



# CHSU

## INTERIM

# Unlawful Discrimination, Harassment, and Title IX Policy and Procedures Effective August 1, 2024

Note: This document is an interim policy intended to implement changes required for compliance with the 2024 Title IX Regulations set forth at 34 CFR Part 106. This policy will be reviewed, revised, and updated as appropriate as new guidance and information becomes available.

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## I. NON-DISCRIMINATION POLICY STATEMENT & PURPOSE

California Health Sciences University (“CHSU”) is committed to creating and maintaining an inclusive environment where all individuals can achieve their academic and professional aspirations free from Sex Discrimination and other forms of unlawful discrimination, harassment, or related retaliation. CHSU does not discriminate in the operation of or access to the University’s programs on the basis of the following protected classes: race (including natural hairstyle or hair texture related thereto); color, national origin (including possessing a driver’s license issued under Vehicle Code § 12801.9); ethnicity or ancestry; age (40 and over); sex, gender, sexual orientation, gender identity, transgender status, gender expression, sex stereotypes, sex characteristics; current, potential, or past pregnancy or related conditions; reproductive health decision-making; parental, family, or marital status; physical or mental disability, perceived physical or mental disability or perceived physical or mental potential disability; medical condition (including cancer-related physical or mental health impairment or history of same); citizenship; military and veteran status; genetic characteristics; political affiliation; religious belief or practice; or any other classifications protected by applicable federal, state, or local laws and ordinances (“Protected Class” or “Protected Classes”).

This Non-Discrimination Policy (“Policy”) prohibits the following conduct (“Prohibited Conduct”):

1. [Harassment](#) or [Discrimination](#), including [Sex Discrimination](#), against students, employees, applicants for admission, or applicants for employment based on membership in a Protected Class;
2. Harassment or Discrimination, including Sex Discrimination, based on the perception that a person is a member of a Protected Class or is associated with a person who has, or is perceived to have, membership in a Protected Class;

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3. Violations of other University policies and procedures regarding students with disabilities, pregnant students, students with pregnancy-related conditions, or students who are parenting, including policies and procedures providing reasonable accommodations/modifications;
  4. Failure to provide reasonable accommodations to employees with a disability to allow employees to perform the essential job functions unless it would cause an undue hardship, in accordance with law;
  5. Failure to provide reasonable accommodations and/or other measures, as appropriate, to employees who are pregnant or have pregnancy-related conditions unless it would cause an undue hardship, in accordance with law;
  6. Any and all Retaliation against any person for submitting a report of violation of this Policy or for cooperating in the administration of this Policy, including participation in an investigation or adjudication process;
  7. Knowingly submitting a complaint under this Policy based on false allegations;
  8. Knowingly providing false information in connection with an investigation or adjudication of a complaint processed under this Policy;
  9. Any Responsible Employee who fails to report allegations of Prohibited Conduct, including, but not limited to, Sex Discrimination;
  10. Any person in a position of power or influence who intentionally deters or hinders another person from reporting allegations of Prohibited Conduct which, if true, would violate this Policy; and
  11. Any other violation of this Policy.

The intent of this Policy is to provide for the University to act consistently with its legal obligations under Title IX of the Education Amendments of 1972 (“Title IX”), Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, Uniformed

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Services Employment and Reemployment Rights Act of 1994 (“USERRA”), the Equal Pay Act of 1963, the Age Discrimination Act of 1975, Title I and Title IV of the Americans with Disabilities Act (“ADA”) of 1990 and, as amended by ADA Amendments Act of 2008, the Immigration Reform and Control Act of 1986 (“IRCA”), the Rehabilitation Act of 1973, the Pregnant Worker Fairness Act, and other applicable federal and state anti-discrimination laws. CHSU recognizes that the law in these areas may change. To the extent this policy conflicts with applicable federal or state law, CHSU will act in compliance with the law.

The purpose of this policy is to:

1. Define [Prohibited Conduct](#);
2. Ensure members of the University community respond appropriately when incidents of Prohibited Conduct occur;
3. Provide methods of reporting Prohibited Conduct to appropriate University administrators;
4. Establish fair and equitable procedures for filing and handling complaints of Prohibited Conduct; and
5. Ensure that when Prohibited Conduct does occur, the University takes appropriate action to stop, prevent, and remedy the Prohibited Conduct;
6. Set forth grievance procedures for the handling of complaints of Sex Discrimination, including as required by federal regulations set forth in 34 Code of Federal Regulations Sections 106.8(b)-(c), 106.45 and 106.46.

This policy shall be reviewed periodically to determine if modifications are appropriate.

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## **II. APPLICATION AND SCOPE; EMPLOYEE REPORTING OBLIGATIONS; CONFIDENTIAL DESIGNATIONS**

### **A. Application & Scope**

This policy applies to all members of the University community, including CHSU employees, students, applicants for admission or employment, third-party contractors and vendors, independent contractors, volunteers, and any third party who enters CHSU facilities. This Policy's prohibition on Sex Discrimination also applies to other individuals who are participating or attempting to participate in the recipient's education program or activity, including former employees and former students who may report Sex Discrimination. Every member of the community is responsible for complying with this Policy.

This Policy applies to Prohibited Conduct alleged to have occurred: (a) on CHSU property; (b) in connection with CHSU activities, programs, or events; (c) online or off-campus where the conduct affects the CHSU learning or working environment, would violate other University Policies had it occurred on campus, or where the University determines it has a substantial interest. CHSU will also address Sex Discrimination when such conduct is: subject to the University's disciplinary authority; occurring in buildings owned or controlled by student organizations officially recognized by CHSU; and/or when some conduct alleged to be contributing to a hostile environment occurred outside of CHSU's educational program or activity or outside the United States.

CHSU recognizes and promotes its commitment to academic freedom and freedom of speech, as described in applicable CHSU policies. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws, such as Prohibited Conduct under this Policy.



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CHSU also recognizes that some students are employed by the University (“Student—Employee”). Under this Policy, Student-Employees may be treated either as students, employees, or both, based on the circumstances of each situation, in compliance with the provisions set forth below.

Additionally, while this Policy comprehensively prohibits illegal harassment and discrimination, some procedures will only apply to Sex Discrimination (defined below) because different legal requirements apply in such matters. Applicable distinctions in the processing of allegations of Sex Discrimination are addressed below.

Further, there may be some instances where allegations of misconduct or admissions of misconduct which violate a different University policy – for example, the student code of conduct – arise in the course and scope of a matter being processed under this Policy. In such situations, the University may, in its sole discretion, either: (a) consolidate investigation and/or adjudication of such matters with investigation and/or adjudication procedures under this Policy; and/or (b) refer such matters for processing under other University policies during or following the resolution of resolution of the matter under this Policy.

**B. Responsible Employees – Mandatory Reporting of Prohibited Conduct to the Title IX Coordinator**

All employees of CHSU are mandated to report allegations of Prohibited Conduct, including Sex Discrimination, to the Title IX Coordinator unless specifically exempted from reporting obligations as a Confidential Employee/Resource, as defined below, (“Responsible

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Employees”).<sup>1</sup>

Responsible Employees include employees who are also students when the Student-Employee receives such information in their capacity as an employee.

All Responsible Employees of the University who receive information that a possible violation of this Policy has occurred shall promptly report that information to the Title IX Coordinator. It is not sufficient for a Responsible Employee to report Prohibited Conduct to their supervisor; rather, a direct report by the Responsible Employee to the Title IX Coordinator is required to comply with this Policy. The online reporting form can be accessed at <https://chsu.edu/title-ix/>.

### **C. Confidential Employees & Confidential Resources**

Responsible Employees **do not include** any of the following who are Confidential

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<sup>1</sup> CHSU includes all employees other than Confidential Resources as mandated to report Prohibited Conduct, including Sex Discrimination. For purposes of ensuring compliance with Education Code section 66281.8(a)(2)(B), this shall explicitly include individuals with any of the following positions or substantially similar positions or job duties, regardless of the specific title the University may attach to the position, to the extent they exist or may exist in the future at CHSU: (a) Title IX Coordinator or other coordinator designated to comply with and carry out the institution’s responsibilities related to complaints of Sex Discrimination; (b) Residential Advisors, while performing the duties of employment by the institution; (c) Housing Directors, coordinators, or deans; (d) Student Life Directors, coordinators, or deans; (e) Athletic Directors, coordinators, or deans; (f) Coaches of any student athletic or academic team or activity; (g) Faculty and associate faculty, teachers, instructors, or lecturers; (h) Graduate student instructors, while performing the duties of employment by the institution; (i) Laboratory Directors, coordinators, or principal investigators; (j) Internship or externship Directors or coordinators; (k) Study abroad program directors or coordinators.

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Employees/Resources:<sup>2</sup>

1. A Confidential Employee is an employee of the University who is a therapist, physician, psychotherapist, sexual assault counselor, or domestic violence counselor, as defined in the California Evidence Code, only when the employee is acting in the course and scope of their licensure.<sup>3</sup>
2. A Confidential Employee is also an employee of the University who is acting in a professional capacity for which confidentiality is mandated by federal or California state law.
3. A Confidential Resource is an employee or a non-employee who provides mental health counseling, acts in a professional capacity, or otherwise works pursuant to a professional license requiring confidentiality while working on campus within the scope of such role.

Confidential Employees and Confidential Resources are exempt from reporting Prohibited Conduct when working in the course and scope of their licensure and/or position. However, Confidential Employees and Confidential Resources still have requirements to provide information to anyone a person who informs the Confidential Employee/Resource of

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<sup>2</sup> CHSU is not a research university and at the time of publishing this Policy has no employees conducting Institutional Review Board-approved human-subjects research for which information about Sex Discrimination, which would otherwise qualify as a Confidential Employee.

<sup>3</sup> Being a licensed physician or other healthcare professional does not automatically exclude an employee from reporting allegations of Prohibited Conduct under this Policy unless they learn of the information in the course of providing medical treatment. Physicians, pharmacists, and other healthcare professionals employed or otherwise retained by CHSU as faculty and not employed to provide healthcare services to employees or students are not Confidential Employees/Resources.

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conduct that reasonably may constitute Sex Discrimination under Title IX or its implementing regulations. Specifically, Confidential Employees/Resources must share with any such person the following:

1. The employee's status as a Confidential Resource;
2. That as a Confidential Resource, the circumstances in which the Confidential Resource is not required to inform the Title IX Coordinator about conduct that reasonably may constitute Sex Discrimination;
3. How to contact the Title IX Coordinator;
4. That the person can make a report of Sex Discrimination and how to make a report or complaint of Sex Discrimination; and
5. That the Title IX Coordinator may be able to offer and coordinate supportive measures as well as initiate an informal resolution process or an investigation under the grievance procedures.

When Confidential Employees/Resources are not working in the course and scope of their licensure, and they learn about allegations of Prohibited Conduct, they are Responsible Employees and, as such, are required to report the alleged Prohibited Conduct.

This exemption for Confidential Employees/Resources from reporting Prohibited Conduct under this Policy does **not** extend to other areas of mandated reporting obligations under federal, state, or local laws, such as Tarasoff Warnings (i.e., Duty to Protect rule), the California Child Abuse and Neglect Reporting Act (CANRA), or Clery Act reporting requirements as a Campus Security Authority.

#### **D. Approvals; Effective Date; Record Keeping**

This Policy has been approved by the Office of the President. It supersedes all other University policies regarding Prohibited Conduct, with the exception that complaints of Sex

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Discrimination reported to have occurred on or before August 1, 2024, shall be processed under the prior version of the Policy (i.e., the version effective June, 6 2023). The Title IX, Diversity and Equity Coordinator is responsible for the administration of this Policy.

The University shall maintain the following records for a period of at least seven (7) years: for each complaint of Sex Discrimination, records documenting the informal resolution process and/or the grievance procedures under this Policy and the resulting outcome; for each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute Sex Discrimination under Title IX and 34 CFR section 106.8, including notifications under section 34 CFR section 106.44(c)(1) or (2), and records documenting actions the University took to meet its obligations under 34 CFR section 106.44; and all materials used to provide training under 34 CFR section 106.8(d), which shall be made available upon request for inspection by members of the public.

All other records shall be maintained in accordance with California state or federal law and the University’s record-keeping policy(ies) and procedure(s), if applicable.

### **III. ESTABLISHMENT OF THE OFFICE OF THE TITLE IX COORDINATOR**

The President of the University shall designate and authorize an administrator to serve as CHSU’s Title IX, Equity, and Diversity Coordinator (“Title IX Coordinator”) who has the training, experience, and resources necessary to perform the following duties:<sup>4</sup>

- A. Coordinate the University’s compliance with Title IX of the Education Amendments of 1972, its implementing regulations, and other California state and federal laws

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<sup>4</sup> The Title IX Coordinator may delegate responsibilities to one or more designees, as appropriate, so long as the Title IX Coordinator retains ultimate oversight over such responsibilities under Title IX and 34 CFR Part 106.

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applicable to Prohibited Conduct, including Sex Discrimination, and ensure issuance of annual notification of this Policy to members of the campus community.

B. Respond to complaints regarding Prohibited Conduct, including Sex Discrimination, file complaints of Sex Discrimination when appropriate, conduct investigations, prepare required reports, and effectively implement Supportive Measures and Corrective Measures (as defined herein). This includes the Title IX Coordinator's responsibility to take the following actions in response to a notification of conduct that reasonably may constitute Sex Discrimination to promptly and effectively end any Sex Discrimination in the University's education program or activity, prevent its recurrence and remedy its effects:

1. Treat the Complainant and Respondent equitably;
2. Offer and coordinate supportive measures for the Complainant and, in the event of informal resolution or initiating of a grievance procedure, for the Respondent, as appropriate;<sup>5</sup>
3. Notify the Complainant, or if the Complainant is unknown, the individual who reported the conduct, of the informal resolution and/or grievance procedures under this Policy, if available and as appropriate;
4. If a complaint is made, notify the Respondent of the informal resolution and/or grievance procedures under this Policy, if available and as appropriate;
5. In the absence of a complaint or the withdrawal of any or all of the allegations in the complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of Sex Discrimination and, if so, notify the

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<sup>5</sup> For students with disabilities, the Title IX Coordinator may consult, as appropriate, with the administrator or office responsible for providing support to students with disabilities as appropriate.

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Complainant prior to doing so while taking steps to address reasonable concerns about the Complainant's safety or the safety of others, including providing supportive measures to the Complainant; and

6. Regardless of whether a complaint of Sex Discrimination is initiated or dismissed, take other appropriate prompt and effective steps, in addition to steps necessary to effectuate the remedies provided to an individual Complainant, if any, to ensure that Sex Discrimination does not continue or recur within the University's education program or activity.

C. In determining whether to initiate a complaint of Sex Discrimination, the Title IX Coordinator shall make a fact-specific determination regarding whether the alleged conduct presents an imminent and serious threat to the health or safety of the Complainant or other person or whether the conduct alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity. In making such a determination, the Title IX Coordinator must consider, at a minimum, the following factors:

1. The Complainant's request not to proceed with initiation of a complaint;
2. The Complainant's reasonable safety concerns regarding the initiation of a complaint;
3. The risk that additional acts of Sex Discrimination would occur if a complaint were not initiated;
4. The severity of the alleged Sex Discrimination, including whether the discrimination, if established, would require the removal of the Respondent from campus or imposition of another Corrective Measure to end the discrimination and prevent its recurrence;
5. The scope of the alleged Sex Discrimination, including information suggesting a

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pattern, ongoing Sex Discrimination, or Sex Discrimination alleged to have impacted multiple individuals;

6. The availability of evidence to assist a decisionmaker in determining whether Sex Discrimination occurred; and
7. Whether the University could end the alleged Sex Discrimination and prevent its recurrence without initiating its grievance procedures under this Policy.

D. Developing and maintaining the University's Title IX webpages which provide information regarding Title IX compliance, including methods for reporting Sex Discrimination, applicable grievance processes, and options regarding Supportive Measures whether or not a Formal Complaint of Sex Discrimination is filed.

E. Ensure that the University is providing mandatory Sex Discrimination prevention education and training programs regarding the obligations under this Policy to all members of the University campus, as required by California state and federal laws and regulations, including providing annual training for employees; providing training regarding a trauma-informed perspective for any CHSU employee responsible for any part of an informal resolution or grievance process for complaints of Sex Discrimination; ensuring all facilitators of the informal resolution process, investigators, decision-makers, and other persons responsible for implementing the University's grievance procedures or who have authority to modify or terminate supportive measures are appropriately trained. Such prevention education and training must not rely on sex stereotypes.

F. Offer primary prevention programs and awareness campaigns to the University community to promote ongoing awareness of Sex Discrimination, including preventing dating violence, domestic violence, sexual assault, and stalking. These campaigns may include but are not limited to education about the definition of consent, consensual relationships, options for bystander intervention, trauma-informed approaches, and risk



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reduction awareness information. These programs are to promote behaviors that foster healthy and respectful relationships while also encouraging a safe environment for bystanders to intervene in a potential case of dating violence, domestic violence, sexual assault, or stalking.

- G. Provide educational materials to promote compliance with the Policy and familiarity with reporting procedures, and post on the CHSU's website the names and contact information of the Title IX Coordinator and other information regarding preventing and reporting Sex Discrimination and compliance with this Policy.
- H. Maintain records of reports of Prohibited Conduct, including Sex Discrimination, as required by this Policy.
- I. Monitor, identify, and address barriers to reporting Sex Discrimination and any patterns or systemic problems that arise during the review of reports of Sex Discrimination.

#### **IV. APPLICABLE DEFINITIONS**

The definitions applicable to this Policy are set forth below. In some cases, pursuant to federal regulation, definitions may only be applicable in cases of Sex Discrimination or Title IX Sexual Harassment and are noted accordingly below.

- A. Complaint (Other than Sex Discrimination): A report of Prohibited Conduct (other than Sex Discrimination) received by the Title IX Coordinator, a Responsible Employee, or a Confidential Employee/Resource.
- B. Complaint (Allegations of Sex Discrimination): An oral or written request to the University that objectively can be understood as a request for the University to investigate and make a determination about alleged Sex Discrimination.

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- C. Party: A Complainant or Respondent.
- D. Complainant (other than in cases of alleged Sex Discrimination): A Complainant is any person who reports alleged Prohibited Conduct or an alleged victim of Prohibited Conduct, regardless of whether the alleged victim makes the report. Prohibited Conduct for purposes of this definition does not include Sex Discrimination.
- E. Complainant (Allegations of Sex Discrimination): A Complainant for allegations of Sex Discrimination under this Policy is (a) a student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination; or (b) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex Discrimination and who was participating or attempting to participate in the University's education program or activity at the time of the alleged Sex Discrimination.<sup>6</sup> A Complaint of Sex Discrimination may be oral or in writing, and does not require a signature.
- F. Respondent (other than in cases of alleged Sex Discrimination): A Respondent is a person alleged to have engaged in Prohibited Conduct. Prohibited Conduct for purposes of this definition does not include Sex Discrimination.
- G. Respondent (Allegations of Sex Discrimination): A Respondent for allegations of Sex Discrimination under this Policy is a person who is alleged to have violated this Policy's prohibition on Sex Discrimination.

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<sup>6</sup> The following persons have a right to make a complaint of Sex Discrimination: a complainant; the parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; the Title IX Coordinator consistent with this Policy. Complainants are encouraged to report via the University's online reporting system.

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H. Supportive Measures: Supportive Measures are individualized measures offered, as appropriate and reasonably available, to a Complainant or Respondent, without unreasonably burdening either Party. Supportive measures must restore or preserve that party's access to the University's education program or activity and shall be designed to (a) protect the safety of the parties or the University's educational environment; or (b) support the Complainant or Respondent during an informal resolution process or grievance process. Supportive measures shall not be imposed for punitive or disciplinary reasons and must be provided without additional fee or charge by the University to the person receiving them. Supportive measures may vary depending on what the University deems to be reasonably available. The University may, as appropriate, modify or terminate supportive measures at the conclusion of an informal resolution or grievance process, or may continue them beyond that point. Supportive Measures may include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; restrictions on contact applied to one or more parties; leaves of absence; paid administrative leave for employees; changes in class, work, extracurricular, or any other activity, regardless of whether there is or is not a comparable alternative; training and education programs related to sex-based harassment; and/or other measures determined to be reasonable by the Title IX Coordinator (or designee).

I. Preponderance of Evidence: A standard of proof that requires that a fact be found when its occurrence, based on evidence, is more likely than not to be true. This shall be the standard of proof applicable to all fact-finding under this Policy.

J. Relevancy of Evidence: Throughout this Policy, references are made to relevant evidence, both in the investigation phase or adjudication phase of a matter. Relevant

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evidence means evidence which has any tendency in reason to prove or disprove a disputed fact, including both inculpatory and exculpatory evidence, which may aid a decision-maker in determining whether Prohibited Conduct occurred under the Preponderance of the Evidence Standard, except evidence which is otherwise excluded under this Policy. Relevant evidence includes evidence regarding the Credibility of a party or witness.

K. Credibility: The credibility of Complainants, alleged victims, Respondents, and witnesses must be evaluated when there are conflicting versions of relevant events related to a matter under investigation required by this Policy. Credibility means whether a particular version of events should be believed. In assessing the credibility of any person, factors to consider include, but are not necessarily limited to: inherent plausibility of the person's statement; their demeanor and attitude toward the matter; whether they have the motivation to inaccurately state facts; whether or not other persons or evidence corroborate their version of events (such as an eye witness or someone who discussed the events with the person around the time the events took place); the character of the testimony; the extent of the person's capacity to perceive, remember, or communicate regarding the matter; consistent or inconsistent statements made by the same person; admissions of untruthfulness. No one (1) factor is necessarily determinative of credibility. The mere fact that there was no eyewitness to an alleged event does not mean a person is not credible, and similarly, whether a Respondent had previously engaged in similar misconduct does not mean the Respondent is not credible as to the current matter being investigated. Credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness.

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L. Sex: Under this Policy, the term “Sex” includes sex; gender; sexual orientation; gender identity;<sup>7</sup> transgender status; gender expression; sex stereotypes; sex characteristics; current, potential, or past pregnancy or related conditions; reproductive health decision making; parental, family, or marital status. Additionally, the following sub-definitions are as follows:

1. Pregnancy or related conditions: pregnancy, childbirth, termination or loss of pregnancy, lactation, breastfeeding; medical conditions related to pregnancy, childbirth, termination or loss of pregnancy, lactation, or breastfeeding; or recovery from pregnancy, childbirth, termination or loss of pregnancy, or related medical conditions. This includes but is not necessarily limited to, pregnancy-related fatigue, dehydration, nausea, increased body temperature, anemia, gestational diabetes, preeclampsia, infertility, recovery from miscarriage or abortion, ectopic pregnancy, pre-natal or post-partum depression, or swelling/leaking of the breast tissue or mastitis.
2. Reproductive health decision-making: includes, but is not limited to, a decision to use or access a particular drug, device, product, or medical service for reproductive health.
3. Parental status: refers to a person who, with respect to another person who is either under the age of 18 or over the age of 18 but incapable of self-care due to a physical or mental disability, is: a biological parent, an adoptive parent, a foster parent, a stepparent, a legal custodian or guardian, in loco parentis with respect to such a person, or actively seeking legal custody, guardianship, visitation, or adoption of such a person.

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<sup>7</sup> Individuals are permitted to use CHSU’s campus facilities, such as bathrooms, consistent with their gender identity.

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M. Consent to Sexual Activity: Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires, of all persons involved, an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved to ensure they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest, lack of resistance, or silence does not alone constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity, even after penetration occurs. If confusion or ambiguity arises as to the willingness of the other individual to proceed, then consent should be re-obtained. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or a dating relationship alone suffice as evidence of consent to prior conduct). The following provisions apply to the definition of consent:

1. Incapacitation: Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.
2. The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief is reasonable. In making this determination, the factfinder will consider all the facts and circumstances the Respondent knew or reasonably should have known at the time. In particular, the Respondent's belief is not a valid defense where:
  - a. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
  - b. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the alleged victim affirmatively consented; or
  - c. The Respondent knew or reasonably should have known that the Complainant

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was unable to consent because the Complainant was incapacitated, in that the Complainant was: asleep or unconscious; unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication; unable to communicate due to a mental or physical condition. Anyone engaging in sexual activity should be aware of the other person's level of intoxication.

3. Sex Discrimination: Sex Discrimination under this Policy is a term broadly used to encompass all forms of discrimination or harassment that are illegal under federal or California state law based on: sex, gender, sexual orientation, gender identity, transgender status, gender expression, sex stereotypes, sex characteristic; current, potential, or past pregnancy or related conditions; reproductive health decision-making; and parental, family, or marital status. Sex Discrimination includes, but is not necessarily limited to, the following:

d. Sexual Harassment prohibited by California law, including the California Fair Employment & Housing Act ("FEHA") and 2 CCR sections 11019 and 11034, which includes unwelcome sexual advances, requests for sexual favors, and other visual, verbal, or physical conduct in the following instances:<sup>8</sup>

- i. Quid Pro Quo: an applicant for employment or an employee's submission to sexual advances or other conduct based on sex is an explicit or implicit condition of a job or other term of employment, such as promotion; and
- ii. Unwelcome comments or conduct based on sex that are both subjectively and objectively offensive and which unreasonably interfere with an employee's work performance or create an

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<sup>8</sup> Such conduct need not be motivated by sexual desire.

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intimidating, hostile, or offensive work environment. Such comments or conduct must be either severe or pervasive such that it alters the conditions of employment and creates an abusive working environment.

e. Sexual Harassment as defined by the California Education Code, which includes, but is not necessarily limited to:

- i. Unwelcome sexual advances, requests for sexual favors, and other verbal, visual, and physical conduct of a sexual nature or based on sex made by someone from or in the work or educational setting under any of the following conditions: (1) Submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress; (2) Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual; (3) The conduct has the purpose or effect of having a negative impact on the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment; and (4) Submission, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
- ii. Sexual Violence, which means physical, sexual acts (whether completed or attempted) perpetrated against a person without the



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person's affirmative consent, including Rape<sup>9</sup> and Sexual Battery;<sup>10</sup>

iii. Sexual Exploitation (whether completed or attempted).<sup>11</sup>

f. Sexual Harassment prohibited under Title VII of the Civil Rights Act of 1964 and 29 CFR Section 1604.11, which includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- iii. Such conduct has the purpose or effect of unreasonably interfering

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<sup>9</sup> Rape, defined as penetration, no matter how slight, of the vagina or anus with any part of an object, or oral copulation of a sex organ by another person, without consent of the victim.

<sup>10</sup> Sexual Battery means the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

<sup>11</sup> 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 or services, through force, fraud or coercion; (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 photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure; (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.

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with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

g. Sexual Harassment prohibited by Title IX of the Education Amendments of 1972 and 34 CFR Section 106.2, which includes sexual harassment and other harassment on the basis of sex that is:

- i. Quid Pro Quo Harassment – An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity, explicitly or implicitly conditioning the provision of such aid, benefit, or service on a person's participation in unwelcome sexual conduct;
- ii. Hostile Environment Harassment – Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment);<sup>12</sup> and

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<sup>12</sup> Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

(i) The degree to which the conduct affected the Complainant's ability to access the recipient's education program or activity; (ii) the type, frequency, and duration of the conduct; (iii) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other sex-based harassment in the recipient's education program or activity.

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iii. Specific Offenses – sexual assault,<sup>13</sup> dating violence,<sup>14</sup> domestic violence,<sup>15</sup> and stalking.<sup>16</sup>

4. Discrimination (other than Sex Discrimination): Discrimination means excluding from participation, denying the benefits of, or otherwise subjecting an individual or group of individuals to different treatment based on a Protected Class (other than Sex). For example, unlawful discrimination may consist of a decision, policy, or practice.
5. Harassment (other than Sex Discrimination): Harassment is unwelcome verbal, visual, or physical conduct based on a Protected Class (other than Sex) which creates an intimidating, offensive, or hostile work or educational environment that interferes with a person’s work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile or offensive. Harassment can be verbal (including slurs, jokes, insults, epithets, gestures, or teasing), visual (including offensive posters, symbols,

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<sup>13</sup> Sexual assault, meaning an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigations.

<sup>14</sup> Dating violence meaning violence committed by a person who: (A) Is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship; (2) The type of relationship; and (3) The frequency of interaction between the persons involved in the relationship.

<sup>15</sup> Domestic violence, meaning felony or misdemeanor crimes committed by a person who: (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim; (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) Shares a child in common with the victim; or (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

<sup>16</sup> Stalking, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) Fear for the person’s safety or the safety of others; or (B) Suffer substantial emotional distress.

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cartoons, drawings, computer displays, or emails), or physical conduct (including physically threatening another, blocking someone's way, etc.) that denigrates or shows hostility or aversion towards an individual based on a Protected Class (other than Sex).

6. Retaliation: Retaliation is an adverse action against a person based on: their report of alleged Prohibited Conduct, including Sex Discrimination, to a University employee or the Title IX Coordinator; making a complaint of Prohibited Conduct, including Sex Discrimination; their participation, or refusal to participate,<sup>17</sup> in an informal resolution or grievance process under this Policy or otherwise testifying, assisting with an informal resolution or grievance process under this Policy; their cooperation with a University investigation; their receipt or implementation of Supportive Measures or Corrective Measures under this Policy; or for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations. An adverse action is conduct that would discourage or prevent a reasonable person from reporting Prohibited Conduct or participating in a process provided for in this Policy. Adverse action includes, but is not necessarily limited to: intimidation, threats, coercion, or discrimination against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity. Retaliation includes peer retaliation (i.e., a student retaliating against another student). Retaliation does not include good faith actions lawfully pursued in response to a report of Prohibited Conduct.

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<sup>17</sup> University employees are required to cooperate with, assist with, and participate in the University's grievance process, including investigations, hearings, and/or other decision-making process. Nothing in this Policy prevents the University from requiring an employee to do so.

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7. Disciplinary Sanctions: Disciplinary Sanctions are consequences imposed on a Respondent following a determination the Respondent has engaged in Sex Discrimination under this Policy. Disciplinary Sanctions may include any of the listed Corrective Measures.
  8. Remedies: Remedies are measures provided, as appropriate, to a Complainant or other person the University identifies as having had their equal access to the University's education program or activity limited or denied by Sex Discrimination. Remedies are provided to restore or preserve that person's access to the University's education program or activity after the University has determined that Sex Discrimination occurred.
  9. Corrective Measures: Disciplinary Sanctions, Remedies, or other measures, services, accommodations, or corrective actions put in place as a result of the final resolution of a complaint of conduct prohibited by this Policy. Possible Corrective Measures imposed under this Policy include:
    - a. Participation in a voluntary, facilitated restorative process;
    - b. A written or verbal apology;
    - c. A written or verbal warning, letter of reprimand, performance improvement plan, or other document outlining expectations for future behavior and related consequences;
    - d. Training or other educational requirements, such as an assigned reading, a research or reflective paper, attendance at an educational seminar or program, or similar activity;
    - e. Assistance from or check-ins with campus safety or security personnel;
    - f. Mandatory or voluntary counseling;
    - g. Mentorship, accountability meetings, or coaching assignments;

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- h. Community service or other volunteer activities;
  - i. Modifications to job position or work assignments (such as a transfer or modification of job duties), or delivery of curriculum or course requirements, such as independent study, adjusted deadlines, or remote learning;
  - j. Disciplinary probation, which may include monitoring of progress, review of behavior, limitations on campus privileges, or other restrictions on participation in University events, extra-curricular, or co-curricular activities over a set period of time;
  - k. Prohibition from utilizing certain campus facilities;
  - l. No-contact directives;
  - m. Drug testing and/or drug and alcohol counseling programs;
  - n. Temporary or permanent exclusion from attending University events or activities, including extra-curricular or co-curricular activities;
  - o. Suspension from employment or participation in an academic program, extra-curricular, or co-curricular activities;
  - p. Dismissal from the University's academic programs
  - q. Termination of employment;
  - r. Other actions that seek to make a victim whole or which seek to prevent a recurrence of Prohibited Conduct, such as a written or verbal apology or participation in a post-grievance process mediation.

## **V. REPORTING TO POLICE FOR CRIMINAL CONDUCT; EFFECT OF CRIMINAL CHARGES OR CRIMINAL INVESTIGATION**

In an emergency situation, CHSU community members should call 9-1-1. CHSU encourages

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all members of its community who believe they are the victim of criminal behavior (including, but not limited to, criminal sexual violence) to report the conduct to the police even if significant time has passed since the incident. All members of the CHSU community may seek assistance in reporting a crime of sexual violence to law enforcement by contacting the Title IX Coordinator.

Complainants under this policy also may choose not to notify law enforcement. Regardless of whether a Complainant chooses to make a report to law enforcement, the Complainant may still file a complaint with the University and may still receive Supportive Measures, as set forth in this Policy. Additionally, regardless of whether the alleged misconduct rises to the level of a criminal offense, CHSU encourages all community members to report alleged discrimination, harassment, retaliation, or sexual violence to CHSU.

In some cases, University personnel, including the Title IX Coordinator, may be required by law to make a report of criminal conduct to law enforcement. Pursuant to California law (AB 1433 – Reporting of Sexual and Hate Violence, 2014), while the reporting disclosure of an act of violence may be mandated, a victim’s identity may not be disclosed to local law enforcement unless the victim consents to being identified after being informed of the victim’s right to have identifying information withheld. If a victim does not consent to disclosing the victim’s identity, the alleged perpetrator’s identity may not be disclosed either.

The procedures outlined in this Policy are separate from any criminal process or investigation. Because the requirements and standards for finding a violation of criminal law are different from the standard under this Policy, criminal investigations, reports, or verdicts may be different from the outcomes under this Policy. The University may share information and coordinate investigation efforts with law enforcement when necessary or appropriate. A delay resulting from such coordination is good cause for extending the timelines to

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complete the University's grievance process. Any such delay will be communicated and documented to the Parties.

State, federal, and local government agencies are responsible for criminal prosecution. The University has no authority or responsibility for the criminal prosecution of any matter, even if the University helps someone file a report of criminal conduct or receives a report of a complaint under this policy that may rise to the level of criminal conduct.

## **VI. REPORTING PROHIBITED CONDUCT TO THE UNIVERSITY; AMNESTY FOR STUDENT COMPLAINANTS AND WITNESSES**

CHSU is committed to enforcing this Policy. The effectiveness of the University's efforts depends in part on employees and students telling the University about inappropriate conduct. Employees and students should not assume that CHSU has knowledge of any form of illegal discrimination, harassment, or retaliation, including Sex Discrimination. If employees or students do not report harassing or discriminatory conduct, CHSU may not become aware of a possible violation of this Policy and may not be able to take appropriate action. Any Responsible Employee who believes that this Policy has been violated is mandated to report those concerns to the Title IX Coordinator directly.

Any person can report Prohibited Conduct at any time (including during non-business hours), either verbally or in writing, in person, by mail, by telephone, email, or by any other means as follows:

1. Report to the Title IX Coordinator. As of the effective date of this policy, the University's Title IX Coordinator is Ms. Carlita Romero-Begley, PHR, SHRM-CP, Vice President of Human Resources and Title IX Coordinator, and may be contacted by phone at 559-282- 8747 (direct line), via email at [cromerobegley@chsu.edu](mailto:cromerobegley@chsu.edu) or [titleix@chsu.edu](mailto:titleix@chsu.edu) or in person at 120 N. Clovis



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Avenue, Clovis, CA 93612 (at the time of publication in Room Number 137). The CHSU website will be kept updated with any changes to the Title IX Coordinator's name and contact information.

2. Report to Another Responsible Employee. They can report verbally, via phone or email to any Responsible Employee, such as to the Dean or the student affairs staff of any of the University's colleges, or the Office of the President. Any person or office that receives a report (except for Confidential Employees/Resources) must forward it to the Title IX Coordinator. If the person to whom a report normally would be made is the person accused of Prohibited Conduct, reports may be made to another Responsible Employee or the Title IX Coordinator. If the person accused of Prohibited Conduct is the Title IX Coordinator, the report may be made to the President.
3. Online Through the University Website. A report can be made by submitting the online form, either with a name or anonymously. The online form is located on CHSU's website at <https://chsu.edu/title-ix/>. Forms submitted online will be delivered to the Title IX Coordinator.

While there is no time limit for submitting reports of Prohibited Conduct, such reports should be brought forward as soon as possible. Prompt reporting will better enable CHSU to respond, investigate, provide an appropriate remedy, and impose Corrective Measures, if appropriate. All incidents should be reported even if significant time has elapsed.

CHSU prefers the Complaint be made in writing and specifically identifies the person(s) involved, names of witnesses, and what occurred. However, if a Complaint is not filed in writing but CHSU receives notice of any allegation(s) of Prohibited Conduct, CHSU shall take steps to address the allegation(s) in a manner appropriate to the circumstances.

The University will keep reports of Prohibited Conduct as confidential as possible but may

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be required to disclose information to comply with law or the University's policies and procedures, including (but not limited to) for the purposes of investigating and/or resolving the complaint.

The University encourages reporting of Prohibited Conduct. It is in the best interest of the CHSU community that individuals come forward to make reports of Prohibited Conduct, regardless of whether they have engaged in conduct in violation of University policy, such as using drugs or alcohol at or near the time of the incident. To encourage reporting in these types of situations, the University will not subject a Complainant or witness of Prohibited Conduct who is a student or a student-employee to Corrective Measures for a violation of the University's code of conduct or other University policy (i.e., the University will grant the student or student-employee amnesty) unless the University determines that the violation was egregious. Egregious violations include acts that: (1) place the health or safety of themselves or others at risk; or (2) involves plagiarism, cheating or academic dishonesty. Student-employees may still be subject to Corrective Measures as employees of CHSU for acts which put CHSU at significant risk of litigation or damage to reputation. The University reserves the right to require individuals who are granted amnesty under this Section IX to participate in assessments, training, counseling, or educational programs, including (but limited to) on topics such as health and safety, professionalism, or harassment/discrimination prevention.

The University will not pursue action against a person for a code of conduct violation that does not involve Sex Discrimination or sexual harassment but arises out of the same facts or circumstances as a report or complaint of Sex Discrimination for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations.

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## VII. TITLE IX COORDINATOR RESPONSE TO COMPLAINTS OF PROHIBITED SEX-BASED CONDUCT (COMPLIANCE WITH CALIFORNIA EDUCATION CODE SECTION 66281.8)

The Title IX Coordinator will process complaints of sexual harassment, sexual violence, or other Sex Discrimination in accordance with this Section VI. This section only applies to the Title IX Coordinator's processing of complaints; it does not apply to Responsible Employees making a mandatory report of alleged misconduct under this Policy. **Nothing in this section shall relieve a Responsible Employee from reporting obligations described in other sections of this policy.**

Any disciplinary measures imposed by the University for violations of the University's policies at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of California Education Code section 67386.

The University will take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the University's policies that occur in connection with any educational activity or other program of the University, as well as incidents that occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

Regardless of how the information was received, if the University knows, or reasonably should know, about the possible sexual harassment involving individuals subject to the University's policies at the time, the University shall promptly investigate under the procedures set forth under Grievance Process 1, to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the University determines that an investigation is not required. If the University determines that the alleged conduct more

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likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. The University is presumed to know of sexual harassment if a Responsible Employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment.<sup>18</sup>

#### **A. Responding to Prior Incidents of Sexual Harassment**

The University shall consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

In some cases, students may disclose incidents of sexual harassment or other Sex Discrimination in the course of their academic program. Responsible Employees, and Confidential Resources acting outside the scope of their licensure (for example, physicians who are performing faculty member duties), are still required to report these disclosures to the University's Title IX Coordinator. In such cases, investigation or adjudication of the alleged misconduct may not be required or possible; however, the University may provide the student with supportive measures and resources appropriate to the situation and consistent with the University's obligation to prevent a hostile educational environment or interference with the student's access to education.

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<sup>18</sup> The University may rebut this presumption of knowledge if it shows all of the following: (1) The University provides training and requires all nonconfidential responsible employees to report sexual harassment; (2) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment; (3) Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.

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## **B. Responding To Students' Requests for Confidentiality**

If a student who is not an employee of the University is a Complainant and requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential Respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the University shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the Complainant, and considering other requirements of law and University policy. In determining whether to disclose a Complainant's identity or proceed to an investigation over the objection of the Complainant, the University may consider whether any of the following apply:

1. There are multiple or prior reports of sexual misconduct against the Respondent;
2. The Respondent reportedly used a weapon, physical restraints, or engaged in battery;
3. The Respondent is a faculty or staff member, or other person, with oversight of students;
4. There is a power imbalance between the Complainant and Respondent;
5. The Complainant believes that the Complainant will be less safe if Complainant's name is disclosed or an investigation is conducted;
6. The University is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation;
7. Other basis for taking action to preserve campus safety or the safety of the Complainant or others.

If the University determines that it can honor the student's request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the Complainant.

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These steps may include increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing additional training and education materials for students and employees; or conducting climate surveys regarding sexual violence. The University shall also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The Complainant shall be notified that the steps the University will take to respond to the complaint will be limited by the request for confidentiality.

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

Notwithstanding the above, all Responsible Employees are required to report allegations of sexual harassment as set forth in Section VI. The determinations set forth in this Section VII regarding whether to initiate an investigation or not shall be the responsibility of the Title IX Coordinator (or designee), and not left to the discretion of any other Responsible Employee.

## **VIII. UNIVERSITY GRIEVANCE PROCESSES; INITIAL REVIEW OF REPORT OF PROHIBITED CONDUCT; CONSOLIDATION**

The University has two (2) separate grievance processes for handling reports of Prohibited Conduct under this Policy:

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- A. [Grievance Process One \(1\)](#): This grievance procedure is utilized for all Complaints of Prohibited Conduct except for those involving Sex Discrimination, Retaliation involving a report or Complaint of Sex Discrimination, which are not otherwise processed via Informal Resolution procedures.
- B. [Grievance Process Two \(2\)](#): This grievance procedure is utilized for all Complaints of Sex Discrimination and Complaints of Retaliation related to a report or Complaint of Sex Discrimination, which are not otherwise processed via Informal Resolution procedures. Grievance Process Two (2) has two sub-parts: Part A and Part B. [Grievance Process Two \(2\) Part A](#) applies when none of the Parties involved are students. [Grievance Process Two \(2\) Part B](#) applies when one or more of the Parties involved is a student, including a student-employee.

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator shall conduct an initial review of the report and determine whether the alleged conduct, if true, violates this Policy. If so, the Title IX Coordinator shall then determine whether the alleged conduct, if true, would constitute Sex Discrimination under this Policy and, if so, process the matter under either the University's informal resolution procedures (if applicable) or Grievance Process 2, as set forth above.

The Title IX Coordinator may, but is not required to, consolidate reports of Prohibited Conduct for processing under this Policy. In instances where a report of Prohibited Conduct involves Sex Discrimination and alleged misconduct on the basis of a Protected Class other than Sex, the Title IX Coordinator may either: (a) choose to process allegations separately under the appropriate grievance procedure for each type of allegation; or (b) choose to consolidate the matter and process the it under Grievance Process Two Part A (2-A) or Grievance Process Two Part B (2-B), as appropriate.

Under any of the above grievance procedures, the investigation and adjudication of alleged

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Prohibited Conduct is not an adversarial process or a formal legal process between the Complainant, the Respondent, and the witnesses, but rather an internal administrative process for the University to comply with their obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

Additionally, the University may require the Parties, Support Persons, Advisors, witnesses, third-party professionals, or others involved in the grievance process to execute non-disclosure agreements, FERPA waivers, or similar documents under either Grievance Process 1, Grievance Process 2, or Informal Resolution procedures.

In all cases, the availability of Informal Resolution procedures is governed by Section IX of this Policy, below.

## **IX. INFORMAL RESOLUTION OF COMPLAINTS INVOLVING STUDENT RESPONDENTS**

Prior to the initiation of the appropriate grievance process or at any time prior to conclusion of a grievance process, a report of Prohibited Conduct (including Sex Discrimination) may be resolved by an informal resolution process under the following circumstances:

1. Title IX Coordinator chooses to offer an informal resolution process;
2. The Respondent is a student, who is not also an employee, and the student is willing to accept the Corrective Measures resulting from the informal process;
3. All parties have received a written notice (“Notice of Informal Resolution Procedures”) which includes the following: (a) the allegations; (b) the requirements of the informal process; (c) explains that during the informal process either party has a right to withdraw and resume the applicable grievance



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process; (d) explains that if the Parties agree to a resolution at the conclusion of the informal resolution process then they are precluded from initiating or resuming the grievance procedures arising from the same allegations; (e) examples of terms<sup>19</sup> that may be requested or offered in an informal resolution agreement; (f) a statement that an informal resolution agreement is binding only on the Parties; and (g) explains any consequences resulting from participating in the informal process including what records will be maintained or shared from the informal process for use in a grievance process under this Policy.

4. The parties wish to resolve the matter without completion of an investigation or adjudication, and/or where the Respondent desires to admit responsibility for the alleged Prohibited Conduct;
5. The Complainant and Respondent both voluntarily provide written consent<sup>20</sup> to participate in the informal process (“Participation Agreement”); and
6. An informal resolution process is not otherwise prohibited by federal, California, or local law.

Generally speaking, an informal resolution process shall take place within thirty (30) business days following the Complainant and Respondent’s execution of a Participation Agreement. This timeline may be extended for good cause. Even if an informal resolution process is utilized to resolve an allegation of Sex Discrimination, the Title IX Coordinator

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<sup>19</sup> For example, restrictions on contact, restrictions on the Respondent’s participation in one or more of the University’s programs or activities or attendance at specific events, or other Corrective Measures as defined in this Policy.

<sup>20</sup> The University shall not require waiver of the right to an investigation and adjudication of the complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercising any other right in order to for a party to participate in informal resolution.

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must still take prompt and effective steps to ensure that Sex Discrimination does not continue or recur within the University's education program or activity.

The Title IX Coordinator has authority to: (1) require the University to be included as a party to an informal process; and/or (2) terminate the informal process at any time prior to its completion and re-initiate the applicable grievance process if facts or circumstances emerge that indicate the matter is not appropriate for an informal process. The Title IX Coordinator's decision whether to offer an informal resolution process and whether to terminate such process prior to completion is final and not subject to appeal.

Informal resolution processes should generally be completed within thirty (30) business days from the initiation of the process. The documented agreement resulting from the informal resolution process is final and not subject to appeal. Following completion of an informal resolution process, the Title IX Coordinator shall ensure the parties adhere to the outcome.

Information shared with a facilitator or mediator during the informal resolution process will not be used in a separate student conduct process or a grievance process under this Policy if the informal process is not completed. The facilitator or mediator shall not become a witness to any subsequent student conduct process or grievance process under this Policy. However, facts disclosed to a facilitator may otherwise be uncovered in the normal course of investigation if a student conduct process or grievance process is started or re-initiated. Information shared between a Complainant and Respondent during an informal resolution process may be used in the applicable grievance process if the informal resolution process is started but not completed, in accordance with law and University policy.

Options that the Title IX Coordinator may offer for informal resolution of Prohibited Conduct include: (1) a facilitated restorative justice process ("RJ Process"); and (2) a facilitated

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mediation (“Mediation”), as described below. In either case, the informal resolution process cannot be facilitated by the same person who will serve as the investigator or decisionmaker for the matter under the University’s grievance process.

**A. Restorative Justice Process**

A facilitated restorative justice process is philosophy of justice as well as a set of practices and seeks to: (a) eliminate Prohibited Conduct; (b) prevent recurrence of Prohibited Conduct; and (c) address harm caused by Prohibited Conduct through active accountability in a manner that meets the needs of both Complainant and the campus community. A RJ Process is facilitated by someone trained in trauma-informed restorative justice practices who is impartial and free from conflicts of interest, or bias for or against the Complainant or Respondent or Complainants or Respondents generally (“Facilitator”).

Disputes of fact are permitted in a RJ Process; however, in all cases the student Respondent must be willing to admit and take responsibility for the Prohibited Conduct as generally described in the report of Prohibited Conduct.

At the end of a RJ Process, an agreement is required to document the outcome that must be in writing signed by the parties. The Facilitator shall deliver the agreement to the Title IX Coordinator.

Aside from the requirements described above, the restorative justice facilitator has discretion in how best to conduct the process, including, but not limited to, whether face-to-face interaction between the parties occurs.

**B. Mediation**

Mediation is a process that seeks to help the parties resolve a dispute. Mediation is facilitated by an impartial facilitator who is free from conflicts of interest, or bias for or

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against the Complainant or Respondent or Complainants or Respondents generally (“Mediator”). The Mediator must be familiar with negotiation and dispute resolution protocols and may be, but is not required to be, an attorney. The Mediator does not have the authority to unilaterally impose Corrective Measures – the parties must agree to Corrective Measures to resolve the matter.

Disputes of fact are permitted in a mediation process; however, in all cases the student Respondent must be willing to negotiate regarding the appropriate imposition of Corrective Measures to resolve the allegations of Prohibited Conduct.

At the end of a Mediation, the negotiated agreement must be in writing signed by the parties, and the Mediator shall forward a copy of the agreement to the Title IX Coordinator.

Aside from the requirements described above, the Mediator has discretion in how best to conduct the process, including, but not limited to, whether face-to-face interaction between the parties occurs.

## **X. GRIEVANCE PROCESS 1 FOR COMPLAINTS OTHER THAN SEX DISCRIMINATION**

As set forth above, this grievance process is utilized for all reports of [Prohibited Conduct](#) except for: (a) those involving [Sex Discrimination](#); (b) those involving Retaliation related to a report or Complaint of Sex Discrimination; or (c) those resolved via Informal Resolution.

### **A. Initial Review of the Complaint; Supportive Measures**

The Title IX Coordinator shall conduct an initial review of the Complaint to determine whether an investigation is required and whether [Supportive Measures](#) are appropriate. An investigation is required when there is a dispute of fact which impacts the determination of whether Prohibited Conduct has occurred or if the Title IX Coordinator determines it is

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otherwise in the best interest of the campus community to do so.

### **B. Assignment of Neutral Investigator; Notice of Complaint Procedures**

If an investigation is required, then the Title IX Coordinator shall either directly investigate the matter or may assign a qualified neutral investigator to investigate the alleged misconduct (“Investigator”). In some cases, an investigative team may be utilized. The Title IX Coordinator shall have broad discretion in selection of an investigator, provided that the assigned Investigator: (a) has the skills and resources necessary to conduct a complete investigation; (b) is free of conflicts of interests; and (c) is free from bias in favor of or against either the Complainant or Respondent or Complainants or Respondents generally. The Investigator may be a qualified University employee or an external investigator. External investigators must be either licensed attorneys or licensed private investigators. Before the investigation begins, the Title IX Coordinator will provide the Complainant and the Respondent with a Grievance Process 1 Notice of Complaint & Investigation Procedures (“G1 Notice of Complaint Procedures”) that, generally, includes the following information:

1. A copy of or access to the Grievance Process 1 procedures and this Policy;
2. The general nature of the alleged violations;
3. The purpose of the investigation, including a statement that the investigation is when all known and/or available evidence or information must be introduced;
4. A statement that knowingly making false statements or knowingly submitting false information to the University as part of the grievance process is a violation of this Policy and the codes of conduct applicable to employees and students, and may subject the person doing so to corrective measures, up to and including expulsion from the University’s academic program and/or termination from employment;
5. The identity and contact information of the Investigator;
6. A statement that the findings of fact will be based on a Preponderance of Evidence

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standard;

7. A statement warning against interference with the integrity of the investigation, consistent with law and this Policy;
8. Any Supportive Measures;
9. The option for a Support Person;
10. A statement that Retaliation is prohibited; and
11. A statement that any new allegations that arise during the course of the investigation that could subject either party to new or additional Corrective Measures shall be subject to the same notice requirements.

### **C. Support Person**

The Complainant and/or Respondent may choose anyone (including legal counsel, a colleague, friend, family member, or other representative) to voluntarily serve as their support person during the grievance process, so long as the person selected is not a witness to the allegations being processed (“Support Person”). The Complainant and Respondent may be accompanied by their Support Person to any meeting or proceeding under this Policy; however, the Support Person may not speak on their behalf, advise them on how to answer a question of the Investigator, or otherwise engage with the Investigator or others participating in any part of the process under this Policy. The Complainant and Respondent must notify the Title IX Coordinator at least three (3) business days in advance if they wish to bring a Support Person and must disclose their name and contact information to the Title IX Coordinator. The Support Person and the person they are supporting may be required to sign documents agreeing to confidentiality and non-disclosure of information obtained in the Grievance Process, FERPA waivers, or other paperwork the Title IX Coordinator deems appropriate.

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### **C. Investigation Timeline and Process; Standard of Proof**

Generally, the investigation shall generally be completed within ninety (90) business days from the issuance of the G1 Notice of Complaint. This deadline and all deadlines under Grievance Process 1 may be extended by the University for good cause, including but not limited to the need to ensure a thorough and accurate investigation process. The University shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint due to periods of examination or school closures. The Complainant and Respondent will be notified in writing of any such extensions, the general reason(s) for the extension, and the projected new timeline. During the investigation, the Investigator will meet separately with the Complainant, Respondent, and witnesses who may have Relevant information, and will gather other available and Relevant evidence and information. The Investigator will make findings of fact based on a Preponderance of the Evidence. The interviews may be electronically recorded at the discretion of the Investigator. The Investigator's recording will be the sole electronic recording permitted; the parties and witnesses are not permitted to make their own recording of their interview. No recording devices, including cell phones, will be permitted during the interview other than the Investigator's recording device. All employees and students are required to participate in the investigation process as requested by the Investigator or Title IX Coordinator, subject to discipline under the relevant University codes of conduct or professionalism policies. To the extent a Respondent does not participate in the investigation, non-participation may not be used as a basis for appeal and the Investigator will make findings of fact without the input of the Respondent. The Investigator may bring support staff to investigative interviews or other proceedings to assist in the process. No other persons are permitted at an investigatory interview or other proceeding unless granted permission by the Title IX Coordinator.

### **D. Consent Required for Privileged Information**

The Investigator cannot access, consider, disclose, or otherwise use a Party's records which

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are protected by a legally recognized privilege, including, but not limited to, the following: the attorney-client privilege, and questions and evidence made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Investigator obtains that Party's voluntary, written consent to do so.

#### **D. Investigation Documentation**

The Investigator shall prepare a written summary for the Title IX Coordinator that includes a statement of the allegations and issues, the perspectives of the parties (e.g., admissions or denials), a summary of the evidence, findings of fact and information supporting such findings, and credibility determinations for the Complainant, Respondent, and all Relevant witnesses without basing such determination on the person's status as a Complainant, Respondent, or witness. At the request of the Title IX Coordinator, the Investigator may also make a recommendation regarding whether any University policy violations occurred.

#### **E. Investigation File**

The investigation file, including the final written summary, interview recordings, and any documentary evidence relied upon by the Investigator, shall be maintained by the Title IX Coordinator and shall not be made available to the Complainant, Respondent, or any witness unless otherwise required by law. The Title IX Coordinator may share the investigation file with others as needed to carry out their obligations under this Policy.

#### **F. Adjudication and Corrective Measures**

If no investigation is required, or following the completion of an investigation, the Title IX Coordinator may utilize the following options for adjudication and, if appropriate, determination regarding [Corrective Measures](#) by a decision-maker which shall generally take place within 15 business days following the completion of the investigation:



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1. If the Title IX Coordinator did not investigate the matter directly, then the Title IX Coordinator may review the written summary and make a determination regarding whether a violation of this Policy has occurred and, if so, the Corrective Measures to be implemented;
  2. Refer the matter to an external adjudicator who will review the written summary and make a determination regarding whether a violation of this Policy has occurred and, if so, the external adjudicator shall recommend Corrective Measures for approval by the Title IX Coordinator or other appropriate University administrator;
  3. For matters involving employee Respondents, the Title IX Coordinator may forward the written summary to an administrator within the Office of Human Resources or another supervisory level administrator for a determination regarding whether a violation of this Policy has occurred and, if so, the Corrective Measures to be implemented;
  4. For matters involving student Respondents, the Title IX Coordinator may forward written summary to an administrator within the appropriate student affairs office for a determination regarding whether a violation of this Policy has occurred and, if so, the Corrective Measures to be implemented; or
  5. May refer the matter for further adjudication or resolution under other applicable University policies.

In all cases, the person(s) assigned to serve as a decision-maker for the matter shall: (a) be free from conflicts of interest; (b) be free from bias either for or against the Complainant or Respondent or complainants or respondents generally; (c) be trained in this Policy, including (but not limited to) with regard to the the definitions of harassment, discrimination, retaliation and preponderance of the evidence standard.

Following adjudication, the Title IX Coordinator shall provide the Parties with a Notice of Decision setting forth the University's decision regarding whether a violation of this Policy

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occurred and, if so, the Corrective Measures.

**G. Right to Request a Student Hearing Where the Corrective Measures Include Student Suspension or Dismissal from An Academic or Extracurricular Program**

Following receipt of a Notice of Decision, a student Respondent may request a hearing in writing submitted to the Title IX Coordinator within five (5) business days only in situations where the Corrective Measures to be imposed include suspension or expulsion from the University's academic program or University-controlled extracurricular programs. The University may utilize the student conduct hearing procedures set forth under the student's College policies, except that, at a minimum, they shall include the following: (a) an external hearing officer may be, but is not required to be, utilized as part of the student hearing process; (b) at hearing the Respondent may indirectly question the Complainant and/or witnesses before a neutral decision-maker who has the authority to independently make findings of fact and credibility assessments; (c) the hearing shall be informal, and rules of evidence shall not apply; and (d) the parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation unless the hearing officer, acting within their discretionary authority, has decided that there is good cause to accept such new evidence offered at the hearing. Following the hearing, the Title IX Coordinator will communicate the outcome to the Parties with a Notice of Student Hearing Decision, which shall include the decision regarding whether a violation of this Policy occurred and, if so, appropriate Corrective Measures.

**H. Appeal Rights**

Either the Complainant or the Respondent may appeal the Notice of Decision or Notice of Student Hearing Decision in writing submitted to the Title IX Coordinator within five (5) business days from the date of the notice based on one or more of the following criteria: (1) procedural irregularity that would change the outcome; (2) new evidence that would change

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the outcome that was not reasonably available when the determination of the outcome of the matter was made; or (3) the Title IX Coordinator, Investigator, decision-maker and/or hearing officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome. For purposes of appeal of the Notice of Decision, the outcome includes a determination whether a Policy violation occurred and the decision regarding Corrective Measures. Upon receipt of an appeal, the Title IX Coordinator will review the appeal to determine if it meets the required criteria and, if so, forward the appeal to an Appeal Adjudicator who shall not be the original decision-maker, the Investigator or the Title IX Coordinator. The Appeal Adjudicator may affirm the finding, affirm but modify the Corrective Measures, or remand the matter back for further investigation and/or other proceedings. The Title IX Coordinator shall ensure the Parties are provided with the Appeal Adjudicator's decision as well as the rationale for such decision in writing. All Appeal Adjudicator decisions are final.

### **I. Notices**

All notices and communications to CHSU faculty, staff, administration, and students will be delivered via the University's email system. All such parties have a responsibility to promptly read all University emails. For individuals outside of the CHSU community (including former employees and former/withdrawn students), notices and communications will be sent to the most recent email and/or physical home address on file with the Title IX Coordinator.

## **XI. GRIEVANCE PROCESS 2 FOR COMPLAINTS OF SEX DISCRIMINATION**

As set forth above, Grievance Process 2 is utilized for all reports of Sex Discrimination, including reports of Retaliation related to a report or Complaint of Sex Discrimination, except for those resolved via Informal Resolution.

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[Part A of Grievance Process 2](#), as set forth below, shall apply to such matters involving a Complainant(s) and Respondent(s) who are not students.

[Part B of Grievance Process 2](#), as set forth below, shall apply to such matters involving a student Complainant or a student Respondent (including students who are also employees).

**A. Grievance Process 2-A: Complaints Not Involving Students As a Complainant or Respondent**

1. Major Stages of the Grievance Process; Timelines

The major stages of this grievance process 2-A are as follows: [Evaluation](#); [Investigation](#); [Decision](#); and [Appeal](#). These major stages of the grievance process will typically be processed under the timelines set forth below; however, reasonable extensions shall be granted by the Title IX Coordinator on a case-by-case basis for good cause with notice to the Parties regarding the reason for extension. Where a timeline is not identified in this section, the Title IX Coordinator shall have discretion to implement reasonable timelines, consistent with law and this Policy, for procedural steps of the grievance process within each major stage, taking into consideration the nature of the matter and circumstances of the procedural step being taken. For example, the Title IX Coordinator may establish reasonable timelines for a request for review of decisions regarding Supportive Measures under [section XI.A.3.b.](#), below, and for appeals of a Notice of Dismissal under [section XI.A.7](#), below.

- a. Evaluation. The Title IX Coordinator shall evaluate a report of possible Sex Discrimination or Retaliation related to a report or Complaint of Sex Discrimination, including conducting the initial review of the matter as set forth below in [section XI.A.3.a](#), generally within fifteen (15) business days from the Title IX Coordinator's receipt of the report.

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- b. Investigation. The investigation phase shall generally be concluded within ninety (90) business days from the issuance of a Notice of Allegation.
  - c. Decision. The Title IX Coordinator's delivery of Notices of Decision to the Parties, as set forth below, shall take place generally within ten (10) business days from the completion of the investigation.
  - d. Appeal of Notice of Decision & Appeal Decision. The Parties shall have ten (10) business days from receipt of the Notice of Decision to submit an appeal, as set forth below. The Appeal Adjudicator shall issue the Appeal Decision generally within fifteen (15) business days following the Appeal Adjudicator's receipt of an appeal.

2. Basic Requirements for Grievance Procedures

The following basic requirements apply to this grievance procedure –

- a. Equitable Treatment; Burden of Gathering Evidence. Complainants and Respondents shall be treated equitably. Additionally, neither Complainants nor Respondents shall have the burden of gathering sufficient evidence for a determination regarding Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination occurred; rather, the University shall be responsible for conducting an investigation that gathers such evidence.
- b. No Conflicts of Interest or Bias. The Title IX Coordinator, Investigator, and appeal adjudicator shall not have a conflict of interest, or a bias for or against an individual Complainant or Respondent or complainants or respondents generally.
- c. Respondent Presumed Not Responsible. The Respondent is presumed not responsible for allegations of Sex Discrimination until a determination is made at the conclusion of this grievance procedure.
- d. Support Person. The Complainant and/or Respondent may choose

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anyone (including legal counsel, a colleague, friend, family member, or other representative) to voluntarily serve as their support person during the grievance process (“Support Person”). The Complainant and Respondent may be accompanied by their Support Person to any meeting or proceeding under this Policy; however, the Support Person may not speak on their behalf, advise them on how to answer a question of the Investigator, or otherwise engage with the Investigator or others participating in any part of the process under this Policy. The Complainant and Respondent must notify the Title IX Coordinator at least three (3) business days in advance if they wish to bring a Support Person and must disclose their name and contact information to the Title IX Coordinator. The Support Person and the person they are supporting may be required to sign documents agreeing to confidentiality and non-disclosure of information obtained in the Grievance Process, FERPA waivers, or other paperwork the Title IX Coordinator deems appropriate.

- e. Privacy. The University shall take reasonable steps to protect the privacy of the Parties and Witnesses during the pendency of the grievance process, including from unauthorized disclosure of information and evidence obtained solely through the grievance process, so long as the Parties are not restricted in their ability to: obtain and present evidence, including speaking to witnesses; consult family members; confidential resources or advisors; or otherwise prepare for or participate in the grievance process.
- f. Evidence Evaluation & Exclusion. All Relevant evidence, including evidence that is both inculpatory and exculpatory, shall be evaluated during the grievance process objectively unless such evidence is excluded. If evidence is excluded, questions seeking such evidence are

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impermissible. Such evidence must not be accessed or considered (except as needed to determine whether an exception to exclusion applies) and must not be disclosed or otherwise used. Evidence shall be excluded, even if Relevant, as follows (collectively, “Impermissible Evidence”):

- i. Privileged Information. Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a Confidential Employee or Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- ii. Professional and Paraprofessional Records. A Party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party’s or witness’s voluntary, written consent for use in the grievance process; and
- iii. Sexual Interest & Prior Sexual Conduct. Evidence that relates to the Complainant’s sexual interests or prior sexual conduct, unless evidence about the Complainant’s prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant’s prior sexual conduct with the Respondent that is offered to prove Consent to sexual conduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant’s consent to alleged violations of this Policy or preclude determination that a violation of this Policy occurred.

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- g. Disability & Pregnancy Accommodations/Modifications. The Title IX Coordinator shall ensure reasonable accommodations or reasonable modification are provided to Parties or witnesses with disabilities, and those who are pregnant or with pregnancy related conditions, to allow them to participate in the grievance process, as appropriate and consistent with law and University policy.
  - h. Notices. All notices and communications to CHSU faculty, staff, administration, and students will be delivered via the University's email system. All such parties have a responsibility to promptly read all University emails. For individuals outside of the CHSU community (including former employees and former/withdrawn students), notices and communications will be sent to the most recent email and physical home address on file with the Title IX Coordinator.

### 3. Evaluation

- a. Initial Review of Report or Complaint; Supportive Measures. The Title IX Coordinator shall conduct an initial review of a report of Sex Discrimination or Retaliation related to a report or Complaint of Sex Discrimination to determine whether, as defined and set forth in this Policy: (a) the report qualifies as a Complaint or whether the Title IX Coordinator should file a Complaint on the Complainant's behalf, including whether additional information needs to be gathered prior to making such determination; (b) whether Supportive Measures (as defined in section IV) are appropriate and, if so, implement such Supportive Measures; and (c) whether a Complaint should be dismissed, investigated under this grievance procedure, or processed under a different University grievance process, policy or procedure.
- b. Request for Review of Supportive Measure Determinations: The University will provide a Complainant or Respondent with timely



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opportunity to seek, from an appropriate and impartial University administrator (other than the administrator who made the decision regarding supportive measures), modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them.

- c. Administrative Leave. The University may, in its sole discretion, determine it is appropriate to place an employee on administrative leave during the pendency of the grievance process. Placement on administrative leave does not reflect a University decision regarding a Complaint and is not disciplinary or a Corrective Measure.
- d. Consolidation. The Title IX Coordinator may, but is not required to, consolidate Complaints of Sex Discrimination that arise out of the same facts or circumstances, including Complaints against more than one Respondent, by more than one Complainant against one or more Respondent, or a Complaint by one Party against another Party. If the Title IX Coordinator consolidates such Complaints and a party to a consolidated Complaint is a student (including a student-employee), then the matter shall be processed under Grievance Process 2-B, below.
- e. Notice of Allegations. If the Title IX Coordinator determines that initiation of this Grievance Process 2-A is appropriate, the Title IX Coordinator will provide written Notice of Allegations to the Parties as follows:
  - i. A copy of or access to the Grievance Process 2-A procedures and this Policy;

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- ii. Sufficient information<sup>21</sup> available at the time the Notice of Allegations is issued to allow the Parties to respond to the allegations;
  - iii. A statement that the Respondent is presumed not responsible for Sex Discrimination until a determination is made at the conclusion of the grievance process;
  - iv. A statement that prior to the determination, the Parties are entitled to an equal opportunity to access an accurate description of the Relevant and not otherwise Impermissible Evidence as set forth in this Policy and to access such evidence upon request by any Party;
  - v. A statement that knowingly making false statements or knowingly submitting false information to the University as part of the grievance process is a violation of this Policy and the codes of conduct applicable to employees and students, and may subject the person doing so to corrective measures, up to and including expulsion from the University's academic program and/or termination from employment;
  - vi. The identity and contact information of the Investigator;
  - vii. A statement that the findings of fact will be based on a Preponderance of Evidence standard;
  - viii. A statement warning against interference with the integrity of the

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<sup>21</sup> Sufficient information includes the identity of the Parties involved in the alleged incident(s), the conduct alleged to constitute Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination, and the date(s) and location(s) of the alleged incident(s) to the extent that information is available to the University at the time the Notice of Allegation is issued.

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- investigation, consistent with law and this Policy;
- ix. Any Supportive Measures;
  - x. The option for a Support Person;
  - xi. A statement that Retaliation is prohibited; and
  - xii. A statement that any new allegations of Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination that arise during the course of the investigation or which are consolidated into the original investigation under this Grievance Process Part 2-A shall be subject to the same notice requirements.

#### 4. Investigation

- a. Selection and Assignment of an Investigator. The Title IX Coordinator shall assign a qualified neutral investigator to investigate the alleged misconduct (“Investigator”). In some cases, an investigative team may be utilized. The Title IX Coordinator shall have broad discretion in selection of an investigator, provided that the assigned Investigator: (a) has the skills and resources necessary to conduct a complete investigation; (b) is free of conflicts of interests; and (c) is free from bias in favor of or against either the Complainant or Respondent or Complainants or Respondents generally. The Investigator may be a qualified University employee or an external investigator. External investigators must be either licensed attorneys or licensed private investigators.
- b. Gathering Evidence and Information. During the investigation, the Investigator will meet separately with the Complainant, Respondent, and witnesses who may have Relevant information, and will gather other available and Relevant evidence and information. The Investigator will not access or use Impermissible Evidence, even if Relevant, as set

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forth in this grievance procedure. The Investigator will provide an equal opportunity for the Complainant and Respondent to present facts, witnesses, and other inculpatory and exculpatory evidence that is Relevant and not otherwise considered Impermissible Evidence. The Investigator is responsible for determining whether evidence is Relevant or not, and whether evidence is Impermissible Evidence or not.

- c. Credibility Assessments. The Investigator shall question Parties and witnesses to adequately assess the Parties' or witnesses' credibility to the extent credibility is both in dispute and Relevant to evaluating one or more of the allegations.
- d. Expert Witnesses. Generally, expert witness evidence shall not be permitted; However, the Investigator may, but is not required to, permit the use of expert witness evidence on a case-by-case basis. If the Investigator permits expert witness evidence, the Investigator shall document to the Title IX Coordinator the reasoning for permitting such evidence in a particular matter. In all cases, Parties shall be treated equally with regard to expert witness evidence.
- e. Recording of Interviews. The interviews may be electronically recorded at the discretion of the Investigator. The Investigator's recording will be the sole electronic recording permitted; the parties and witnesses are not permitted to make their own recording of their interview. No recording devices, including cell phones, will be permitted during the interview other than the Investigator's recording device.
- f. Participation in the Investigation. All employees and students are required to participate in the investigation process as requested by the Investigator or Title IX Coordinator, subject to discipline under the relevant University codes of conduct or professionalism policies.

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Parties may bring their Support Persons to the investigation interviews. To the extent a Respondent does not participate, or does not fully participate, in the investigation, such non-participation may not be used as a basis for appeal and the Investigator will make findings of fact without the input of the Respondent. The Investigator may bring support staff to investigative interviews or other proceedings to assist in the process. No other persons are permitted at an investigatory interview unless granted permission by the Title IX Coordinator.

- g. Draft Investigation Report. The Investigator shall prepare a draft investigation report that shall contain an accurate description of the Relevant evidence and information collected, excluding Impermissible Evidence (“Draft Investigation Report”). The Draft Investigation Report may, but is not required to include, exhibits of documents obtained during the investigation.
- h. Party’s Review of & Response to Evidence. The Investigator shall provide the Parties with an equal opportunity to review the Draft Investigation Report. Upon request of either Party, the Investigator shall provide an equal opportunity for the Parties to access evidence that is Relevant and not otherwise Impermissible Evidence, consistent with this grievance procedure (including, but not limited to, the privacy and unauthorized disclosure provisions). The Investigator shall have discretion with regard to the manner in which evidence is made available to the Parties so long as it complies with this Policy and is approved by the Title IX Coordinator. The Investigator shall provide each Party with a reasonable opportunity to respond to the evidence, either orally or in writing. The Investigator has the discretion to continue investigating the matter following receipt of the Party’s response to evidence if the Investigator deems it appropriate under this grievance

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procedure. If so, the Investigator shall ensure that any new or different evidence obtained is incorporated into an updated Draft Investigation Report and provide the Parties another equal and reasonable opportunity to review and respond to the new or different evidence in the updated Draft Investigation Report.

- i. Final Investigation Report. Following the Parties' review of and response to the evidence, the Investigator shall prepare a Final Investigation Report which shall include: (a) a summary of the evidence collected; (b) the Parties, response (if any) to such evidence; (c) findings of fact; (d) credibility determinations to the extent credibility is in dispute and Relevant to evaluating one or more of the allegations; and (e) a determination regarding whether the Respondent has engaged in Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination.

5. Decision; Disciplinary Sanctions; Remedies

- a. Notice of Decision; Disciplinary Sanctions. Following conclusion of the investigation, the Title IX Coordinator shall simultaneously provide the parties with a Notice of Decision which sets forth: (a) the Investigator's determination regarding whether the Respondent has engaged in Sex Discrimination; (b) the rationale for such determination; (c) if Sex Discrimination occurred, then the notice shall include the [Disciplinary Sanctions/Corrective Measures](#) imposed on the Respondent; and (d) the procedures and permissible grounds for appeal of the Notice of Decision.
- b. Remedies. If the determination is that Sex Discrimination has occurred, then the Title IX Coordinator shall coordinate the provision and implementation of Remedies to the Complainant and any other persons the University identifies as having had equal access to the University's education program or activity limited or denied by Sex Discrimination,

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and take any other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue to recur within the recipient's education program or activity.

- c. Effective Date. The determination regarding responsibility becomes final either on the date the University provides the Parties with the written determination of the result of any appeal or, if no party appeals, the date on which an appeal would no longer be considered timely.

6. Appeal of Notice of Decision

- a. Grounds for Appeal. Either the Complainant or the Respondent may appeal the Notice of Decision in writing submitted to the Title IX Coordinator based on one or more of the following criteria: (1) procedural irregularity that would change the outcome; (2) new evidence that would change the outcome that was not reasonably available when the determination of the outcome of the matter was made; (3) the Title IX Coordinator, Investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome. For purposes of appeal of the Notice of Decision, the outcome includes a determination whether a Policy violation occurred and the decision regarding Disciplinary Sanctions/Corrective Measures.
- b. Appeal Procedures. Upon receipt of an appeal, the Title IX Coordinator will review the appeal to determine if it meets the required criteria and, if so, forward the appeal to an Appeal Adjudicator who shall not be the original decision-maker, the Investigator or the Title IX Coordinator. The Appeal Adjudicator may affirm the decision, affirm the decision but modify the Disciplinary Sanctions/Corrective Measures, or remand the

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matter back for further investigation and/or other proceedings. The Title IX Coordinator shall ensure the Parties are provided with the Appeal Adjudicator's decision as well as the rationale for such decision in writing. All Appeal Adjudicator decisions are final.

7. Dismissal

- a. Grounds for Dismissal. At any time during the grievance process, the Title IX Coordinator may, but is not required to, dismiss a Complaint of Sex Discrimination for any of the following reasons after making reasonable efforts to clarify the allegations with the Complainant: (i) if the University is unable to identify who the Respondent is after taking reasonable steps to do so; (ii) if the Respondent is not participating in the University's education program or activity and is not employed by the University; (iii) the Title IX Coordinator determines that the conduct alleged in the report or Complaint of Sex Discrimination, or Retaliation involving a report or Complaint of Sex Discrimination, would not constitute such a violation even if proven; or (iv) the Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under Grievance Process 2-A, and the Title IX Coordinator determines that the allegations in the report and/or Complaint would not constitute Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination even if proven.
- b. Notice of Dismissal. Upon dismissal, the Title IX Coordinator shall promptly provide a Notice of Dismissal to the Complainant, and, if already noticed, the Respondent, regarding the basis of dismissal. Notice of Dismissal shall be in writing and transmitted by the Title IX Coordinator simultaneously to the Parties. The Notice of Dismissal must include information regarding the option to appeal the Notice of



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Dismissal, including the grounds for appeal. If the Complainant appeals but the Respondent was not previously provided a Notice of Allegations, then the Title IX Coordinator must also provide the Respondent with a Notice of Allegations along with the Notice of Dismissal and an explanation that the Respondent may also appeal the Notice of Dismissal.

- c. Grounds for Appeal of Notice of Dismissal. Grounds for appeal of a Notice of Dismissal are limited to: (1) procedural irregularity that would change the outcome; (2) new evidence that would change the outcome and that was not reasonably available when the dismissal was decided; or (3) the Title IX Coordinator, Investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
- d. Appeal of Notice of Dismissal Procedures. In all cases, the Title IX Coordinator shall provide the Parties with a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome. If the Notice of Dismissal is appealed, the Title IX Coordinator shall notify the Parties and shall refer the matter for decision to a Dismissal Appeal Adjudicator who shall not be the same person who investigated the allegations or decided to dismiss the Complaint. The Dismissal Appeal Adjudicator can either uphold the dismissal or reinstate the Complaint for processing under this Policy.
- e. Notice of Decision for Appeal of Dismissal. The Title IX Coordinator shall communicate to the Parties the Dismissal Appeal Adjudicator's decision in writing, including the rationale for the decision.
- f. Effect of Dismissal. A dismissal of a Complaint is a decision by the University not to process the matter under this grievance procedure.

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However, a dismissal does not relieve the Title IX Coordinator of the obligation to provide Supportive Measures, as appropriate, and to ensure prompt and effective steps to ensure that Sex Discrimination does not continue or recur in the University's education program or activity.

## **B. Grievance Process 2-B: Complaints of Sex Discrimination Involving One or More Students As a Complainant or Respondent**

### **1. Major Stages of the Grievance Process; Timelines**

The major stages of this grievance process 2-B are as follows: [Evaluation](#); [Investigation](#); [Live Hearing](#); [Decision](#); and [Appeal](#). These major stages of the grievance process will typically be processed under the timelines set forth below; however, reasonable extensions shall be granted by the Title IX Coordinator on a case-by-case basis for good cause with notice to the Parties regarding the reason for extension. Where a timeline is not identified in this section, the Title IX Coordinator shall have discretion to implement reasonable timelines, consistent with law and this Policy, for procedural steps of the grievance process within each major stage, taking into consideration the nature of the matter and circumstances of the procedural step being taken. For example, the Title IX Coordinator may establish reasonable timelines for a request for review of decisions regarding Supportive Measures under [section XI.B.4.b](#), below, and for appeals of a Notice of Dismissal under [section XI.B.9](#), below.

- a. [Evaluation](#). The Title IX Coordinator shall evaluate a report of possible Sex Discrimination or Retaliation related to a report or Complaint of Sex Discrimination, including conducting the initial review of the matter as set forth below in [section XI.B.4.a](#), generally within fifteen (15) business days from the Title IX Coordinator's receipt of the report.

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- b. Investigation. The investigation phase shall generally be concluded within ninety (90) business days from the issuance of a Notice of Allegation.
  - c. Live Hearing & Hearing Officer/Hearing Panel's Written Decision. The live hearing phase, including completion of the Hearing Officer/Hearing Panel's written decision, shall generally be concluded within sixty (60) business days from the issuance of the Final Investigation Report.
  - d. Decision. The Title IX Coordinator's delivery of Notices of Decision to the Parties, as set forth below, shall take place generally within ten (10) business days from the completion of the investigation.
  - e. Appeal of Notice of Decision & Appeal Decision. The Parties shall have ten (10) business days from receipt of the Notice of Decision to submit an appeal, as set forth below. The Appeal Adjudicator shall issue the Appeal Decision generally within fifteen (15) business days following the Appeal Adjudicator's receipt of an appeal.

2. Basic Requirements for Grievance Procedures

The following basic requirements apply to this grievance procedure –

- a. Equitable Treatment; Burden of Gathering Evidence. Complainants and Respondents shall be treated equitably. Additionally, neither Complainants nor Respondents shall have the burden of gathering sufficient evidence for a determination regarding Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination occurred; rather, the University shall be responsible for conducting an investigation that gathers such evidence.
- b. No Conflicts of Interest or Bias. The Title IX Coordinator, Investigator, Hearing Officer/Hearing Panel, and appeal adjudicator shall not have a conflict of interest, or a bias for or against an individual Complainant or Respondent or complainants or respondents generally.

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- c. Respondent Presumed Not Responsible. The Respondent is presumed not responsible for allegations of Sex Discrimination until a determination is made at the conclusion of this grievance procedure.
- d. Advisor. The Complainant and/or Respondent may choose anyone (including legal counsel, a colleague, friend, family member, or other representative) to voluntarily serve as their advisor during the grievance process (“Advisor”). The Complainant and Respondent may be accompanied by their Advisor to any meeting or proceeding under this Policy; however, the Advisor may not speak on their behalf, advise them on how to answer a question of the Investigator, or otherwise engage with the Investigator or others participating in any part of the process under this Policy. The Complainant and Respondent must notify the Title IX Coordinator at least three (3) business days in advance if they wish to bring an Advisor and must disclose their name and contact information to the Title IX Coordinator. The Advisor and the person they are supporting may be required to sign documents agreeing to confidentiality and non-disclosure of information obtained in the Grievance Process, FERPA waivers, or other paperwork the Title IX Coordinator deems appropriate.
- e. Privacy. The University shall take reasonable steps to protect the privacy of the Parties and Witnesses during the pendency of the grievance process, including from unauthorized disclosure<sup>22</sup> of information and evidence obtained solely through the grievance process, so long as the Parties are not restricted in their ability to:

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<sup>22</sup> Unauthorized disclosure does not include disclosure of such information and evidence for purposes of administrative proceedings or litigation related to a Complaint of Sex Discrimination.

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obtain and present evidence, including speaking to witnesses; consult family members; confidential resources or advisors; or otherwise prepare for or participate in the grievance process.

- f. Evidence Evaluation & Exclusion. All Relevant evidence, including evidence that is both inculpatory and exculpatory, shall be evaluated during the grievance process objectively unless such evidence is excluded. If evidence is excluded, questions seeking such evidence are impermissible. Such evidence must not be accessed or considered (except as needed to determine whether an exception to exclusion applies) and must not be disclosed or otherwise used. Evidence shall be excluded, even if Relevant, as follows (collectively, “Impermissible Evidence”):
- i. Privileged Information. Evidence that is protected under a privilege as recognized by Federal or State law or evidence provided to a Confidential Employee or Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii. Professional and Paraprofessional Records. A Party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party’s or witness’s voluntary, written consent for use in the grievance process; and
  - iii. Sexual Interest & Prior Sexual Conduct. Evidence that relates to the Complainant’s sexual interests or prior sexual conduct, unless evidence about the Complainant’s prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific

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incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to sexual conduct. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to alleged violations of this Policy or preclude determination that a violation of this Policy occurred.

- g. Disability & Pregnancy Accommodations/Modifications. The Title IX Coordinator shall ensure reasonable accommodations or reasonable modification are provided to Parties or witnesses with disabilities, and those who are pregnant or with pregnancy related conditions, to allow them to participate in the grievance process, as appropriate and consistent with law and University policy.
- h. Notices. The Title IX Coordinator must ensure that any Party to a matter processed under this Grievance Process 2-B is provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate. In some cases, such notice may be delivered by the Investigator (or designee). All notices and communications to CHSU faculty, staff, administration, and students will be delivered via the University's email system. All such parties have a responsibility to promptly read all University emails. For individuals outside of the CHSU community (including former employees and former/withdrawn students), notices and communications will be sent to the most recent email and physical home address on file with the Title IX Coordinator.

### 3. Temporary Emergency Removal Procedures for Student Respondents

The University may remove a student Respondent from one or more parts, or all parts, of the University's education program or activity on an emergency basis

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after undertaking an individualized safety and risk analysis to determine whether an imminent and serious threat to the health or safety of a Complainant or any student, employee, or other person arising from an allegation of Sex Discrimination. If such an imminent and serious threat to health or safety exists, the University may then affect such emergency removal of a student Respondent from the University's educational program or activity as follows:

- a. Notice. Prior to the emergency removal, the University must provide the student Respondent with notice of the decision to remove them from the educational program or activity on an emergency basis.
- b. Immediate Right to Appeal Emergency Removal. The University shall provide the student Respondent an opportunity to challenge the decision immediately following the removal. If the student Respondent chooses to appeal the emergency removal decision, the student Respondent's appeal of the emergency removal shall be immediately reviewed by the University to determine if emergency removal is appropriate. Such review shall be conducted by a decision-maker other than the person who originally determined to initiate the emergency removal procedures.
- c. Continuance of Academic Coursework. In some cases, the Title IX Coordinator may offer a student Respondent who has temporarily been removed from one or more parts of the University's educational program or activity alternative options to continue academic coursework during the removal period, as appropriate and without fundamentally altering the academic requirements of the student Respondent's academic program.
- d. Impact of Temporary Emergency Removal on Grievance Process. The temporary emergency removal of a student respondent shall not be "relevant evidence" for consideration in reaching a determination

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whether the student Respondent has violated this Policy.

4. Evaluation

- a. Initial Review of Report or Complaint; Supportive Measures. The Title IX Coordinator shall conduct an initial review of a report of Sex Discrimination or Retaliation related to a report or Complaint of Sex Discrimination to determine whether, as defined and set forth in this Policy: (a) the report qualifies as a Complaint or whether the Title IX Coordinator should file a Complaint on the Complainant's behalf, including whether additional information needs to be gathered prior to making such determination; (b) whether Supportive Measures (as defined in section IV) are appropriate and, if so, implement such Supportive Measures; and (c) whether a Complaint should be dismissed, investigated under this grievance procedure, or processed under a different University grievance process, policy or procedure.
- b. Request for Review of Supportive Measure Determinations. The University will provide a Complainant or Respondent with timely opportunity to seek, from an appropriate and impartial University administrator (other than the administrator who made the decision regarding supportive measures), modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them.
- c. Administrative Leave. The University may, in its sole discretion, determine it is appropriate to place an employee (including a student-employee) on administrative leave from their employment with the University during the pendency of the grievance process. Placement on administrative leave does not reflect a University decision regarding a Complaint and is not disciplinary or a Corrective Measure. Temporary Emergency Removal procedures in section XI.B.3, above, are not



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applicable to placement of an employee on administrative leave from employment with the University.

- d. Consolidation. The Title IX Coordinator may, but is not required to, consolidate Complaints of Sex Discrimination that arise out of the same facts or circumstances, including Complaints against more than one Respondent, by more than one Complainant against one or more Respondent, or a Complaint by one Party against another Party. If the Title IX Coordinator consolidates such Complaints and a Party to a consolidated Complaint is a student (including a student-employee), then the matter shall be processed under Grievance Process 2-B.
- e. Notice of Allegations. If the Title IX Coordinator determines that initiation of this Grievance Process 2-B is appropriate, the Title IX Coordinator will provide written Notice of Allegations<sup>23</sup> to the Parties as follows:
- i. A copy of or access to the Grievance Process 2-B procedures and this Policy;
  - ii. Options for Informal resolution if the Title IX Coordinator chooses to offer it as set forth in [section IX](#) of this Policy;
  - iii. Sufficient information<sup>24</sup> available at the time the Notice of

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<sup>23</sup>When the University has reasonable concerns for the safety of any person as a result of providing a Notice of Allegations, the University may reasonably delay providing it to such person in order to address the safety concerns appropriately. Such reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

<sup>24</sup> Sufficient information includes the identity of the Parties involved in the alleged incident(s), the conduct alleged to constitute Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination, and the date(s) and location(s) of the alleged incident(s) to the extent that information is available to the University at the time the Notice of Allegation is issued.

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- Allegations is issued to allow the Parties to respond to the allegations;
- iv. A statement that the Respondent is presumed not responsible for Sex Discrimination until a determination is made at the conclusion of the grievance process;
  - v. A statement that prior to the determination, the Parties are entitled to an equal opportunity to access an investigation report that accurately summarizes the Relevant and not otherwise Impermissible Evidence, as set forth in this Policy, and to access such evidence upon request by any Party;
  - vi. A statement that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise Impermissible Evidence, as set forth in this Policy, to a trained, impartial decision-maker;
  - vii. A statement that knowingly making false statements or knowingly submitting false information to the University as part of the grievance process is a violation of this Policy and the codes of conduct applicable to employees and students, and may subject the person doing so to corrective measures, up to and including expulsion from the University's academic program and/or termination from employment;
  - viii. The identity and contact information of the Investigator;
  - ix. A statement that the findings of fact will be based on a Preponderance of Evidence standard;
  - x. A statement warning against interference with the integrity of the investigation, consistent with law and this Policy;
  - xi. Any Supportive Measures;
  - xii. A statement that they may have an Advisor of their choice, who

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- may but is not required to be an attorney, as set forth in this Policy;
- xiii. A statement that Retaliation is prohibited; and
  - xiv. A statement that any new allegations of Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination that arise during the course of the investigation or which are consolidated into the original investigation under this Grievance Process Part 2-B shall be subject to the same notice requirements.

## 5. Investigation

- a. Selection and Assignment of an Investigator. The Title IX Coordinator shall assign a qualified neutral investigator to investigate the alleged misconduct (“Investigator”). In some cases, an investigative team may be utilized. The Title IX Coordinator shall have broad discretion in selection of an investigator, provided that the assigned Investigator: (a) has the skills and resources necessary to conduct a complete investigation; (b) is free of conflicts of interests; and (c) is free from bias in favor of or against either the Complainant or Respondent or Complainants or Respondents generally. The Investigator may be a qualified University employee or an external investigator. External investigators must be either licensed attorneys or licensed private investigators.
- b. Gathering Evidence and Information. During the investigation, the Investigator will meet separately with the Complainant, Respondent, and witnesses who may have Relevant information, and will gather other available and Relevant evidence and information. The Investigator will not access or use Impermissible Evidence, even if Relevant, as set forth in this grievance procedure. The Investigator will provide an equal opportunity for the Complainant and Respondent to

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present facts, witnesses, and other inculpatory and exculpatory evidence that is Relevant and not otherwise considered Impermissible Evidence. The Investigator is responsible for determining whether evidence is Relevant or not, and whether evidence is Impermissible Evidence or not.

- c. Expert Witnesses. Generally, expert witness evidence shall not be permitted; However, the Investigator may, but is not required to, permit the use of expert witness evidence on a case-by-case basis. If the Investigator permits expert witness evidence, the Investigator shall document to the Title IX Coordinator the reasoning for permitting such evidence in a particular matter. In all cases, Parties shall be treated equally with regard to expert witness evidence.
- d. Recording of Interviews. The interviews may be electronically recorded at the discretion of the Investigator. The Investigator's recording will be the sole electronic recording permitted; the parties and witnesses are not permitted to make their own recording of their interview. No recording devices, including cell phones, will be permitted during the interview other than the Investigator's recording device.
- e. Participation in the Investigation. All employees and students are required to participate in the investigation process as requested by the Investigator or Title IX Coordinator, subject to discipline under the relevant University codes of conduct or professionalism policies. Parties may bring their Advisor to the investigation interviews. To the extent a Respondent does not participate, or does not fully participate, in the investigation, such non-participation may not be used as a basis for appeal and the Investigator will make findings of fact without the input of the Respondent. The Investigator may bring support staff to

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investigative interviews or other proceedings to assist in the process. No other persons are permitted at an investigatory interview unless granted permission by the Title IX Coordinator.

- f. Draft Investigation Report. The Investigator shall prepare a draft investigation report that shall contain an accurate description of the Relevant evidence and information collected, excluding Impermissible Evidence (“Draft Investigation Report”). The Draft Investigation Report may, but is not required to include, exhibits of documents obtained during the investigation.
- g. Party’s Review of & Response to Evidence. The Investigator shall provide the Parties and the Parties’ Advisors (if any) with an equal opportunity to review the Draft Investigation Report. Upon request of either Party, the Investigator shall provide an equal opportunity for the Parties to access evidence that is Relevant and not otherwise Impermissible Evidence, consistent with this grievance procedure (including, but not limited to, the privacy and unauthorized disclosure provisions). The Investigator shall have discretion with regard to the manner in which evidence is made available to the Parties so long as it complies with this Policy and is approved by the Title IX Coordinator. The Investigator shall provide each Party with a reasonable opportunity to respond to the evidence, either orally or in writing. The Investigator has the discretion to continue investigating the matter following receipt of the Party’s response to evidence if the Investigator deems it appropriate under this grievance procedure. If so, the Investigator shall ensure that any new or different evidence obtained is incorporated into an updated Draft Investigation Report and provide the Parties another equal and reasonable opportunity to review and respond to the new or different evidence in the updated Draft Investigation Report.

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- h. Final Investigation Report. Following the Parties' review of and response to the evidence, the Investigator shall prepare a Final Investigation Report which shall include: (a) a summary of the evidence collected; and (b) the Parties, response (if any) to such evidence.
6. Live Hearing. Following completion of the Final Investigation Report, the Title IX Coordinator will convene a live hearing before a Hearing Officer or Hearing Panel who shall serve as the decision-maker for a determination regarding whether Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination occurred, consistent with the provisions of this section 2-B.
- a. Selection of a Hearing Officer. The Title IX Coordinator shall select a qualified neutral hearing officer to determine whether Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination occurred ("Hearing Officer"). In some cases, a panel of adjudicators may be utilized ("Hearing Panel") which may be led by a Hearing Officer. The Title IX Coordinator shall have broad discretion in selection of the Hearing Officer or Hearing Panel, provided that they: (a) have the skills and resources necessary to conduct the hearing; (b) are free of conflicts of interests; and (c) are free from bias in favor of or against either the Complainant or Respondent or Complainants or Respondents generally. The Hearing Officer/Hearing Panel may be one or more qualified University employees or one or more external professionals.
- b. Standard of Evidence; Relevant & Impermissible Evidence. The Hearing Officer/Hearing Panel shall use the Preponderance of the Evidence Standard. The Hearing Officer/Hearing Panel shall consider on all Relevant evidence, both inculpatory and exculpatory, except for Impermissible Evidence. The California or Federal Rules of Evidence shall not apply to the hearing.

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- c. Pre-Hearing Procedures. Prior to the live hearing, the Title IX Coordinator shall provide a Notice of Hearing to the Parties and their Advisors (if any). The Notice of Hearing shall provide information regarding the date, time and how to access the live hearing, access to the Final Investigation Report, and a request for each Party and their Advisor to submit an initial list of questions the Party wants asked of the other Party and witnesses in advance of hearing.
- d. Virtual Hearing; Participants. Generally, all hearings will be virtual, accomplished through the use of technology such as Zoom or another virtual meeting platform with security settings ensuring the privacy of the proceeding. At a virtual hearing, the Parties and their Advisors (if any) have the right to be present to observe and hear (or, if deaf or hard of hearing or blind or visually impaired, to access through auxiliary aids) testimony of all individuals who testify. The Hearing Officer/Hearing Panel shall determine the order in which to call Parties and witnesses. In addition to the Hearing Officer/Panel the following other individuals are permitted to attend the hearing: the Parties and their Advisors, the Title IX Coordinator; the Investigator; the University's legal counsel; support staff of the University, Investigator, and/or Hearing Officer/Hearing Panel who are assisting with conducting the hearing. The hearing shall be closed to Parties and witnesses, except when they are called to answer questions of the Hearing Officer/Hearing Panel.
- e. Questioning of Parties and Witnesses. At the hearing, the Hearing Officer/Hearing Panel shall question Parties and witnesses to adequately assess the Parties' or witnesses' credibility to the extent credibility is both in dispute and relevant to evaluating one or more of the allegations. Additionally, the Hearing Officer/Hearing Panel shall allow each Party (or their Advisor) to propose such questions that the Party wants asked of

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any Party or Witness to be asked by the Hearing Officer/Hearing Panel. Parties and Advisors are not permitted to question the other Party or witness directly. The Hearing Officer/Hearing Panel must determine, prior to it being asked, whether a proposed question is Relevant and not otherwise Impermissible Evidence. If the proposed question is Relevant and not otherwise Impermissible Evidence, the question must be asked by the Hearing Officer/Hearing Panel unless it is unclear, harassing of a Party or witness, or unduly repetitive. If the proposed question is Relevant but Impermissible Evidence or is otherwise unclear, harassing or unduly repetitive, then the Hearing Officer/Hearing Panel must exclude the question, explain why it is excluded, and provide the Party (or their Advisor) a reasonable opportunity to clarify or revise the question. If the Party (or their Advisor) sufficiently clarifies or revises the question to satisfy the requirements above, then the question shall be asked by the Hearing Officer/Hearing Panel.

- f. Unavailability of Party or Witness; Refusal to Participate. In reaching a decision, if a Party or witness is unavailable to attend the hearing, or refuses to participate in the hearing, the Hearing Officer/Hearing Panel may still rely on any Relevant statement of that Party or witness previously that is not otherwise Impermissible Evidence (e.g., statements to the Investigator, emails or text exchanges between the Parties or between Parties and witnesses, statements in police reports, etc.). The Hearing Officer/Hearing Panel may choose to place less or no weight upon statements by a Party or Witness who refuses to respond to appropriate questions; however, the Hearing Officer/Hearing Panel must not draw an inference about whether Sex Discrimination occurred based solely on a Party or Witness refusing to respond to such questions.



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- g. Recording. The University shall create an audio or audiovisual recording, or transcript, of the hearing and make it available to the Parties for inspection and review. The University's recording or transcript shall be the only permitted recording or transcript of the hearing.
  - h. Rules of Procedure and Decorum. The Hearing Officer/Hearing Panel shall: decide on any procedural issues that may come up during the hearing; make any determinations necessary to ensure an orderly, productive, and procedurally proper hearing; have discretion to pause or continue the hearing as needed to determine procedural issues or to accommodate the availability of Parties and witnesses. In all cases, rules of procedure or decorum must be imposed equally on the Parties and their Advisors.

7. Decision; Disciplinary Sanctions; Remedies

- a. Hearing Officer/Hearing Panel's Written Decision. The Hearing Officer/Hearing Panel shall prepare a written decision to the Title IX Coordinator which sets includes: (i) a description of the alleged Sex Discrimination; (ii) information about the policies and procedures that the Hearing Officer/Hearing Panel used to evaluate the allegations; (iii) an evaluation of the Relevant and not otherwise Impermissible Evidence; and (iv) a determination regarding whether Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination occurred. Upon request of the Title IX Coordinator, the Hearing Officer/Hearing Panel may also include a recommendation regarding Disciplinary Sanctions/Corrective Measures.
- b. Notice of Decision to Parties. Following receipt of the Hearing Officer/Hearing Panel's written decision, the Title IX Coordinator shall simultaneously provide the parties with a Notice of Decision which includes: (a) a copy of the Hearing Officer/Hearing Panel's written

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decision; (b) if Sex Discrimination occurred, then the notice shall include the Disciplinary Sanctions/Corrective Measures imposed on the Respondent; (c) whether Remedies other than Disciplinary Sanctions will be provided to the Complainant and, to the extent appropriate, other students identified by the University to be experiencing the effects of the Sex Discrimination; and (d) the procedures and permissible grounds for appeal of the Notice of Decision. If the determination is that Sex Discrimination has occurred, then the Title IX Coordinator shall coordinate the provision and implementation of Remedies to the Complainant and any other persons the University identifies as having had equal access to the University's education program or activity limited or denied by Sex Discrimination, and take any other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue to recur within the recipient's education program or activity.

- c. Effective Date. The determination regarding responsibility becomes final either on the date the University provides the Parties with the written determination of the result of any appeal or, if no party appeals, the date on which an appeal would no longer be considered timely.

#### 8. Appeal of Notice of Decision

Either the Complainant or the Respondent may appeal the Notice of Decision in writing submitted to the Title IX Coordinator based on one or more of the following criteria: (1) procedural irregularity that would change the outcome; (2) new evidence that would change the outcome that was not reasonably available when the determination of the outcome of the matter was made; (3) the Title IX Coordinator, Investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome. For purposes of appeal of the Notice of Decision, the outcome includes a determination whether a Policy

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violation occurred and the decision regarding [Disciplinary Sanctions/Corrective Measures](#). Upon receipt of an appeal, the Title IX Coordinator will review the appeal to determine if it meets the required criteria and, if so, forward the appeal to an Appeal Adjudicator who shall not be the original decision-maker, the Investigator or the Title IX Coordinator. The Appeal Adjudicator may affirm the decision, affirm the decision but modify the [Disciplinary Sanctions/Corrective Measures](#), or remand the matter back for further investigation and/or other proceedings. The Title IX Coordinator shall ensure the Parties are provided with the Appeal Adjudicator's decision as well as the rationale for such decision in writing. All Appeal Adjudicator decisions are final.

9. Dismissal

- a. Grounds for Dismissal. At any time during the grievance process, the Title IX Coordinator may, but is not required to, dismiss a Complaint of Sex Discrimination for any of the following reasons after making reasonable efforts to clarify the allegations with the Complainant: (i) if the University is unable to identify who the Respondent is after taking reasonable steps to do so; (ii) if the Respondent is not participating in the University's education program or activity and is not employed by the University; (iii) the Title IX Coordinator determines that the conduct alleged in the report or Complaint of Sex Discrimination, or Retaliation involving a report or Complaint of Sex Discrimination, would not constitute such a violation even if proven; or (iv) the Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under Grievance Process 2-B, and the Title IX Coordinator determines that the allegations in the report and/or Complaint would not constitute Sex Discrimination or Retaliation involving a report or Complaint of Sex Discrimination even if proven.
- b. Withdrawal of Complaints. If the dismissal is based on the Complainant's

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withdrawal, the Title IX Coordinator must obtain the Complainant's withdrawal in writing.

- c. Notice of Dismissal. Upon dismissal, the Title IX Coordinator shall promptly provide a Notice of Dismissal to the Complainant, and, if already noticed, the Respondent, regarding the basis of dismissal. Notice of Dismissal shall be in writing and shall be transmitted by the Title IX Coordinator simultaneously to the Parties. The Notice of Dismissal must include information regarding the option to appeal the Notice of Dismissal, including the grounds for appeal. If the Complainant appeals but the Respondent was not previously provided a Notice of Allegations, then the Title IX Coordinator must also provide the Respondent with a Notice of Allegations along with the Notice of Dismissal and an explanation that the Respondent may also appeal the Notice of Dismissal.
- d. Grounds for Appeal of Notice of Dismissal. Grounds for appeal of a Notice of Dismissal are limited to: (1) procedural irregularity that would change the outcome; (2) new evidence that would change the outcome and that was not reasonably available when the dismissal was decided; or (3) the Title IX Coordinator, Investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
- e. Appeal of Notice of Dismissal Procedures. In all cases, the Title IX Coordinator shall provide the Parties with a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome. If the Notice of Dismissal is appealed, the Title IX Coordinator shall notify the Parties and shall refer the matter for decision to a Dismissal Appeal Adjudicator who shall not be the same person who

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investigated the allegations or decided to dismiss the Complaint. The Dismissal Appeal Adjudicator can either uphold the dismissal or reinstate the Complaint for processing under this Policy.

- f. Notice of Decision for Appeal of Dismissal. The Title IX Coordinator shall communicate to the Parties the Dismissal Appeal Adjudicator's decision in writing, including the rationale for the decision.
- g. Effect of Dismissal. A dismissal of a Complaint is a decision by the University not to process the matter under this grievance procedure. However, a dismissal does not relieve the Title IX Coordinator of the obligation to provide Supportive Measures, as appropriate, and to ensure prompt and effective steps to ensure that Sex Discrimination does not continue or recur in the University's education program or activity.

## **XII. OUTSIDE AGENCIES**

CHSU encourages all students and employees who believe they have been subjected to unlawful discrimination or harassment to bring their concerns to the University so that appropriate action can be taken. While it is not required that you exhaust CHSU's internal investigation process before contacting a governmental agency, CHSU encourages all members of the CHSU community to take advantage of CHSU's process for resolving harassment, discrimination, and retaliation concerns and complaints. CHSU cannot remedy claimed discrimination, harassment, or retaliation unless such complaints are brought to its attention. Failure to report these claims prevents CHSU from taking steps to address the problem. If a CHSU community member observes a violation of this policy or believes someone has violated this policy, the member is strongly encouraged to report the incident, irrespective of whether the alleged victim files a complaint themselves. Responsible Employees who learn of such a complaint are required to bring it to the University's attention as described above.

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The U.S. Equal Employment Opportunity Commission (“EEOC”) and the California Civil Rights Department (“CRD”) investigate reports of unlawful harassment and sexual violence in employment. The U.S. Department of Education Office for Civil Rights (“OCR”) investigates reports of unlawful harassment and sexual violence by students in educational programs or activities. These agencies may serve as fact-finders and attempt to facilitate the voluntary resolution of disputes. For more information students/employees may contact these agencies as described below:

- California Civil Rights Department: <https://calcivilrights.ca.gov/> or by phone at 800-884-1684 (voice), 800-700-2320 (TTY) or California's Relay Service at 711 or at Call our Communication Center at 800-884-1684 (voice), 800-700-2320 (TTY) or California's Relay Service at 711 via mail 651 Bannan Street, Suite 200, Sacramento, CA 95811
- US Department of Education Office of Civil Rights: <https://www2.ed.gov/about/offices/list/ocr/index.html> or by phone at 415-486-5555 or TDD: 800-877-8339 or by mail 50 United Nations Plaza, Mail Box 1200, Room 1545 San Francisco, CA 94102

#### POLICY TRACKING DATA

Approval/Effective Date: 08/01/2024

Revision Date(s):

08/01/2024

04/17/2023

02/10/2023 with the exception of the revision to former Section XI(B)(6)(f)(3) which was effective as stated in footnote 1 of the prior version of this Policy.

02/09/2023

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10/27/2022

09/31/2021

Reviewed Date(s):

08/01/2024

**R:** Vice President of Human Resources and Title IX Coordinator

**A:** Vice President of Human Resources and Title IX Coordinator

**C:** All College Deans and Program Directors, Legal, Student Affairs

**I:** CHSU Community