

Approving Law School Officials: President and Dean;
Dean of Students and Diversity Affairs
Responsible Office: The Diversity Affairs Office
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**POLICY TO PREVENT DISCRIMINATION, HARASSMENT, AND
RETALIATION**

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I. Policy to Prevent Discrimination, Harassment, and Retaliation

- A. Policy Statement:** Southwestern Law School prohibits discrimination and harassment on the basis of race (including hairstyle and hair texture), ethnicity, color, religion, creed, ancestry, national origin, sex, gender (including pregnancy, childbirth, breastfeeding, or related medical conditions), sexual orientation, gender identity, gender expression, parental status, marital status, age (40 and over), disability (mental and physical), medical condition, citizenship status, military service, veteran status, genetic information, or any other classification protected by law (referred to as “protected classes”) in matters of admissions, employment, housing, or services, or in the educational programs or activities Southwestern operates. Such conduct violates Southwestern’s values and disrupts the living, learning, and working environment for students, faculty, staff, and other community members.
- B. Community Standards and Respect for Others:** This policy addresses the prohibition on behavior based on a protected category and sets forth procedures for responding. In addition, all members of the Law School community are expected to treat others with the utmost respect, honesty, and civility. Each community member is responsible for promoting a spirit of respect that reflects the Law School’s commitment to an inclusive community. This expectation applies to interactions with students, employees, and anyone else in our community. Failure to treat others with the utmost respect, honesty, and civility, while not handled under this policy, may violate other Law School policies and will be addressed accordingly.

Individuals impacted by discrimination or harassment may contact the Diversity Affairs Office to receive support, resources, and information even if they do not wish to move forward with the Complaint Resolution Process described in this policy.

- C. Sexual Misconduct:** Conduct prohibited by this policy includes sexual misconduct (including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation, and stalking) that is not otherwise covered by the Sexual Misconduct Policy. **Individuals impacted by sexual misconduct may contact the Law School’s Title IX Coordinator to receive support, resources, and information even if they do not wish to move forward with the Complaint Resolution Process.** Please see the [Sexual Misconduct Policy](#) or contact the Title IX Coordinator for additional information.

Reports can be made to the following individuals:

Contact: Title IX Coordinator, Jessica E. Johnson
Location: 3050 Wilshire Boulevard, Suite 102, Los Angeles, California 90010
Phone: (213) 738-6705
Email: titleix@swlaw.edu

Contact: Deputy Title IX Coordinator, Marcie Canal
Location: 3050 Wilshire Boulevard, Suite 100, Los Angeles, California 90010
Phone: (213) 738-6847
Email: titleix@swlaw.edu

- D. Jurisdiction:** All students, employees (whether full-time or part-time), and Board of Trustees members must refrain from conduct prohibited by this policy. These definitions of prohibited conduct also apply to admitted students who have not yet matriculated, business associates or guests, independent contractors or consultants, vendors, volunteers,

individuals providing services pursuant to a contract, and any other persons with whom

students or employees come into contact while conducting Law School business or participating in Law School programs and activities. Depending on the status of the parties, the Diversity Affairs Office oversees the Law School's response to reports of violations of this policy. Southwestern may investigate any reported violations of this policy that occur in the context of a Law School program or activity or that otherwise affect Southwestern's working or learning environments, regardless of whether the reported conduct occurred on or off campus or in a virtual space. For every report submitted, Southwestern will review the circumstances of the reported conduct to determine whether this policy or the Sexual Misconduct Policy applies and was violated.

The Law School has jurisdiction over the parties involved and will take steps within its control to eliminate, prevent, and address the conduct that violates this policy or the Sexual Misconduct Policy. If the respondent is not a member of the Southwestern community or is no longer affiliated with Southwestern at the time of the report or at the time the Complaint Resolution Process is initiated (including when the respondent has graduated or left the Law School), Southwestern's ability to take disciplinary action may be limited.

- E. **Purpose:** Southwestern is committed to fostering an environment in which all members of our community are safe, secure, and free from prohibited discrimination, harassment, and retaliation. When learning of conduct or behavior that may not meet these standards, community members and the Law School are expected to take an active role in upholding this policy and promoting the dignity of all individuals by reporting the conduct to the Diversity Affairs Office (student conduct) or Human Resources (employee or other individual's conduct).
- F. **Accessibility:** The Diversity Affairs Office is committed to making our services accessible to all members of the Southwestern community. Accessibility includes, but is not limited to, providing reasonable accommodations to persons with disabilities, including mental health concerns; ensuring our online resources are accessible; and providing competent, respectful, and trauma-informed service to people of all identities and expressions. Additional information regarding accessibility at Southwestern Law School may be found in [The Policy Statement Regarding Students and Applicants with Disabilities](#).
- G. **Definitions of Participants**
 - 1. A **reporting party** is the person who has been impacted by an alleged policy violation.
 - 2. A **respondent** is the person who is alleged to have violated Law School policy.
 - 3. **Parties** is a term that refers to the reporting party and the respondent collectively.
 - 4. A **witness** is a person who has knowledge related to specific aspects of a case.
 - 5. An **advisor** is a support person who may be present to provide support to a reporting party or respondent throughout an investigation and/or hearing. In general, an advisor may not also serve as a witness in the same matter. Please see below for more information regarding the role of an advisor.

H. Implementation

1. Prohibited Conduct

a. **Discrimination:** Prohibited discrimination includes treating someone differently because of their actual or perceived inclusion in a protected class in matters of admissions, employment, housing, or services, or in the educational programs or activities that Southwestern operates. In determining whether discrimination occurred, the Diversity Affairs Office examines (1) whether a protected class was used as the basis for a decision; and (2) if a facially neutral basis for the decision was used, whether a disparate impact affected a protected class. If a disparate impact affected the individual's work or the educational environment, the Diversity Affairs Office will consider whether there is a legitimate, non-discriminatory reason for the action. Examples of discrimination can include:

- Denying someone access to an educational program based on their membership in a protected class;
- Denying someone access to a Law School facility based on their membership in a protected class;
- Refusing to hire or promote someone because of their membership in a protected class; and
- Reducing someone's job responsibilities because of their membership in a protected class.

b. **Harassment in Employment:** Harassment in employment means any unwelcome behavior that is reasonably regarded as offensive and that is based on a protected category listed above that:

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

A single incident of harassing conduct may create a hostile work environment if the harassing conduct has unreasonably interfered with the victim's work performance or created an intimidating, hostile, or offensive work environment. Whether the respondent meant to cause offense or believed their comments or conduct were welcome is not significant. Rather, an individual violates the policy when other individuals, whether recipients or mere observers, are actually offended by comments or conduct based on any protected category and the conduct is considered offensive by a reasonable person. Examples of conduct based on a protected category that may constitute harassing conduct may include, but are not limited to:

- Making gestures, threats, derogatory comments or slurs that may be reasonably regarded as offensive to individuals in a particular group;
- Bullying behavior that is threatening, intimidating, verbally abusive, or results in other disruptive actions in the workplace; and
- Displaying derogatory objects, photographs, cartoons, calendars, or posters.

- c. **Sexual Harassment in Employment:** Sexual harassment is a particular type of harassment. Certain types of sexual harassment may also be addressed by the Law School's [Sexual Misconduct Policy](#). Under this policy, prohibited sexual harassment can include conduct on the basis of sex, including unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to such conduct is made a condition of employment or employment decision (*quid pro quo*) or meets the definition of harassment as stated above (*hostile work environment*). Examples of conduct that may constitute prohibited sexual harassment include, but are not limited to:
- Unwanted physical touching;
 - Telling sexually explicit jokes or stories;
 - Making comments or gestures reasonably regarded as lewd or offensive;
 - Displaying sexually suggestive objects, cartoons, or pictures;
 - Sending sexually explicit messages by letter, notes, electronic mail, text, app, social media posting, or phone;
 - Making unwelcome comments reasonably regarded as offensive about a person's body, physical appearance or clothing;
 - Frequently using unwelcome terms of endearment; or
 - Repeatedly asking an individual for a date or meeting outside of working hours after they have indicated an unwillingness to go.

Consistent with its obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, the Law School also prohibits sexual assault, dating violence, domestic violence, and stalking based on sex by and against its employees. If this conduct does not fall under the jurisdiction of the Sexual Misconduct Policy, the Law School reserves the right to address this conduct under the procedures of this policy, using the same definitions of prohibited conduct as the Sexual Misconduct Policy and the definition of affirmative consent for cases of sexual assault involving students. In these cases, as required by the Violence Against Women Act (VAWA), the parties will be entitled to have an advisor of choice at any meetings or proceedings and to receive simultaneous notice of the outcome, results, and the available appeal procedures.

- d. **Harassment of Students:** In addition to the conduct prohibited by the [Sexual Misconduct Policy](#), employees may not engage in specific forms of prohibited conduct against the Law School's students, including harassing conduct by an employee (e.g. physical, verbal, graphic, or written) that is so sufficiently severe, pervasive, or persistent that it interferes with or limits the ability of a student to participate in or benefit from the services, activities, or privileges provided by the Law School. Employees are additionally prohibited from engaging in "sexual harassment" of students, which is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions: (a) submitting to or rejecting the conduct is explicitly or implicitly made a term or a condition of a student's employment, academic status, or progress; (b) submitting to or rejecting the conduct is used as the basis of academic decisions affecting the individual; (c) the conduct has the purpose or effect of having

a negative impact upon the student's academic performance, or of creating an intimidating, hostile, or offensive educational environment; or (d) submitting to or rejecting the conduct is used as the basis for any decision affecting a student regarding benefits and services, honors, programs, or activities available at or through the Law School.

Complaints by students (except student-employees who are making a complaint in their capacity as employees) against employees will use the above definitions and be resolved pursuant to this policy unless otherwise covered by the Sexual Misconduct Policy.

- e. **Anti-Abuse/Molestation:** In its operations and activities, the Law School prohibits all conduct meeting the definition of unlawful sexual abuse or neglect of minors set forth in [California Penal Code 11164](#). All persons involved in the Law School's operations are covered by this policy. The Law School reserves all rights to determine the appropriate procedures for handling allegations of violations of this provision, depending on the nature of the conduct and the age of the minor.
- f. **Retaliation:** The Law School prohibits retaliation against any member of its community for reporting an incident of discrimination or harassment or for participating, in any manner, in an investigation or hearing related to a report of discrimination or harassment. Reports of retaliation occurring in connection with cases under this policy or the Sexual Misconduct Policy will be handled under the procedures set forth in this policy. Retaliation includes adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceedings under this policy. Adverse action includes conduct that threatens, intimidates, harasses, coerces, or in any way seeks to discourage a reasonable person from engaging in activity protected under this policy. Retaliation can be committed by or against any individual or group of individuals. Retaliation does not include good-faith actions such as disciplinary actions pursued in response to a report of Prohibited Conduct.

Members of the Southwestern community are prohibited from engaging in actions, directly or through others that are aimed to deter a reasonable party or a witness from reporting discrimination or harassment or participating in an investigation or hearing or done in retribution for such activities.

- g. **Uncivil Behavior:** Our community includes employees and students who value and are expected to treat each other with mutual respect and consideration, recognizing that disagreement and informed debate are valued in an academic community. The Law School is also committed to free expression and academic freedom and believes these values can coexist. General bullying or uncivil behavior that is not based on a protected class does not fall within the purview of this policy. However, such behavior may violate the Law School's expectations and should be reported to the Dean of Students for students. Employees may be reported to Human Resources and/or an individual's supervisor.
- h. **Consequence of violating this policy:** Individuals who violate this policy may be subject to discipline under the Law School policies and procedures described in Section III (Discrimination, Harassment, and Retaliation Complaint Process) up to and including expulsion or termination of employment.

- 2. **Reporting:** The Law School encourages individuals to report incidents of

discrimination, harassment, and retaliation. The information below is for individuals who wish or are required to report violations of this policy. Anyone wishing to or required to report conduct prohibited by this policy to the Diversity Affairs Office may do so in person, by email, by regular mail, by phone, or as explained below. Every report of an alleged violation of this policy will receive a written acknowledgment from the Diversity Affairs Office, if the reporter's identity is provided.

While the Diversity Affairs office will review anonymous reports, the Law School's ability to address misconduct reported by anonymous sources is significantly limited.

There is no time limit for reporting an incident of discrimination, harassment, or retaliation. However, the Law School encourages reports be made as soon as possible after the incident. The passing of time makes reviewing the evidence more difficult, and the memories of involved parties may become less reliable. The Diversity Affairs Office reserves the right to investigate or otherwise address any report, regardless of when it is made, or to refer the matter for resolution under the Sexual Misconduct Policy.

To make a report, please contact the Diversity Affairs Office:

Contact: Associate Dean, Dean of Students and Diversity Affairs, Nydia Duenez
Location: 3050 Wilshire Boulevard, Suite 102, Los Angeles, California 90010
Email: nduenez@swlaw.edu

After receiving a report, if the identity of the individual reporting is known, a Diversity Affairs Office staff member will contact the person who made the report and the person who may have experienced the prohibited conduct. The outreach from the Diversity Affairs Office staff member will generally include information about the applicable Policy, options for pursuing a complaint, and relevant resources. The outreach will also include an invitation to meet with or provide additional information to a Diversity Affairs Office staff member.

- 3. Reporting Obligations:** All Law School employees (full-time and part-time) are obligated to promptly report conduct prohibited by the Sexual Misconduct Policy of which they become aware in the scope of their work to the Law School's Title IX Coordinator and conduct prohibited by this policy of which they become aware in the scope of their work for the Law School to the Diversity Affairs Office, unless they are a confidential resource listed below in Section II. If a Law School employee is unsure which Policy applies, they should report the concern to the Title IX Coordinator for further evaluation.

The Law School encourages all individuals—including students—to report conduct prohibited by this policy to the Law School's Diversity Affairs Office and conduct prohibited by the Sexual Misconduct Policy to the Law School's Title IX Coordinator.

Contact: Title IX Coordinator, Jessica E. Johnson
Location: 3050 Wilshire Boulevard, Suite 102, Los Angeles, California 90010
Phone: (213) 738-6705

Email: titleix@swlaw.edu

Contact: Associate Dean, Dean of Students and Diversity Affairs, Nydia Duenez

Location: 3050 Wilshire Boulevard, Suite 102, Los Angeles, California 90010

Email: nduenez@swlaw.edu

Any and all instances of child abuse or neglect toward a minor (person under the age of 18), including but not limited to, inappropriate physical conduct, assault, unwanted touching, molestation or any other sexual misconduct required to be reported by law, will be promptly reported to the appropriate local law enforcement agency and local child protective services agency as required by law. All employees whose duties bring them into contact with minors on a regular basis or any employees who supervise those whose duties bring them into contact with minors on a regular basis, and any members of the Human Resources department, are required to report to child protective services and to Human Resources any allegations, reports or concerns of child abuse, child molestation, or neglect occurring on the Law School's premises or at an official activity of, or program conducted by the Law School.

All persons involved in the Law School's operations are required to report any possible concerns of unlawful sexual abuse or neglect of minors set forth in [California Penal Code 11164](#) to the Human Resources department immediately.

4. **Free Expression and Academic Freedom** Southwestern is firmly committed to free expression and academic freedom. The Law School is equally committed to creating and maintaining a safe, healthy, and discrimination and harassment-free environment for all members of its community, and firmly believes that these two legitimate interests can coexist.

Discrimination, harassment, and retaliation against members of the Southwestern community are not protected expression or the proper exercise of academic freedom. The Law School will consider academic freedom in the investigation of reports of discrimination or harassment that involve an individual's statements or speech in an academic context.

II. Resources

A. Confidential Resources

The following confidential resources are available for individuals to discuss incidents and issues related to conduct prohibited by this policy. Confidential resources are not obligated to disclose reports of discrimination or harassment to the Diversity Affairs Office but may be required to disclose certain information in the event of a threat to self or others. Please consult with the confidential resources about the scope of their obligations before disclosing any information.

Student Resources	Contact Information	Description
Dr. Daria Spino – On-Campus Psychologist	(213) 738-6617 Email: dspino@swlaw.edu	Provides confidential counseling services to students.

Student and Employee Resource	Contact Information	Description
HELPNET	(1-800-435-7638)	A private consulting firm that can refer counseling services and community resources. This is a confidential resource that is available 24 hours a day, seven days a week.

B. Educational Training, Awareness, and Educational Programs

The Law School offers a variety of training programs to address discrimination, harassment, and retaliation within the Southwestern community. The Law School strives to ensure that such programming is developed to be culturally relevant; trauma-informed; inclusive of diverse communities and identities; sustainable; responsive to community needs; informed by research or assessed for value, effectiveness, and outcome; and considerate of environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

III. Discrimination, Harassment, and Retaliation Complaint Resolution Process

A. General Procedures

1. Introduction

The following procedures outline the process the Law School follows when it receives a report alleging a violation of the Policy to Prevent Discrimination, Harassment and Retaliation by a member of the Southwestern community. For purposes of this policy, “by a member of the Southwestern community” means current faculty (as defined by the Faculty Handbook), non-probationary current staff members, and current third-party affiliates who have a formal (including contractual) relationship with the Law School. Others who are accused of discrimination, harassment, or retaliation are not entitled to the process set forth in this policy. Southwestern will exercise its discretion to review complaints involving these individuals.

Unless the conduct is also covered by the Sexual Misconduct Policy, the Diversity Affairs Office (“the Office”) is responsible for handling reports of violations of this policy. In addition, the Office may make findings on other potential Policy violations arising out of the same complaint in place of another Law School investigation process that otherwise would apply or refer the potential Policy violation to the appropriate Law School office, or unit. All reports will be handled in a prompt, fair, and impartial manner in accordance with relevant laws and regulations, applicable Law School policies, and this policy. The Law School will take appropriate action in response to complaints or

knowledge of such behaviors while preserving the rights of those against whom allegations have been made to receive procedural protections in the fact-finding and decision-making process. All such investigations will be conducted by qualified, impartial personnel in a manner that is fair, equitable, and timely to all parties. The Law School maintains the confidentiality of investigations to the extent possible, documents, and tracks investigations to ensure reasonable progress, and closes investigations in a reasonably timely manner.

The process described below is Southwestern's internal Law School process to determine whether Southwestern Policy was violated and is not a court system. As such, Southwestern's process does not use the same rules of procedure or evidence as those used by courts or law enforcement.

Because allegations of discrimination, harassment, and retaliation can sometimes raise challenging new issues, the Law School reserves discretion to take reasonable actions to address those issues in a manner consistent with the spirit of this policy, while preserving fairness for both parties and maintaining the integrity of the resolution process.

- 2 Participating in the Process** - The Law School encourages all parties and witnesses to participate fully in the complaint resolution process. For the Law School to respond fully to the allegations, most situations will require the reporting party's participation and that their identity be disclosed to the respondent.

If a reporting party decides not to participate, but wants disciplinary action to be taken, the Law School will determine whether it is possible to proceed with the formal resolution process described below. In some cases, it will not be possible for the Law School to proceed without the reporting party's participation. If a respondent elects not to participate in any part of the process, the Law School may proceed without the respondent's participation. Respondents will be held accountable for any outcomes issued, even if they decline to participate.

When individuals report allegations of discrimination or harassment to the Law School but do not consent to the disclosure of their names or refuse to disclose the identity of or identifiable information about the alleged offender, the Law School's ability to respond to the reports may be limited. When a reporting party requests anonymity or does not wish to proceed with an investigation, the Law School will attempt to honor that request but, in some cases, the Diversity Affairs Office may determine that the Law School will proceed with an investigation, particularly in cases involving employees or as otherwise required by law. In those situations, the Law School will not compel the reporting party to participate. The Office will consider the following factors in reaching a determination about whether to proceed:

- The totality of the known circumstances;
- The nature and scope of the alleged conduct;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of the reported behavior recurring;
- Whether there have been other reports of misconduct by the respondent;
- Whether the report reveals a pattern of misconduct at a given location or

by a particular group;

- The reporting party's interest in the Law School not pursuing an investigation or disciplinary action and the impact of an investigation on the reporting party;
- Whether the Law School possesses other means to obtain relevant evidence;
- Fairness considerations for both parties;
- The Law School's obligation to provide a safe and non-discriminatory environment; and
- Any other available and relevant information.

All participants have the responsibility to be completely truthful with the information they share at all stages of the process. Any individual who knowingly or intentionally provides false information as part of a report or investigation under this policy will be subject to discipline in accordance with the procedures set forth in the Student Handbook, Faculty Handbook, or Employee Handbook. The Law School may take disciplinary action if an incident is falsely reported by a third party and the impacted individual does not engage with the Diversity Affairs Office. This provision does not apply to a good-faith report that is not substantiated (i.e., proven by a preponderance of the evidence).

- 3. Privacy and Sharing of Information** – The Law School considers reports and investigations of discrimination and harassment to be private matters for the parties involved. For that reason, the Law School will protect the identity of persons involved in reports of discrimination and harassment to the best of its ability. The Law School will share personally identifiable information only with persons with a need to know for the Law School to investigate and respond or to deliver resources or support services. The Law School does not publish the names or post identifiable information about persons involved in a report of discrimination or harassment. However, the Law School cannot promise complete confidentiality or privacy in the handling of discrimination and harassment reports or complaints.

All participants in an investigation of discrimination and harassment will be informed that privacy enhances the integrity of the investigation, protects the privacy interests of the parties, and protects the participants from statements that might be interpreted to be retaliatory or defamatory. For these reasons, the reporting party and respondent will be asked at the beginning of the investigation to keep the information related to the investigation and resolution private, to the extent consistent with applicable law. Witnesses and advisors will be asked to keep any information learned in an investigation meeting confidential, to the extent consistent with applicable law.

- 4. Case Resolution Timeline** - Though the Law School strives to resolve all cases in a prompt and timely manner, the timeline varies based on the circumstances of the case. Additionally, the timeline for a case may be affected by breaks in the academic calendar, availability of the parties and witnesses (including leaves of absence), scope of the investigation, need for interim actions, and unforeseen or exigent circumstances. In some instances, the Law School may be required to adapt or modify the process, including timelines, to ensure the equitable resolution of a report of prohibited conduct.

The Law School reserves this right. In such instances, the Law School will notify both parties of the modification of the process and, if appropriate, the exceptional circumstances requiring the Law School to adapt or modify the process. The parties will be periodically updated on the status of their case.

5. **Conflicts of Interest** - Southwestern reserves the right to use an adequately trained internal or external investigator, review panel member, or appeal board member as it deems necessary. No decision-maker will have a conflict of interest or bias in favor of or against reporting parties or respondents generally, or in favor or against the parties to the particular case. For purposes of this policy, a “conflict of interest” is defined as a situation in which a decision-maker has interests or relationships, including personal or business relationships, with any party that might reasonably be construed to affect the member’s independent, unbiased judgment when making or participating in making decisions, or where those decisions will or could materially benefit them directly, or indirectly. Parties have three business days to object to the selection of investigator, review panel member, or appeal board member on the basis of conflict of interest or bias. The Diversity Affairs Office will determine whether a conflict of interest or bias exists. No investigator, review panel member, or appeal board member will make findings or determinations in a case in which they have a conflict of interest.
6. **Standard of Evidence** - The Law School uses the preponderance of the evidence standard in investigating complaints alleging violations of this policy. This means that the investigation determines whether it is more likely than not that a violation of this policy occurred. A preponderance of the evidence standard is also used for review of appeals.
7. **Advisor** - An advisor is a support person who is present to provide support to a reporting party or respondent throughout an investigation and/or sanctioning process. Reporting parties and respondents may be accompanied by one advisor throughout the investigation and any sanctioning process, provided that the involvement of the advisor does not result in an undue delay of the process. It is the responsibility of each party to coordinate scheduling with their advisor for any meetings. An advisor may not speak, write, or otherwise communicate with an investigator, sanctioning panel member, or appeal reviewer on behalf of the reporting party or respondent. Advisors may not engage in behavior or advocacy that harasses, abuses, or intimidates either party, a witness, or individuals involved in resolving the complaint. Advisors who do not abide by these guidelines may be excluded from the process.

B. Process

1. **Initial Inquiry** - The Diversity Affairs Office will make the initial inquiry about whether the report falls within the scope of the Sexual Misconduct Policy, this policy, or neither. Following an initial inquiry, possible next steps include:
 - Close the Case: The Office may close a case when the alleged misconduct—even if substantiated—would not be a violation of this policy. The Office may, in its discretion, reopen a case in the future if additional information becomes available.
 - Informal Action (See section 2 below)
 - Formal Resolution (commonly referred to as an investigation) (See section 3 below)

The scope and timing of further action will depend upon a number of factors, including but not limited to, whether the identity of the reporting party or respondent is known;

whether the reporting party is willing to participate in an investigation; whether the reporting party requests anonymity; whether the reporting party or respondent is affiliated with the Law School; **whether the matter is currently under review in another forum (local/state/federal agency or court)**; and whether the Law School has an obligation to proceed with an investigation based on the nature of the conduct alleged, regardless of the reporting party's wishes.

- 2. Informal Action-** Informal action involves measures taken by the Law School in response to a situation or report of discrimination or harassment when formal resolution is not desired by the person who may have experienced the conduct or when there is not enough information to proceed with a formal resolution process against a known respondent. Informal action must be approved by the Diversity Affairs Office and is not used when the Diversity Affairs Office has determined that the Law School needs to proceed with an investigation. This may include transformative justice practices, mediation, or other informal action determined by the Diversity Affairs Office to be appropriate.

Informal action does not result in findings related to responsibility or in sanctions. Informal action does not preclude further steps, including formal resolution, if a complaint is later made or additional information is received by the Diversity Affairs Office. Informal actions include, but are not limited to:

- An educational meeting with the subject of the report;
- Training for a group or unit; or
- An advisory letter.

3. Formal Resolution (Investigation)

a. Notification to Parties - The formal complaint resolution process operates under a standard of fairness for all parties involved. If a case is referred for formal resolution, the Diversity Affairs Office will **notify the reporting party and respondent simultaneously of the opening of the investigation in writing**. The notification will include the allegations, identities of the parties involved in the particular matter, the section of this policy that was allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the incident (if known). This notice will be given to the respondent before any initial interview of the respondent. The Law School may modify the notice of allegations based on additional information learned during the investigation. If additional Law School policies are being investigated concurrently with the alleged violations of this policy, the notice will specify those policies, and this process will be the sole process for investigating, adjudicating, and appealing determinations of violations of those policies.

b. Acceptance of Responsibility - Before an investigation is concluded, the respondent may elect to take responsibility for the prohibited conduct by contacting the Diversity Affairs Office, in writing. When accepting responsibility is considered to be appropriate, the Diversity Affairs Office will issue a brief outcome determination summarizing the allegations and stating the respondent has accepted responsibility and is referring the matter to the review panel for sanctioning. Following the determination of sanctions, parties may appeal the sanctions but not any finding of responsibility.

c. Withdrawal of Complaint - Before an investigation is concluded, the reporting party may request to withdraw the complaint by contacting the Diversity Affairs Office, in writing. The Diversity Affairs Office will determine whether to close the case or conclude the investigation without the reporting party's continued participation. The Diversity Affairs Office may be required to investigate even if the reporting party requests to withdraw the complaint.

d. Investigation - The Diversity Affairs Office investigates complaints proceeding through formal resolution. Depending upon the circumstances, one or more investigators will be assigned by the Diversity Affairs Office. In some cases, another Law School office may conduct an investigation under the direction of the Office, or an outside investigator may be retained. All investigators are educated on the Law School's policies and procedures. The Law School may appoint co-investigators for a matter. Depending on the circumstances and in its discretion, the Law School may consolidate for investigation and sanctioning multiple complaints involving the same respondent or complaints where the parties have made allegations against each other.

- 1. Preliminary Investigative Report:** After each party has had the opportunity to meet with investigator, identify witnesses, and suggest questions, and the investigators have completed witness interviews and the gathering of evidence, the investigator will prepare a preliminary investigative report. The preliminary investigative report will include a summary of the information provided by the reporting party, the respondent, and each witness during the investigation (including relevant supporting evidence provided by either party or witnesses). The preliminary investigative report will not contain any factual findings. The parties will be provided with an opportunity to review the preliminary investigative report and respond. Typically, the preliminary investigative report will be provided to each party electronically. Parties are expected to maintain the privacy of this document and may not distribute this document. Unauthorized distribution of this document may result in referral to the appropriate office for disciplinary action.

The parties may each submit comments, feedback, additional documentary evidence, requests for additional steps in the investigation, names of additional witnesses, or any other information they deem relevant to the investigator within five business days after the preliminary investigative report is made available for review. A party may request an extension in writing to the Diversity Affairs Office. The Diversity Affairs Office has the discretion to grant or deny the extension in accordance with fairness to both parties.

If new, relevant information is provided or identified by a party, the information will be incorporated into the preliminary investigative report and the parties will be provided a second and final opportunity to review the preliminary investigative report and provide feedback regarding the new information before the investigators proceed with finalizing the report. The parties may each submit feedback regarding the new information within five business days after it is made available for review. Thereafter, the investigator will finalize the investigative report, including making any factual findings based on the record.

- 2. Investigation Outcome/Findings of Policy Violations:** Based on the status of the respondent, the appropriate Law School office or officer will review the final investigative report and determine whether the preponderance of the evidence shows the respondent has violated this policy or other identified policies. For cases involving a student respondent, the appropriate office is the Diversity Affairs Office. For cases involving a faculty respondent, the appropriate officer is the Vice Dean or their designee. For cases involving staff respondents, the appropriate officer is the Associate Dean of Administrative Services or their designee. For cases involving a Board of Trustees respondent, the appropriate officer is the Board of Trustees Chair or their designee. The reporting party and the respondent will both be notified simultaneously of the outcome of the investigation.

During an investigation, the reporting party will have the opportunity to describe their allegations and present supporting evidence to the investigator. The respondent will have the opportunity to receive notice of the allegations and evidence being considered against them, respond to them, and present supporting evidence to the investigator. Investigation meetings are not audio- or video- recorded by the Law School and may not be recorded by any participant.

Parties and witnesses may take notes during investigation meetings. Generally, the investigator will meet with each party and each witness separately and may hold multiple meetings with a party to obtain all necessary information. The parties may submit additional materials or information to the investigator. In all cases, both the reporting party and respondent will have equal opportunities to share information and have their information considered.

The reporting party and the respondent will both have the opportunity to present names of potential witnesses and questions the investigator might ask the other party. Reporting parties and respondents should identify only factual witnesses, not character or expert witnesses. The investigator will take the lists provided by the reporting party and respondent into consideration when identifying whom they will interview and what questions they might ask, but these decisions are solely within the investigator's discretion. The investigator may also choose to interview witnesses not identified by the parties.

e. Sanctions – If the report proceeds through formal resolution and the respondent is found responsible for one or more violations of this policy (or other policies contained in the notice of allegations) the Law School will issue sanctions commensurate with the violation(s). The Diversity Affairs Office will designate three trained individuals to serve on a panel (“Review Panel”) to determine sanctions. The Office will notify the parties, in writing, of the names of each panelist within three business days upon receipt of the Final Report. Both parties will have three business days to object to each Review Panelist on the basis of bias or conflict of interest. If either party objects, the Office will evaluate whether the objection is substantiated. The Diversity Affairs Office will remove and replace any Review Panelist believed to have a bias or conflict of interest against

either party.

The Diversity Affairs Office will notify the parties that they have the opportunity to submit statements regarding the appropriateness of any sanctions to the Review Panel five business days after the date to object to the Review Panelists has expired. The Review Panel will review all materials in the case, including the Final Report and any exhibits, in assessing the appropriate sanction. The Review Panel does not have the power or ability to alter the factual findings or the finding of a Policy violation in the Final Report.

The Review Panel will issue a recommendation to the Diversity Affairs Office regarding sanctions within five business days of receiving all materials in the case. The Office will attempt to issue final sanctions within ten business days of receipt of the Review Panel Recommendation. For conduct that meets the definition of dating violence, domestic violence, stalking, or sexual assault as defined by the Clery Act and that is not being processed under the Sexual Misconduct Policy, the Office will notify the parties of the sanctions simultaneously in writing. Otherwise, the reporting party will be notified of sanctions about which they are entitled to know by law, which includes sanctions that impact them (i.e., a no-contact order).

f. Appeal - Both reporting party and the respondent have a limited right to appeal from the findings set out in the Final Report. If the Final Report concludes that the respondent did not violate this policy (or any policy in the notice of allegations), the reporting Party has five business days from receiving written notice of the Investigation Outcome to submit a written appeal. If the respondent has been found responsible for one or more violations, but not others, the reporting Party may submit a written appeal within five business days of notice of the sanction. If the Final Report concludes that the respondent did violate one or more policies, the respondent has five business days from receiving written notice of the sanction to submit a written appeal to the Diversity Affairs Office.

The Party who submits the written appeal will be the “Appellant,” and the other Party will be the “Appellee.” The Appellant’s written appeal must be based on one of three grounds:

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

findings must be included in the written appeal.

- **Disproportionate Sanctions:** Sanctions that are manifestly contrary to the weight of the information presented (i.e., unreasonable and unsupported by the findings).

Appellee will have five business days to submit a response. At the conclusion of these time periods, the Diversity Affairs Office will refer the written appeal, any response thereto, and the Investigation Outcome, exhibits attached to the Investigation Outcome (the “Appeal Record”), to an Appeals Board.

The Diversity Affairs Office will notify both parties of the members of the Appeals Board within three business days of receipt of the written appeal. Both parties will have three business days to object to members of the Appeals Board on the basis of bias or conflict of interest. The Diversity Affairs Office will consider any objection on the grounds of bias or conflict of interest. If the Diversity Affairs Office determines that a member of the Appeals Board may have bias or conflict of interest, the Diversity Affairs Office will remove the individual and designate a new member.

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

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

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

new information should be considered, the complaint will be returned to the investigator to reconsider the complaint considering the new information only, and to reconsider the original findings as appropriate. The investigator will prepare an Addendum to the Final Report.

- **Disproportionate Sanctions:** If the Appeals Board determines that the sanctions are manifestly contrary to the weight of the information presented, the Diversity Affairs Office and the Review Panel will collaborate to issue appropriate sanctions.

The Law School will attempt to issue notice in writing of the outcome of the appeal within ten business days of receipt of Appellee's response statement. The Appeals Board's decision is final and is not subject to appeal.

IV. Required Training

Every employee upon hire and annually thereafter is required to review this policy and acknowledge they have read and understand its content. Supervisors undergo mandatory sexual harassment prevention training within six months of initial employment and biennially thereafter. Additionally, all non-supervisory employees (including temporary employees and volunteers) must complete a one-hour workplace sexual harassment prevention training within six months of their initial employment and biennially thereafter. The Department of Fair Employment and Housing offers sexual harassment training at: <https://www.dfeh.ca.gov/shpt/>.

Policy to Prevent Discrimination, Harassment, and Retaliation
Effective November 15, 2021

Appendix A
 Policy to Prevent Discrimination, Harassment, and Retaliation
 Important Process Steps and Deadlines

Step	Description	Policy Reference	Anticipated Deadlines*
Written Notice of Investigation to Parties	The notification will include allegations, identities of the parties, the section of this policy that was allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the incident (if known). Notice will be given to the Respondent before any initial interview of the Respondent.	III.B.3.a. Page 14	
Preliminary Investigation Report	The Preliminary Report will include a summary of the information provided by the Reporting Party, the Respondent, and each witness during the investigation. The Preliminary Report will not contain any factual findings.	III.B.3.d.i Page 15	The parties may submit additional documentary evidence within five business days after the preliminary report is made available
Final Report and Findings of Policy Violations	Depending on the status of the Respondent (faculty, staff, or student), the appropriate office will determine whether the preponderance of the evidence shows the Respondent has violated this policy or other identified policies.	III.B.3.d.ii Page 16	
Sanctions (if applicable)	The Diversity Affairs Office will designate three trained individuals to serve on a panel (“Review Panel”) to determine sanctions.	III.B.3.e Page 16	<p>Three business days to object to each Review Panelist on the basis of bias or conflict of interest</p> <p>Submit statements regarding the appropriateness of any sanctions to the Review Panel five business days after the date to object to the Review Panelists has expired.</p> <p>The Review Panel will issue recommendation regarding</p>

			sanctions within five business days of receiving all materials in the case.
Step	Description	Policy Reference	Anticipated Deadlines*
Appeals	Grounds for appeal are limited to significant procedural error, new information, and disproportionate sanctions.	III.B.3.f Page 17	<p>Parties have five business days from receiving written notice of the Investigation Outcome or Notice of Sanctions to submit a written appeal.</p> <p>Notification to parties of the members of the Appeals Board within three business days of receipt of the written appeal.</p> <p>Parties have three business days to object to members of the Appeals Board on the basis of bias or conflict of interest.</p> <p>Notice in writing of the outcome of the appeal within ten business days of receipt of Appellee's response statement.</p>

*Anticipated deadlines are subject to change pursuant to III.A.4.