

2022 TITLE IX/DHR POLICY UPDATE

SAEM Town Hall

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NEW NAME AND SIMPLIFIED PROCESS

One Policy Governs DHR/TIX

Former Executive Order 1096 and Executive Order 1097 joined to form the Interim CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking and Retaliation

Scope of Interim Policy – Complaints Against Students

The campus will investigate or otherwise respond to reports of alleged misconduct **committed by a Student** in accordance with these procedures if the alleged misconduct violates the Policy and:

1. Occurred on campus; **or**
2. Involved or impacted a campus program or activity (including campus employment); **or**
3. Affected a Student's or Employee's ability to participate in a program, activity or employment; **AND**
4. The alleged misconduct was **committed by** a person who at the time of the alleged misconduct was a Student.

Scope of Interim Policy – Complaints Against Employees and Third Parties

The campus will investigate or otherwise respond to reports of alleged misconduct **committed by an Employee or Third Party** in accordance with these procedures if the alleged misconduct violates the Policy and:

1. Occurred on campus; **or**
2. Involved or impacted a campus program or activity (including campus employment); **or**
3. Affected a Student's or Employee's ability to participate in a program, activity or employment; **AND**
4. The alleged misconduct was **committed against** a person who at the time of the alleged misconduct was a Student, **or** the alleged misconduct was committed **by or against** an Employee.

Tracks 1 and 2 – Hearing Processes

TRACK 1

FEDERAL MANDATED HEARING PROCESS

- Formerly “Addendum B”
- Applies when the alleged conduct:
- Meets the definition of Sexual Harassment under Article VIIC. Of the Policy; and
- Occurred in the United States; and
- Occurred in an education program or activity at the university, as defined in Track 1

TRACK 2

STATE MANDATED HEARING PROCESS

- Formerly “Addendum A”
- Applies when:
- the complaint is against a **student; and**
- The complaint is one of Sexual Misconduct, Dating Violence, or Domestic Violence; **and**
- The Credibility of one (or both) of the Complainant and the Respondent (“The Parties), or any witness is central to the determination as to whether the Student violated the policy; **and**
- The Student is facing a severe disciplinary sanction (expulsion or suspension) if found to be in violation of university policy.

Track 3 – Non-Hearing Process

- Applies to all other complaints that allege a Policy violation (title IX and DHR)
- No hearing involved
- Investigator determines whether a violation of Policy occurred

**NEW CATEGORY OF
PROHIBITED
CONDUCT**

Sexual Exploitation

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.

UPDATED PROTECTED STATUS

Caste, Gender, Gender
Identity, Sexual Orientation

UPDATES TO OUTREACH COMMUNICATIONS

All Outreach Communications Include

- A statement that the campus has received a report of a violation under the Interim Policy;
- A description of the role of the Title IX Coordinator/DHR Administrator
- Information regarding counseling and other support resources
- A statement regarding the importance of preserving evidence
- A statement that the Complainant may, but is not required to, report to law enforcement any allegations that could constitute criminal behavior
- A request for the Complainant to meet with the Title IX Coordinator/DHR Administrator, or other designated employee, to discuss the Complainant's options and next steps.
- A statement that the Complainant can be accompanied by an Advisor of their choice during any meeting relating to the report and any subsequent Complainant process
- Information regarding potential Supportive Measures, where applicable
- A brief summary of the investigation procedures
- An explanation of how the campus responds to reports of Policy violations and a description of potential disciplinary consequences
- A statement that retaliation for making a Complaint or participating in a Complaint process is prohibited by the Policy

IMPLEMENTATION OF SUPPORTIVE MEASURES

**Title IX Coordinator/DHR
Administrator**

Supportive Measures

Supportive Measures are individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent regardless of whether a Formal Complaint is filed. Supportive Measures are designed to restore or preserve equal access to CSU education programs or activities, or the workplace without unreasonably burdening the other Party, including to protect the safety of all Parties or the educational or work environment.

Examples of Supportive Measures

Supportive Measures may include counseling, extensions of deadlines or other course or work-related adjustments, modifications of work or class schedules, campus escorts, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

NEW STANDARDS FOR NO-CONTACT DIRECTIVES

No Contact Directives

- No-Contact “Directive” rather than No-Contact “Order”
- Can be a supportive Measure, Remedy, or part of an Informal Resolution, with or without an investigation
- First question is always: Is a No-Contact Directive necessary?
- Unilateral v. Mutual: Which is best?
 - One incident v. ongoing, proximity (in same dorm, same floor, same classes), nature of allegations
 - Safety/well-being considerations (either Party)
 - Concerns about interference with an investigation (either Party)

No Contact Directives

- No-Contact Directive must include written explanation and consequences for violation
- Violations addressed by Student Conduct Administrator
- No-Contact Directives are intended to be temporary and should be revisited during and at the conclusion of an investigation
- Where an investigation results a finding of a policy violation, a mutual No-Contact Directive is converted to a Unilateral Directive

UPDATES TO NOTICES OF INVESTIGATION

All Notices of Investigation Include

- A summary of the Complaint allegations (e.g., "who," "what," "when," and "where").
- A copy of, or internet link to, these procedures and the Policy, as well as a summary of the alleged Policy violations.
- A description of the investigation and resolution procedure (including the right to hearing, where applicable, and appeal).
- The estimated timeline for completion of the investigation.
- A description of the university's Policy against Retaliation.
- Information about the Parties' right to an Advisor, including the right to consult with an attorney, at their own expense, or a union representative, at any stage of the process and the right to a Support Person at a hearing (under Track 2).
- Information regarding counseling and other support resources.

All Notices of Investigation Include

- A statement that the Complainant and Respondent will have equal opportunities to identify relevant witnesses and evidence in connection with the investigation and at any hearing, including the ability to:
 1. submit documentary information to the Investigator;
 2. submit a list of potential witnesses to the Investigator; or
 3. request that the Investigator attempt to collect additional relevant evidence.
- A statement that any evidence available, but not disclosed during the investigation might not be considered in any findings made, including at any hearing, and likely will not be considered for purposes of appeal.
- A statement that the Complainant and Respondent will be provided with periodic status updates in accordance with the timelines established in this procedure.
- A statement regarding the possible range of disciplinary outcomes.¹¹ If new but related allegations are raised during the investigation that are materially different from those described in the notice of investigation, the Title IX Coordinator/DHR Administrator will issue a revised Notice of Investigation along with a corresponding revised timeline for completion, if appropriate, to the Parties.

NEW RESOLUTION PROCESS

Acceptance of
Responsibility

Acceptance of Responsibility

The Respondent may, at any time during the investigation process, prior to an Investigator issuing their determination, choose to accept responsibility for the alleged conduct prohibited under the Policy.

Acceptance of Responsibility

- Available under Tracks 2 and 3
- Title IX Coordinator/DHR Administrator discussion with Respondent prior to their written acceptance of responsibility
- Respondent to accept responsibility by signing a written document prepared by the Title IX Coordinator/DHR Administrator that describes the range of disciplinary sanctions that the president or designee will consider in reaching a decision about discipline/sanctions

Acceptance of Responsibility

- Title IX/DHR office will issue a brief written summary of the allegations and a statement that the Respondent has accepted responsibility – sent to both Complainant and Respondent
- Both parties can submit impact statements
- Statement opportunity for Title IX Coordinator/DHR Administrator, Student Conduct Administrator, appropriate HR/Faculty Affairs administrator

Acceptance of Responsibility

- Student Respondent cases only: the parties may appeal the sanction only on the grounds that the sanction(s) imposed was objectively unreasonable, or arbitrary based on the conduct for which the Respondent accepted responsibility
- Acceptance of responsibility regarding some but not all of the alleged conduct – investigation hearing process will continue to completion unless informally resolved

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

QUESTIONS?



THANK YOU!

