation(s). The Coordinator will designate three trained individuals to serve on a three-person panel ("Review Panel") to determine sanctions. The Coordinator will notify the Parties, in writing, of the name of the designated Review Panelists within three (3) business days upon receipt of the Final Report. Both Parties will have three (3) business days to object to each Review Panelist on the basis of bias or conflict of interest. If either of the Parties objects, the Coordinator will evaluate whether the objection is substantiated. The Coordinator will remove and replace any Review Panelist the Coordinator finds to have a bias or conflict of interest against either Party.

The Coordinator will notify the Parties that they have the opportunity to submit statements to the Review Panel within five (5) business days of the receipt of the Final Report. The Review Panel will review the Parties' Impact Statements, and all other materials in the case, including the Final Report and attached exhibits, in assessing the appropriate sanction. The Review Panel does not have the power or ability to alter the findings (factual or ultimate) by the Hearing Officer.

The Review Panel will issue a recommendation to the Coordinator regarding sanctions within

five (5) business days of receiving all materials in the case, including any Impact Statements submitted by the Parties. The Coordinator will issue final sanctions within three (3) business days of receipt of the Review Panel Recommendation. The Coordinator will issue the sanctions recommended by the Review Panel unless (1) the Review Panel recommends sanctions that deviate from sanction guidelines (without demonstrable justification); or (2) the Review Panel recommends sanctions that the Coordinator believes will not effectively stop the alleged harassment, prevent its recurrence, or remedy its effects. The Coordinator will notify the Parties of the sanctions simultaneously in writing.

#### *Remedies and Non-Disciplinary, Administrative Measures*

The Coordinator has the discretion to take non-disciplinary administrative action to stop harassment, prevent its recurrence, and remedy its effects. This may include action addressed toward the Respondent, the campus community, and/or the Complainant, as follows:

Respondent: Any student found responsible for engaging in Prohibited Conduct, who is not permanently separated from the Law School, may be required to, in addition to other sanctions, complete non-disciplinary, educational initiatives at the discretion of the Coordinator.

Campus Community: In all instances where a student is found responsible for engaging in Prohibited Conduct, the Coordinator will consider and determine whether non-disciplinary, administrative measures for the larger campus community are appropriate. Such remedial, community-based responses may include educational initiatives and/or trainings, climate surveys, targeted assessment of high-risk campus areas, or other appropriate measures.

Complainant: The Coordinator will continue to provide support to the Complainant as appropriate, including the ongoing provision of appropriate accommodations.

#### ***D. Appeal***

Both Complainant and Respondent have a limited right to appeal from the findings set out in the Final Report as follows:

- *Complainant*: If the Hearing Officer concludes that the Respondent did not violate a policy that the Complainant believes the Respondent violated, the Complainant has five (5) business days from receiving written notice of the Final Report to submit a written appeal to the Coordinator. If the Respondent has been found responsible for one or more policy violations, but not others, the Complainant may submit a written appeal to the Coordinator within five (5) business days of notice of the sanction.
- *Respondent*: If the Hearing Officer's final decision is that the Respondent did violate one or more policies, the Respondent has five (5) business days from receiving written notice of the sanction to submit a written appeal to the Coordinator.

The Party who submits the written appeal will be the "Appellant," and the responding Party will be the "Appellee." The Appellant's written appeal must be based on one of two grounds: (1) Significant Procedural Error or (2) New Information. Each ground is explained in greater detail:

- **Significant Procedural Error:** A procedural error occurred that significantly impacted the outcome of the investigation or hearing as it applies to the Appellant (e.g. substantiated bias, material deviation from established procedures, etc.). A description of the error and its impact on the outcome of the case must be included in the written appeal; or
- **New Information:** New information has arisen that was not available or known to the Appellant during the investigation or hearing and that could significantly impact the findings. Information that was known to the Appellant during the investigation or hearing but which s/he chose not to present is not new information. A summary of this new evidence and its potential impact on the investigation findings must be included in the written appeal.

Appellee will have five (5) business days to submit a response. At the conclusion of these time periods, the Coordinator will refer the written appeal, including the Final Report, exhibits attached to the Final Report, and Impact Statements (the “Appeal Record”), to an Appeals Board.

The Coordinator will notify both Parties of the members of the Appeals Board within five (5) business days of receipt of the written appeal. Both Parties will have five (5) business days to object to members of the Appeals Board on the basis of bias or conflict of interest. The Coordinator will consider any objection on the grounds of bias or conflict of interest. If the Coordinator determines that a member of the Appeals Board may have bias or conflict of interest, the Coordinator will remove the individual and designate a new member.

The role of the Appeals Board is limited. Appeals are not intended to be a full rehearing of the complaint. Appeals are confined to a review of the Appeal Record for the grounds stated above. The findings contained in the Hearing Officer’s Final Report are presumed to have been decided reasonably and appropriately. The Appellant carries the burden of proof to demonstrate that either the alleged error, or the proposed new evidence, would significantly and materially impact the outcome of the proceeding.

The Appeals Board will determine whether any grounds for the appeal are substantiated. If the Appeals Board determines that the Request for Appeal does not meet the standards for an Appeal under this Grievance Process, the Appeal Boards will notify both Parties of that outcome within ten (10) business days of receipt of both the Appellant’s appeal, and the Appellee’s response. If the Appeal Board determines that the Request for Appeal does meet the standards for an Appeal under this Grievance Process, the Appeals Board will take appropriate action as indicated below.

- **Procedural Error:** If it is determined that a procedural error occurred that was substantially prejudicial to the outcome of the investigation or hearing, the Appeals Board may return the complaint to the Investigator or Hearing Officer with instructions to correct the error, and to reconsider the findings as appropriate. In rare cases, where the procedural error cannot be corrected by the original Investigator or Hearing Officer (as in cases of bias), the Appeals Board may order a new investigation with a new Investigator or a new hearing with a new Hearing Officer.
- **New Information:** If the Appeals Board determines that new information should be considered, the complaint will be returned to the Hearing Officer to

reconsider the complaint in light of the new information only, and to reconsider the original findings as appropriate. The Hearing Officer will prepare an Addendum to the Final Report.

### *Notification of Appeal Outcome*

Appellant and Appellee will generally be notified in writing of the outcome of the appeal within ten (10) business days of receipt of Appellee's response statement. The Appeals Board's decision is final and is not subject to appeal.

#### **E. Additional Provisions**

##### **1. Students: Advisor of Choice**

All persons who are a Complainant or a Respondent to this grievance process are permitted to bring an Advisor of their own choosing, including a family member or an attorney, to provide support. The Advisor may accompany the student Party to any and all portions of the grievance process. Other than cross-examining the witnesses and the other Party at the hearing, the Advisor may not participate directly in, or interfere with, the proceedings. Although reasonable attempts will be made to schedule proceedings consistent with Advisors' availability, the process will not be delayed to schedule the proceedings at the convenience of the Advisor. The Coordinator has the discretion to remove the Advisor from the proceedings if the Advisor interferes with the proceedings.

##### **2. Training**

The Law School provides training to all individuals within the community who are involved in responding to, investigating, or resolving reports of Prohibited Conduct. If the Law School retains an individual outside the community to respond to, investigate, or resolve reports of Prohibited Conduct, the Law School requires the retained individual has received adequate training consistent with the Law School's standards. All advisors, including those that are not members of the Law School community, shall be offered training on the Law School's policy.

## APPENDIX B

### RESOLUTION OF TITLE IX GRIEVANCE

Under the Department of Education's Title IX Regulations, published May 19, 2020, the following procedures will apply **only** to a narrow category of cases. Those cases meeting the definitions and jurisdictional elements below will follow this policy. Those cases that do not fit within these new guidelines will be handled through Law School's Sexual Discrimination, Sexual Misconduct, Relationship Violence, and Stalking Policy & Procedures for Resolving Complainants Against Students, Appendix A; this is not to suggest that any case is more or less important, but instead a reflection of federal regulations that apply only to a specifically-identified set of cases.

The effective date of these procedures is on August 14, 2020. These procedures will apply in all cases where a Formal Complaint of prohibited conduct under these procedures is made on or after August 14, 2020.

Where the date of the alleged prohibited conduct precedes the effective date of these procedures, the definitions of prohibited conduct in existence at the time of the alleged conduct will be used. These procedures, however, will be used to investigate and resolve all Formal Complaints made on or after the effective date of these procedures, regardless of when the conduct occurred.

**If you are unclear about any of the provisions below and would like to get more information, you may speak on a non-confidential basis with the Title IX Coordinator.**

These procedures apply only to the following cases:

#### 1. Nature of Complaint:

- A complaint of Dating Violence, Domestic Violence, Stalking, or Sexual Assault as defined below;
- A complaint of sexual harassment in which the harassment was so severe and pervasive and objectively offensive that it denied the complainant equal access to an educational program or activity;
- A complaint of quid pro quo sexual harassment by an employee respondent.

**If yes to one of the above, continue. If no, please see Southwestern Law School Sexual Misconduct Policy, Appendix A.**

#### 2. Location:

- The incident(s) occurred on the Law School's campus, within the United States or
- The incident(s) occurred in a building owned or controlled by a student organization that is officially recognized by the Law School or
- The incident(s) were part of one of the Law School's programs or activities, such as part of a field trip or academic competition, and within the United States.

**If yes to one of the above, continue. If no, please see Southwestern Law School Sexual Misconduct Policy, Appendix A**

3. The institution has control over the Respondent, meaning the Respondent is a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed),

or another individual over whom the Law School exercises substantial control.

**If yes to one of the above, continue. If no, please see Southwestern Law School Sexual Misconduct Policy, Appendix A**

**4. Complainant is a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed).**

**If yes to one of the above, continue. If no, please see Southwestern Law School Sexual Misconduct Policy, Appendix A**

### **Covered Conduct: Definitions**

1. Sexual Harassment: conduct committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved which is one of the following:

- A. Quid Pro Quo: When a Law School employee conditions the provision of a benefit or service of the Law School on an individual's participation in unwelcome sexual conduct; and/or
- B. Sexual Harassment: Unwelcome conduct\* determined by a reasonable person to be so severe, and pervasive, and objectively offensive, that it effectively denies a person equal access to an educational program or activity of the Law School.

2. Sexual Assault: includes both forcible and non-forcible sexual offenses:

- Sexual offenses, Forcible: Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
  - A. 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 consent of the Complainant.
  - B. Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensual), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - C. The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - D. The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sex Offenses, Non-forcible, includes any of the following:
  - A. Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by California Law.
  - B. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent of 18 years of age.



3. Dating Violence: Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

4. Domestic Violence: Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California or the state in which the conduct occurred.

5. Sex-Based Stalking: 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.

- For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **Consolidation of Cases**

When allegations fall under both Appendix A and this Appendix, the Title IX Coordinator shall have discretion to determine whether or not to consolidate the matters into one adjudication process. In the event that both are combined into one investigation, the Title IX Coordinator shall have the discretion to determine whether to conduct two separate hearings, or combine both into one hearing. When allegations falling within both Appendix A and this Appendix have been combined, the evidentiary rules of each Appendix shall attach to the relevant allegations.

### **Mandatory Dismissal**

At any time prior to the commencement of a hearing, any case proceeding under this policy will be dismissed if it is determined that the conduct at issue does not meet the jurisdictional requirements of this policy. If the alleged conduct would, if true, support a finding that another Law School policy has been violated, the Law School may, in its sole authority, transfer the case for further handling under the appropriate policy, or to Appendix A of the Sexual Misconduct Policy. Upon dismissal, both parties shall be notified in writing. The decision to dismiss is subject to appeal, in keeping with the grounds for appeal as set forth in Appendix A. Both parties will be notified of any determination made upon appeal.

### **Transfer of Cases, Sharing of Information**

For any case brought under this policy, should the case be dismissed and then transferred for handling to

another office, or for handling under Appendix A, the Law School shall have the right to transfer all communications and information gathered to any other Law School administrator who will be reviewing and/or handling the matter under Appendix A, or under any other Law School policy.

### **Standard of Evidence**

The decision regarding a Respondent's responsibility will be determined by a preponderance of the evidence. This means that the Decision Maker will decide whether it is "more likely than not," based upon all of the evidence, that the Respondent is responsible for the alleged violation(s).

### **Prohibition On False Evidence Provided During Title IX Process**

The Law School takes the accuracy of information very seriously, as a report of Prohibited Conduct may have severe consequences. **A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated report of Prohibited Conduct.** However, when a Complainant or third party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the Code of Student Conduct to make an intentionally false report of any Policy violation, and it may also violate state criminal statutes and civil defamation laws.

### **No Conflict of Interest or Bias**

Any individual carrying out this policy shall be free from any actual conflict of interest or bias that would impact the handling of this matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator is to immediately notify the Deputy Title IX Coordinator who will take the role of Acting Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue. Should any investigator have a conflict of interest, the investigator is to notify the Title IX Coordinator upon discovery of the conflict.

Each party may object to the Title IX Coordinator or designated investigator, hearing officer, or appeals officer, on the grounds of an actual bias or conflict of interest. Both Parties will have three (3) business days from the date on which they are provided with the name to object to the selection of the Title IX Coordinator, investigator, hearing officer, or appeals officer on the basis of bias or conflict of interest. If either of the Parties objects, the Title IX Coordinator will evaluate whether the objection is substantiated. The Title IX Coordinator will remove and replace any Investigator, Hearing Officer, or Appeals Officer the Title IX Coordinator finds to have an actual bias or conflict of interest against either Party.

If either of the parties objects to the designated Title IX Coordinator due to an actual conflict of interest or bias on the part of the Title IX Coordinator, the Party should notify (name), who will determine whether an actual conflict exists. The party raising the objection will be notified in writing of the findings within two (2) business days. If it is determined that an actual bias or conflict of interest exists, the Title IX Coordinator will be removed and replaced.

### **Presumption of Non-Responsibility**

The decision to proceed with an investigation is not a determination that the Respondent has engaged in the conduct as alleged. Any Respondent is presumed not responsible for the conduct that is the subject of the investigation, unless and until a decision of responsibility has been made upon the completion of the adjudication process.

### **Advisor**

All persons who are a Complainant or a Respondent are permitted to bring an Advisor of their own

choosing to any meeting or interview to provide support. The Advisor may be any person, including a family member or an attorney. The Advisor may accompany the student Party to any and all portions of the grievance process. Other than asking questions of the other Party, or of witnesses, at the hearing, the Advisor may not participate directly in, or interfere with, the proceedings. Although reasonable attempts will be made to schedule proceedings consistent with an Advisor's availability, the process will not be delayed to schedule the proceedings at the convenience of the Advisor. The Title IX Coordinator has the discretion to remove the Advisor from the proceedings if the Advisor interferes with the proceedings. For any Complainant or Respondent who does not have an Advisor at the hearing, one shall be provided, at no charge, for purposes of cross-examination of the other Party or witnesses.

During a Title IX Hearing, the Advisor's role is to ask questions of the other Party, or of witnesses (cross examination). Other than performing this function, the Advisor is not to otherwise address the Hearing Officer, make legal arguments, address the Party whom they do not represent, or any witness. The Law School will provide a trained Advisor of its choosing to any Complainant or Respondent who does not have an Advisor at the hearing.

### **Requests for Delays, and Extensions of Time**

The Title IX Coordinator may extend any deadlines within this policy, for good cause shown and documented. Complainant and Respondent will be notified in writing of any extension, the reasons for it, and projected new timelines.

## **REPORTING**

### **Reporting a Title IX Complaint:**

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed on the Title IX website, or as described in this Policy. "Document filed by a Complainant" means a document or electronic submission (such as by electronic mail), or otherwise indicates that the Complainant is the person filing the formal complaint. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to confirm a Complainant's intent to file a formal complaint.

You may also notify the Title IX Coordinator if you believe you, or someone else, may have experienced conduct that would be a violation of this Policy. The Title IX Coordinator will then reach out to the Complainant and schedule an intake interview.

### **Formal Complaint**

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator against a Respondent alleging conduct which would constitute a violation of this Appendix B and requesting that the Law School investigate the allegation(s). At the time of filing a formal complaint, a Complainant must be participating in, or attempting to participate in, an education program or activity of the Law School. Upon receipt of a Formal Complaint, the Title IX Coordinator will assign an investigator, and give notice to the parties, including the Respondent, of the Formal Complaint Process. If you are not certain whether you wish to proceed with a Formal Complaint process, you may speak with the Title IX Coordinator at any time prior to filing the Formal Complaint.

## **RESPONSE TO ALLEGATIONS THAT SEXUAL HARASSMENT OR GENDER-BASED MISCONDUCT AS SET FORTH IN THIS APPENDIX B MAY HAVE BEEN VIOLATED**

### **Intake Interview**

Upon receipt of information suggesting a potential violation of this Appendix B, or the Southwestern Law School Sexual Misconduct Policy, the Title IX Coordinator or designee will conduct an Intake Interview as set forth in the Southwestern Law School Sexual Misconduct Policy, Appendix A. During the intake interview, the Title IX Coordinator will also offer supportive measures, explain that supportive measures are available whether or not a formal complaint is filed, and explain the process for filing a formal complaint.

### **Supportive Measures**

Upon notice of conduct alleged to violate the policy set forth in this Appendix B, supportive services will be offered to the Complainant and/or the Respondent by the Law School as appropriate and reasonably available. Such measures are designed to restore or preserve equal access to the Law School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Law School's educational environment, or deter sexual harassment, discrimination and/or retaliation.

At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that the Complainant may file a Formal Complaint as defined in this Appendix B with the Law School either at that time or in the future, if Complainant has not done so already. The Title IX Coordinator will strive to take into account a party's wishes with respect to supportive measures and will ensure that the party's privacy is maintained as much as possible without impairing the Law School's ability to provide the supportive measures. The Law School will act to ensure as minimal an academic impact on the parties as possible.

Please also see Southwestern Sexual Misconduct Policy Appendix A.

### **Emergency Removal Provisions**

Where the reported conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal Law School functions, the Law School may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities, and/or all other Law School activities or privileges for which the student might otherwise be eligible, as the Law School determines appropriate. When interim suspension or leave is imposed, the Law School will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

A Respondent who has been put on interim suspension or leave has the right to a meeting within three (3) days to appeal the interim suspension. A student Respondent will meet with the Dean of Students (or designee); a staff Respondent will meet with the Associate Dean of Administrative Services (or designee); and a faculty Respondent will meet with the Vice Dean (or designee). The appeal will be reviewed to determine whether the decision to interim suspend or place on leave was arbitrary or capricious. A decision is arbitrary and capricious where there is no rational connection between the facts presented and the decision made.

## **RESOLUTION METHODS**

### Informal Resolution

When the Complainant requests an Informal Resolution in writing, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the formal investigation and adjudication processes, there is a determination of responsibility.
- An explanation that each party may be accompanied by an Advisor (add any others who may accompany, such as support person) of their choice, who may be a parent, friend, or attorney.
- The date and time of the initial meeting with the Title IX Coordinator, with a minimum of (how many days) notice.
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

If either party does not voluntarily agree in writing to pursue an Informal Resolution, or if the Complainant, Respondent, or Title IX Coordinator, at any time, determines that Informal Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through Formal Resolution.

Records of any Informal Resolution will be maintained and can be shared with other offices as appropriate.

Allegations of quid pro quo harassment of a student by an employee shall not be handled through the Informal Resolution process, and instead only through the formal complaint process.

The Informal Resolution process shall be carried out in the same manner as Informal Resolution in Southwestern Law School Sexual Misconduct Policy Appendix A.

### **Investigation Process**

The Investigation process shall be carried out in the same manner as set forth in the Preliminary Investigation, Sexual Misconduct Policy, Appendix A.

### **Notice to Respondent**

Upon the filing of a Formal Complaint under this Appendix B, written notice shall be provided to the Respondent and to the Complainant. Such notice shall include the following information:

- The specific allegation and the specific conduct that is alleged to have occurred.
- The identity of the Complainant.
- The date and location (if known) of the conduct that is alleged to have occurred.

- A copy of this policy, which contains the process that will be followed, including an explanation that each party as well as their Advisors (if they have one) shall have the right to inspect and review all evidence directly related to the allegation(s) prior to the completion of the investigation.
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the process below, there is a determination of responsibility.
- An explanation that each party may be accompanied by an Advisor of their choice, who may be a parent, friend, attorney, or union representative.
- The date and time of the initial meeting with the Title IX Coordinator, with a minimum of notice.
- The Law School alcohol and drug amnesty policy.
- The name and contact information for the assigned investigator.
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.
- Information regarding prohibition of providing false information.

**Note: Should additional allegations be added at a later time, the Respondent will again be provided with a full written notice.**

### **Exclusion of Questions Regarding Complainant's Past Sexual Behavior, or Predisposition**

During any investigation, or subsequent hearing, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and will not be asked, unless such questions and evidence about the Complainant's prior sexual behavior are offered for one of two reasons: (a) to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or (b) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **Conclusion of Investigation, Notice of Hearing**

The hearing is an opportunity for the Parties to address the Hearing Officer in person, to question the other Party and/or witnesses, and for the Hearing Officer to consider information following the investigation that is necessary to make a determination of whether a Title IX violation occurred. The hearing will be conducted as follows:

Hearing Officer. The hearing will be conducted by a Hearing Officer, who is selected by the Law School from a pool of qualified candidates. The Hearing Officer will receive annual training regarding the Law School's policies and procedures, the handling of student sexual misconduct cases, and other relevant issues.

The Hearing Officer must be impartial and free from bias or conflict of interest. The Parties will be informed of the identity of the Hearing Officer and vice versa before the pre-hearing meeting. If the Hearing Officer has concerns that he or she cannot conduct a fair or unbiased review, the Hearing Officer must report those concerns in advance of the pre-hearing meeting to the Title IX Coordinator and a different Hearing Officer will be assigned. Similarly, the Parties will have three (3) business days to object to the Hearing Officer's selection on the basis of bias or conflict of interest. If either of the Parties objects, the Title IX Coordinator will evaluate whether the objection is substantiated. The Coordinator will remove and replace any Hearing Officer the Coordinator finds to have a bias or conflict of interest against either Party.

The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person. During cross-examination, the Hearing Officer has the authority to direct any Party or Advisor to refrain from asking questions that are unduly harassing or that seek information that is not relevant under this Policy.

Parties may make requests to the Coordinator related to the format or nature of their participation in the hearing. The Coordinator will work with the Hearing Officer to accommodate reasonable requests, including the option for the hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker and the Parties to simultaneously see and hear the Party answering questions.

Hearings may be in person or via videoconferencing. If by videoconference, parties will receive written procedures for the videoconference within ten (10) days of the hearing. Prior to the hearing, the Hearing Officer shall have received instruction regarding the operation of any audio-visual equipment for the hearing.

Scheduling. The Coordinator will forward a copy of the Summary of Evidence Report and the Parties' responses thereto, if any, to the Hearing Officer. The Coordinator will schedule a hearing date, time, and location and notify the Parties of the same. The Hearing Officer will strive to complete a hearing within fourteen (14) business days from receipt of the Summary of Evidence Report and the Parties' responses thereto, if any.

Pre-Hearing Meeting. Prior to the hearing, the Coordinator will conduct a pre-hearing meeting with each Party, together with the Party's Advisor. At this pre-hearing meeting, each Party will receive an explanation of the hearing process and have the opportunity to ask any questions. If either Party does not have an Advisor, the Law School shall appoint an Advisor of its own choosing.

Witnesses. The Complainant, Respondent, and the Hearing Officer all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. Neither Party will be permitted to call as a witness anyone who was not interviewed by the Investigator as part of the Law School's Investigation.

If either Party wishes to call witnesses the following must be submitted no later than five (5) business days before the hearing to the Hearing Officer and Coordinator via e-mail or in hardcopy format:

- The name of any witness(es), and,
- A summary of why the witness' presence is relevant to making a decision about responsibility at the hearing

No party or witness shall be compelled to attend the hearing.

Three (3) days prior to the hearing, each party shall submit in writing 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 are not relevant, the Hearing Officer shall explain the reason for the exclusion of the question at the hearing.

The Hearing Officer shall have the authority to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. Any such limitation shall be communicated to the parties no later than three (3) days before the hearing.

The hearing shall start with an overview of the hearing process from the Hearing Officer. The Hearing Officer will then pose questions to the Complainant. When the Hearing Officer has concluded, the Respondent's Advisor will then pose questions to the Complainant. If the Hearing Officer has any additional questions, those will be posed by the Hearing Officer. If the Respondent's Advisor has any follow-up questions for the Complainant, the Advisor will ask those questions. The same process will then be followed for questions posed to the Respondent, followed by questions from the Complainant's Advisor to the Respondent. This process will then be followed for any witnesses who are to be interviewed.

The Hearing Officer may refuse to allow those questions that seek information that is not relevant under this Policy. The Hearing Officer is not required to provide a lengthy or complicated explanation, but is required only to explain the reason why a question is not relevant.

If either Party does not appear, their Advisor will be present for the purpose of asking questions of the other party, or of witnesses. If neither the Party nor their Advisor appears, the Law School shall appoint an Advisor for purposes of cross-examining the other party, and witnesses, at the hearing.

The Complainant and the Respondent, their Advisors, and the Hearing Officer will attend the hearing. Other Law School administrators may attend at the request of or with the prior approval of the Hearing Officer, but the Parties will be notified in advance of anyone who will be in attendance. Any individual appearing as a witness will be present only while providing a statement and responding to questions.

The Hearing Officer has absolute discretion to decide upon a format for the hearing and to determine which witnesses are relevant to the outcome determination. A Hearing Officer may decline to hear from a witness where they conclude that the information is not relevant.

The Hearing Officer also will afford both Parties an opportunity at the end of the hearing to offer closing remarks. A decision whether to offer closing remarks is completely voluntary; however closing remarks may only be made by the Parties, and not their Advisors.

Advisors may be present during the hearing whether or not the Party being advised is also present. Other than cross-examining the witnesses and the other Party, Advisors may not participate directly in, or interfere with, the proceedings.

To the extent credibility determination needs to be made, the determination shall not be based on a person's status as complainant, respondent, or witness.

Consideration of Statements by Any Party or Witness Who is Not Cross-Examined by a Party's Advisor:

The Hearing Officer shall not consider any evidence if the Party or Witness who made the statement is not present at the hearing, and willing to answer all questions posed by a Party's Advisor. This does not mean that the statement will be excluded if no questions are asked of them; rather, a refusal to answer some or all of the questions posed by a party's Advisor shall result in the exclusion of all statements made by that Party or Witness. This shall include SANE reports, police reports, text messages to which not all participants in the text exchange agree to cross-examination, and any statements made by any party or witness during the investigation. Whether or not the same evidence would otherwise be subject to consideration in a court of law shall not impact the requirement that the Hearing Officer exclude the statements of anyone not present and willing to be cross-examined by a party's Advisor.

Record of Hearing. The hearing and any pre-hearing meetings or conferences are closed to the public. Each



hearing shall be audio recorded. No other individual is permitted to record while the hearing is taking place. The recording is the property of Law School but shall be available for listening by contacting the Title IX Office.

Standard of Evidence. The Hearing Officer will determine a Respondent's responsibility by a preponderance of the evidence. This means that the Hearing Officer will decide whether it is "more likely than not," based upon all of the evidence, that the Respondent is responsible for the alleged violation(s).

Notice of Hearing Outcome. Following the hearing, the Hearing Officer will consider all of the evidence and make a determination, by a preponderance of the evidence, whether the Respondent has violated this Appendix B.

If the Respondent is found responsible for a violation of the conduct as set forth in this Appendix B, the Formal Resolution process concludes with Sanctions, described in Section C of the Law School's Sexual Misconduct Policy. If the Respondent is found not to have violated the Law School's Sexual Misconduct Policy, the Formal Resolution has concluded.

The Title IX Coordinator will also determine whether any remedies designed to restore or preserve equal access to the Law School's education program or activity will be provided to the Complainant. If such remedies will be put in place, the Coordinator shall note to the Respondent only that remedies were provided. The Complainant shall be informed of the specific remedies that will be provided.

The Hearing Officer will strive to issue the Final Report within fourteen (14) business days of the hearing. The Report shall include:

- The allegations
- A description of all procedural steps
- Findings of fact for each allegation
- Conclusion of application of facts to the policy for each allegation
- The rationale for each finding
- Sanctions and, for the Complainant, appropriate remedies
- Procedure for appeal

## **Appeals**

At the conclusion of the Formal Resolution Process, either Party may appeal upon the grounds described in Section D of the Law School's Sexual Misconduct Policy. Please see (reference to section on Appeals in Southwestern Law School Sexual Misconduct Policy).

## **Consolidation of Cases**

In the event that the allegations under this policy involve allegations of a violation of a separate policy, whether Student Code of Conduct, Faculty Handbook, or Staff Handbook, the School shall have the right, within its sole discretion, to consolidate those other allegations within one investigation and/or hearing. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy.

## **Training for Investigators, Hearing Officers, Hearing Panel, Appeals Officers, Title IX Coordinator**

The Title IX Coordinator, Sanctioning Official, and Appeals Officer must have had the following training prior to commencing any role in any case under this policy:

- the definition of sexual harassment under § 34 C.F.R. § 106.30(a);
- the scope of the Law School’s education program or activity as defined by the same regulations;
- how to conduct investigations (not required for hearings or appeals officers), hearings, appeals, and informal resolution processes; and,
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Hearing Officers and hearing panel members must have training on the following:

- the definition of sexual harassment under § 34 C.F.R. § 106.30(a) the scope of the Law School’s education program or activity as defined by the same regulations;
- how to conduct investigations (not required for hearings or appeals officers), hearings, appeals, and informal resolution processes;
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and,
- issues of relevance of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant per the regulations.

Any individual who will be coordinating any hearing under this process must also have training on how to use any technology that will be used at a live hearing, such as recording equipment, or platforms designed to permit virtual attendance at a live hearing.

Investigators shall receive the following training:

- the regulations’ definition of sexual harassment under § 34 C.F.R. § 106.30(a);
- the scope of the Law School’s “education program or activity” as defined by the regulations;
- how to conduct investigations, hearings, appeals, and informal resolution processes;
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
- issues of relevance; and,
- how to create an investigative report that fairly summarizes relevant evidence.

### **Record Retention**

- All records relating to any procedure or training carried out under this process shall be maintained for 7 years. These records shall include:
- Records of any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant;
- Records of any action taken in response to a report or formal complaint of sexual harassment, as well as document the bases for its conclusions and that it has taken measures designed to
- preserve access to the Law School’s educational program or activity
- Any appeal and its result;
- Any informal resolution and its results;
- All materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment.

**Effective Date: August 14, 2020**