

TITLE IX/DHR OVERVIEW & REPORTING RESPONSIBILITIES

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WHAT CONSTITUTES PROHIBITED CONDUCT?

DHR

- **D**iscrimination (based on Protected Status)
- **H**arassment (based on Protected Status)
- **R**etaliation (for Protected Activity)

TITLE IX

- Sexual Harassment
- Sexual Misconduct
- Sexual Exploitation
- Dating Violence
- Domestic Violence
- Stalking
- Consensual Relationships

Discrimination

Discrimination is (an) **Adverse Action(s)** against a Complainant **because of** their Protected Status.

Categories of Protected Status

- Age
- Disability (physical or mental)
- Gender (or sex)
- Genetic Information
- Gender Identity (including transgender)
- Gender Expression
- Marital Status
- Medical Condition
- Nationality
- Race or Ethnicity (including color, caste, or ancestry)
- Religion or Religious Creed
- Sexual Orientation
- Veteran or Military Status

Adverse Action

Adverse Action means an action that has a substantial and material adverse effect on the Complainant's ability to participate in a University program or activity free from Discrimination, Harassment or Retaliation. Minor or trivial actions or conduct not reasonably likely to do more than anger or upset a Complainant does not constitute an Adverse Action.

Harassment

Harassment means unwelcome verbal, nonverbal or physical conduct engaged in **because of** an individual Complainant's Protected Status.

Examples of Violations

HARASSMENT

- Pregnant student is made fun of in the Zoom chat by her classmates whenever she goes off camera to nurse her baby
- Black student is advised not to wear her hair “natural” when working the front desk at Mashouf Wellness Center
- Graffiti containing swastikas found on Ethnic Studies building

DISCRIMINATION

- Professor tells a pregnant student that she cannot take a lab because it’s dangerous to her unborn child
- Black athlete is told by his coach that he didn’t make the team because there are enough people of color on it already
- Jewish faculty member not allowed to take off for Yom Kippur

Retaliation is Prohibited

The CSU prohibits retaliation against a person who: reports Sex Discrimination, Sexual Harassment, Sexual Misconduct, Dating or Domestic Violence, or Stalking; assists someone with a report of such conduct; or participates in any manner in any related investigation or resolution. Retaliation includes threats, intimidation, reprisals and/or adverse actions related to employment or education.

Retaliation

Retaliation means **Adverse Action** taken against a person because the Student has or is believed to have:

- A. Exercised their rights under this policy;
- B. Reported or opposed conduct which was reasonably and in good faith believed to be in violation of this policy;
- C. Assisted or participated in a policy-related investigation/proceeding under this policy regardless of whether the Complaint was substantiated; or
- D. Assisted someone in reporting or opposing a violation of this policy, or assisted someone in reporting or opposing Retaliation under this policy.

Adverse Action

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WHAT IS TITLE IX?

Title IX is the Federal Civil Rights Law that states,

“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...”

Universities must comply with Title IX to ensure that all members of the campus community can participate equitably in educational activity and programming.



CSU Policy Statement

The CSU prohibits Sex Discrimination, Sexual Harassment, Sexual Misconduct, Sexual Exploitation, Dating and Domestic Violence and Stalking. Sexual Misconduct, Sexual Exploitation, Dating and Domestic Violence, and Stalking violate University policy and may also violate criminal law.

Interim CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation

Safety is Primary Concern

The University's primary concern is the safety of members of the Campus community; that the use of alcohol or drugs never makes the victim at fault for Sexual Misconduct; that Students or Employees who experience or witness Sexual Misconduct should not be deterred from reporting incidents out of a concern that they might be disciplined for related violations of drug, alcohol, or other University policies; and that Students or Employees who experience or witness Sexual Misconduct shall not be subject to discipline for related violations of conduct policies at or near the time of the misconduct unless the violation is egregious (including actions that place the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty).

Sexual Misconduct

All sexual activity between members of the CSU community must be based on **Affirmative Consent**. Engaging in any sexual activity without first obtaining Affirmative Consent to the specific activity constitutes **Sexual Misconduct** and is a violation of this policy, whether or not the conduct violates any civil or criminal law

Sexual activity includes but is not limited to kissing, touching intimate body parts, fondling, intercourse, penetration of any body part, and oral sex.

Affirmative Consent

Affirmative Consent means an informed, affirmative, conscious, voluntary, and mutual agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that Affirmative Consent has been obtained from the other participant(s) to engage in the sexual activity. Lack of protest or resistance does not mean consent nor does silence mean consent. Affirmative Consent can be withdrawn or revoked. Affirmative Consent cannot be given by a person who is incapacitated.

Sexual Exploitation

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

- a. The prostituting of another person.
- b. The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor of services, through force, fraud, or coercion.

Sexual Exploitation (cont'd)

c. The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.

d. The distribution of images, including video or photographs, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.

Sexual Exploitation (cont'd)

e. The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

What do you do?

SEXUAL MISCONDUCT

- Somebody tells you that they and two of their friends felt somebody brush their buttocks as they were using the stationary bikes.
- Somebody tells you that they think they “hooked up” with a guy they were on a date with but cannot remember what happened because they blacked out from drinking.

SEXUAL EXPLOITATION

- Somebody tells you that they were at a party where they saw somebody lifting the shirt of a woman who was either sleeping or passed out, touching her breasts and recording the behavior.
- Somebody tells you they heard that the hosts of a dorm party put a hidden camera in the bathroom and livestreamed what was shown.

Dating Violence

Dating Violence is abuse committed by a person who is or has been in a social or dating relationship of a romantic or intimate nature with the victim. This may include someone the victim just met; i.e., at a party, introduced through a friend, or on a social networking website. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self, or another. Abuse does not include non-physical, emotional distress or injury.

Domestic Violence

Domestic Violence is abuse committed against someone who is a current or former spouse; current or former cohabitant; someone with whom the Respondent has a child; someone with whom the Respondent has or had a dating or engagement relationship, or a person similarly situated under California domestic or family violence law. Cohabitant means two unrelated persons living together for a substantial period of time, resulting in some permanency of relationship. It does not include roommates who do not have a romantic, intimate or sexual relationship. For purposes of this definition, "abuse" means intentionally or recklessly causing or attempting to cause bodily injury or placing another person in reasonable apprehension of imminent serious bodily injury to self, or another. Abuse does not include non-physical, emotional distress or injury.

Stalking

Stalking means engaging in a repeated **Course of Conduct** directed at a specific person that would cause **Reasonable Person** to fear for the safety of self or others' safety or to suffer **Substantial Emotional Distress**.

Course of Conduct

Course of Conduct means two or more acts, including but not limited to, acts in which the stalker directly, indirectly, or through Third Parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable Person

Reasonable Person means a reasonable person under similar circumstances and with the same Protected Status(es) as the Complainant.

Substantial Emotional Distress

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

What to do?

DATING/DOMESTIC VIOLENCE

- Somebody reported to you that while they were parking their car, they saw a female student hitting a male student in the face, saying, “You’d better delete her number if you know what’s good for you.” They also tell you that they know the female because they are currently in a class together.
- You notice black and blue marks on one of your gym member’s arms and when you ask her what happened, she tells you that her boyfriend, who is a personal friend of yours, hurt her.

STALKING

- Somebody reports to you that they have found their ex-girlfriend, who also an SF State student, outside their residence hall every morning as they leave for class, adding that the ex lives off campus.
- Somebody reports that an SF State student has been seen following other students who are leaving Mashouf Wellness Center, making those students feel unsafe and uncomfortable

Student/Employee Relationships

The CSU prohibits Employees from entering into a consensual relationship with any Student or Employee over whom they exercise direct or otherwise significant academic, administrative, supervisory, evaluative, counseling or extracurricular authority.

SF State Employees MUST Report Prohibited Behavior

WHO

WHAT

WHEN

WHERE

HOW

SF State Employees MUST Report Prohibited Behavior

With limited exceptions, any Employee who knows or has reason to know of allegations or acts that violate University policies shall promptly inform the DHR Administrator or Title IX Coordinator. These Employees are required to disclose all information, including the names of the Parties, **even where the person has requested anonymity.**

WHERE TO REPORT?

File a report online:

https://cm.maxient.com/reportingform.php?SFStateUniv&layout_id=3

The Title IX Coordinator/DHR Administrator at SF State is:

Heather Borlase, JD, MFS

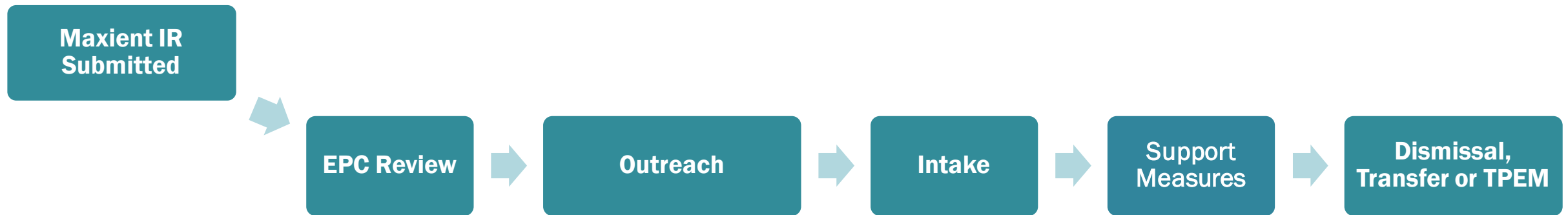
Executive Director, Equity Programs & Compliance

Student Services Building, Room 403

Phone: (415) 338-2032

Email: **equityprograms@sfsu.edu** or **hborlase@sfsu.edu**

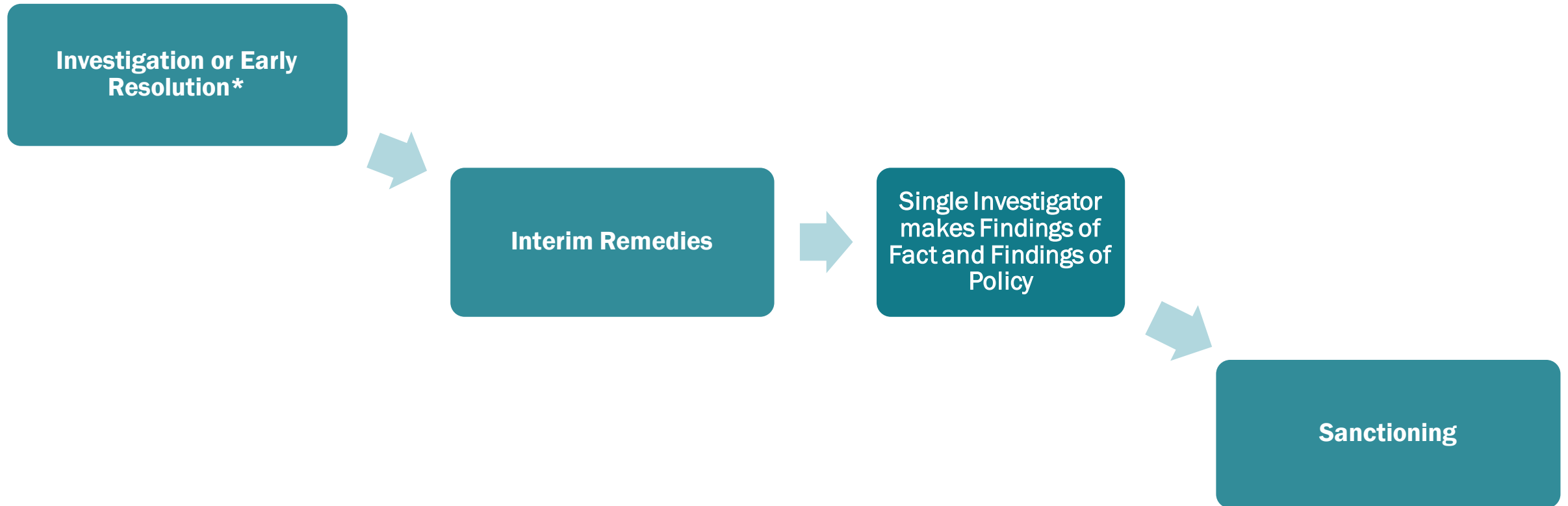
AFTER A REPORT IS SUBMITTED...



TRACK 1 OR TRACK 2: HEARING AFTER INVESTIGATION



TRACK 3: SINGLE INVESTIGATOR PROCESS



HOW CAN EPC SUPPORT YOU?



In your capacity as an SFSU employee:

- Reporting consultation
- Policy training and education

If something happens to you:

- Facilitate on and off campus referrals
- Discuss your options, explain your rights
- Implement academic and wellness accommodations
- Facilitate an Informal Resolution
- Conduct a fair, impartial and prompt investigation

TITLE IX PROTECTS PREGNANT STUDENTS AND EMPLOYEES

Title IX is the Federal Civil Rights Law that states,

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Universities must comply with Title IX to ensure that all members of the campus community can participate equitably in educational activity and programming.



TITLE IX REQUIRES SCHOOLS TO

Allow pregnant students to participate in classes and extracurricular activities even though they are pregnant and not require them to submit a doctor's note unless it requires a doctor's note from all students who have a physical or emotional condition requiring treatment by a doctor.

A school also must not require a doctor's note from a pregnant student after they have been hospitalized for childbirth unless it requires a doctor's note from all students who have been hospitalized for other conditions.

TITLE IX REQUIRES SCHOOLS TO

Provide pregnant students and employees with reasonable adjustments, like a larger desk, elevator access, or allowing them to make frequent trips to the restroom, when necessary because of their pregnancy.

Excuse absences due to pregnancy or childbirth for as long as their doctor says it is necessary.

TITLE IX REQUIRES SCHOOLS TO

Allow pregnant students to return to the same academic and extracurricular status as before their medical leave began, which should include giving them the opportunity to make up any work missed while they were out.

Provide pregnant students with the same special services it provides to students with temporary medical conditions. This includes homebound instruction/at-home tutoring/independent study.

TITLE IX REQUIRES SCHOOLS TO

Ensure that instructors understand the Title IX requirements related to excused absences/medical leave. A teacher may not refuse to allow a pregnant student to submit work after a deadline missed because of pregnancy or childbirth. If the instructor's grading is based in part on class participation or attendance and a student missed class because of pregnancy or childbirth, they should be allowed to make up the participation or attendance credits they didn't have the chance to earn.

TITLE IX REQUIRES SCHOOLS TO

Protect students from harassment based on sex, including harassment because of pregnancy or related conditions.

Comments that could constitute prohibited harassment include making sexual comments or jokes about their pregnancy, calling them sexually charged names, spreading rumors about their sexual activity, and making sexual propositions or gestures, if the comments are sufficiently serious that it interferes with their ability to benefit from or participate in your school's program.

TITLE IX REQUIRES SCHOOLS TO

Provide students private rooms to pump milk or breastfeed.

https://hr.sfsu.edu/sites/default/files/documents/lactation_rooms_location_map_2021.pdf

THIS JUST IN – AB 367

Sponsored by Assemblymember Cristina Garcia, [AB 367](#), known as the Menstrual Equity for All Act of 2021, requires the California State University system -- which has 23 campuses across the state -- and community colleges to stock free menstrual products for students in at least one central location on each campus, starting in the 2022-23 academic year. The legislation also “encourages” the regents of the University of California and private higher education institutions to follow suit.

QUESTIONS?



THANK YOU!

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