

<b>ADMINISTRATIVE DIVISION</b> Office of Equal Opportunity Programs		<b>POLICY NUMBER</b> EOP 1.06
<b>POLICY TITLE</b> Sexual Harassment, Sexual Misconduct and Interpersonal Violence (Interim)		
<b>SCOPE OF POLICY</b> University System	<b>DATE OF REVISION</b> December 21, 2020	
<b>RESPONSIBLE OFFICER</b> Director, Office of Equal Opportunity Programs	<b>ADMINISTRATIVE OFFICE</b> Office of Equal Opportunity Programs	

**PURPOSE**

While the University of South Carolina prohibits all forms of unlawful discrimination and harassment, including sexual misconduct, this policy applies only to sexual harassment as defined in Code of Federal Regulations, 34 CFR Part 106: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (also referred to as the Title IX Regulations) which became effective August 14, 2020.

Allegations involving unlawful harassment, including sexual harassment, can stem from other sources of law and/or policy (for example, Title VII of the Civil Rights Act of 1964 – employment discrimination based on race, color, religion, sex, and national origin - or the American with Disabilities Act of 1990). Accordingly, while this interim policy serves to supersede the existing policy [EOP 1.05 Sexual Misconduct, Intimate Partner Violence and Stalking](#), allegations of sexual misconduct not covered by this policy may be addressed by policies [EOP 1.02 Sexual Harassment](#), [EOP 1.03 Prohibition of Unlawful Discrimination and Harassment](#), and [STAF 6.24 Harassment or the Student Non-Discrimination and Non-Harassment Policy](#).

Questions about this policy may be directed to the Office of Equal Opportunity Programs, the Office of the General Counsel or the Office of the Dean of Students.

**DEFINITIONS**

**Actual Knowledge of Sexual Harassment, Sexual Misconduct and Interpersonal Violence:**

The University of South Carolina receives actual knowledge of a sexual harassment, sexual misconduct or interpersonal violence (including sexual assault, dating/domestic violence, and stalking) incidents, as defined by the Title IX regulations or university policies, when the incident is reported to the Title IX Coordinator (including the Deputy Title IX Coordinators) or to any university official with authority to institute corrective actions, as described in Section S.2.

**Complainant:** an individual who is alleged to have experienced conduct that could constitute sexual harassment, sexual misconduct or interpersonal violence, as defined by the Title IX regulations or other university policies.

**Emergency Removal:** Removal from the university based on an emergency that arises from alleged conduct that could constitute sexual harassment, sexual misconduct or interpersonal violence, as defined by the Title IX regulations or university policies, when the university conducts an individualized analysis and concludes that an immediate threat to physical health or safety of any student or other person is caused by the allegations of sexual harassment, sexual

misconduct or interpersonal violence, as defined by the Title IX regulations or university policies.

**Formal Complaint:** A formal complaint is a document filed by a complainant with the university requesting that the university investigate the allegation of sexual harassment, as defined in this interim policy. In some cases, the Title IX coordinator may file a signed formal complaint to request that the university investigate an allegation of sexual harassment, as defined by this interim policy.

**Respondent:** A respondent is an individual who has been reported to have committed conduct that could constitute sexual misconduct and interpersonal violence, including sexual assault, dating/domestic violence, and stalking, as defined in this policy, or in other university policies.

**Student:** A person who is currently enrolled at the university, or who is accepted for admission or readmission to the university, or who has been enrolled at the university in a prior semester or summer session and is eligible to continue enrollment in the semester or summer session that immediately follows, or who is attending an educational program sponsored by the university while that person is on campus, or who engaged in prohibited conduct at a time when the individual met the above criteria. Individuals who are not currently enrolled at the university remain subject to the disciplinary process for conduct that occurred while they were enrolled.

**Student Organization:** a student group that maintains active status on the University of South Carolina campus, has fulfilled all responsibilities of a student organization and represents a group of students who desire to come together to support a particular view, explore common interests or accomplish identified tasks. Student organizations must be student-initiated and student-led; this includes the various types of student organizations outlined in [STAF 3.10 Student Organizations](#).

### **Sexual Harassment:**

- A. This interim policy adopts the following definition of sexual harassment to apply to all reported incidents at the university:
1. An employee of the University of South Carolina conditioning the provision of an aide, benefit, or service of the University of South Carolina on an individual's participation in unwelcome sexual conduct;
  2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University of South Carolina's education program or activity; or
  3. Sexual assault, as defined in 20 USC 1092 (f)(6)(A)(v); dating violence as defined in 34 USC 12291(a)(10); domestic violence as defined in 34 USC 12291(a)(8); or stalking as defined in 34 USC section 12291 (a) (30).
    - a. Sexual Assault, as Defined in the Clery Act

### Sexual Assault:

- i. An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system.
- ii. A sex offense is any sexual act directed against another person, without the consent \*\* of the victim, including instances where the victim is incapable of giving consent.
- iii. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- iv. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- v. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

### b. Dating Violence

The term “dating violence” means violence committed by a person

- i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship.
  - b. The type of relationship.
  - c. The frequency of interaction between the persons involved in the relationship.

### c. Domestic Violence

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

d. Stalking

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- i. fear for his or her safety or the safety of others; or
- ii. suffer substantial emotional distress.

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

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

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

## **POLICY STATEMENT**

It is the policy of the University of South Carolina (“university” or “UofSC”) to provide an educational and working environment for its students, faculty, and staff that is free from sexual harassment, sexual misconduct, and interpersonal violence. Applying to all students, faculty, and staff, this interim policy articulates university response to allegations of sexual harassment, sexual misconduct, and interpersonal violence. This interim policy does not preclude a university response to allegations which may not meet the policy’s stated definitions for sexual harassment, sexual misconduct, and interpersonal violence.

To the extent conduct of any university employee or student constitutes sexual harassment, sexual misconduct or interpersonal violence as defined by the Title IX Regulations, or university policies, the procedures set forth in this interim policy shall apply. However, this interim policy is not intended to, and shall not be applied or interpreted in any manner which, conflicts with, limits or otherwise restrict the rights of any university employee under Title VII of the Civil Rights Act of 1964.

## **PROCEDURES**

### **A. Requirements of Formal Complainant/Consolidation of Complaints**

1. To consider a formal complaint, the respondent must have been a student, faculty, or staff in accordance with the definition articulated in this policy, at the time of the reported incident. While the current Title IX regulations outline specific requirements for meeting the criteria of a Title IX complaint, this interim policy applies equal consideration to

reports that involve individuals who were students, faculty, or staff at the time of the incident and the incident occurred in the continental United States.

2. **Scope:** Individuals who alone, or in concert with others, participate or attempt to participate in prohibited conduct described in this policy are subject to disciplinary action by the university, notwithstanding any action that may or may not be taken by civil or criminal authorities. This policy applies to all members of the university community, including students, employees, volunteers, independent contractors, visitors, and any individuals regularly or temporally employed, studying, living, visiting, conducting business, or having any official capacity at the university regardless of gender, gender identity, or gender expression. Compliance with this policy does not constitute a violation of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 2974 (FERPA)
3. A formal complaint may be filed with the Title IX coordinator in person, by mail, or by electronic means, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the university. The University of South Carolina has designated an online Interpersonal Violence Incident Report as a means for students to file a formal complaint online under this policy, and an online EOP complaint form for faculty and staff to file a complaint online.

Link to online form for students:

[https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout\\_id=6](https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout_id=6)

Link to online form for employees:

[https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout\\_id=40](https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout_id=40)

4. **Consolidation of Complaints:** The University of South Carolina may consolidate formal complaints:
    - a. against more than one respondent;
    - b. or by more than one complainant against one or more respondents;
    - c. or by one party against the other party;
    - d. where the allegations of sexual harassment sexual misconduct or interpersonal violence arise out of the same facts or circumstances.
- B. Action Required Upon Receiving Notice of Sexual Harassment, Sexual Misconduct, or Interpersonal Violence**
1. When the University of South Carolina receives actual knowledge of a potential sexual harassment, sexual misconduct or interpersonal violence incident or an allegation of such an

incident, as defined by Title IX or university policies, the university is required to respond in a manner that does not constitute deliberate indifference. That is, the response must not be clearly unreasonable considering the known circumstances.

2. Supportive Measures: Supportive measures will be designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party. The university's response may include providing supportive measures to the complainant as well as to the respondent. Supportive measures may include, but not be limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, safety planning, and monitoring of certain areas of the campus.
  - a. any supportive measures provided to the respondent must not be punitive in nature until a decision of responsibility is made upon the completion of the investigation and/or grievance process.
  - b. Supportive measures for the complainant and the respondent shall be coordinated/implemented by the Title IX Coordinator, Deputy Title IX coordinators, or other designees as directed by the Title IX Coordinator. For example, supportive measures for students are under the jurisdiction of the Deputy Title IX Coordinator for students, who has designated that responsibility to the office of student conduct.
  - c. If a student requests, and it is reasonable to provide, the university may, but is not required, continue providing supportive measures to either party upon either a finding of non-responsibility through the formal complaint process or resolution of an informal process as specified in this policy.

#### C. Emergency Removal of Student-Respondent/Placing Student-Employee on Administrative Leave

In some instances, an emergency removal of the respondent may be appropriate.

1. For the university to undertake an emergency removal, an emergency must arise from alleged conduct that could constitute sexual harassment as defined herein, or sexual harassment, sexual misconduct or interpersonal violence, as defined by other university policies. Specifically, the university may remove a respondent on an emergency basis, whether a grievance process is underway or not, if it conducts an individualized analysis and concludes that an immediate threat to physical health or safety of any student or other person is caused by the allegations of sexual harassment, or sexual harassment, sexual misconduct or interpersonal violence, as defined by other university policies.
2. An emergency removal is not limited to instances where the complainant has reported an alleged sexual assault or rape, but could also be justified to address alleged severe, pervasive and objectively offensive verbal or online harassment. The identification of an immediate risk situation is not limited to the details of the alleged sexual harassment

incident itself but may also include an evaluation and response to a respondent's related post-incident actions or behaviors.

3. The university must conduct an individualized safety or risk analysis, which cannot be based upon generalized, hypothetical or speculative beliefs or assumptions that a respondent could pose a risk to someone's physical health or safety. Under this policy, this risk analysis will be conducted under the authority of the university's Threat Assessment Unit within the Department of Law Enforcement and Safety.
4. An emergency removal is not a determination of responsibility or a sanction. The emergency removal allows the university discretion to address genuine emergency situations, while protecting the respondent's due process and fundamental fairness rights to notice and an opportunity to challenge a removal action.
5. An emergency removal must not, in any way, result in a pre-judgment of the allegations against the respondent, who is entitled to a presumption of non-responsibility, pending the completion of the grievance process.
6. All designated personnel involved in the emergency removal process must be free of bias and avoid conflicts of interest. Their involvement in the removal analysis could preclude later participation in the grievance process, if their participation in the emergency removal process results in a bias for or against any party, or a conflict of interest develops as a result of their participation in the removal process.
7. The respondent has the right to challenge any emergency removal decision immediately upon its issuance.
8. Any appeal of the emergency removal decision shall be made to the Title IX Coordinator, whose decision shall be final.
9. Five steps to follow in making an emergency removal decision are:
  - a. Conduct a prompt individualized safety and risk analysis.
  - b. Make the required findings: Is there an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment?
  - c. Evaluate the applicability of disability laws to the removal decision.
  - d. Consider the appropriateness of supportive measures in lieu of an emergency removal.
  - e. Provide the respondent with notice and an opportunity to challenge the emergency removal; the opportunity to challenge the emergency removal should be made within

48 hours of notice and the university will make efforts to respond to the challenge within five days of receiving the challenge.

10. If the respondent's actions pose an immediate and identified threat, but do not "arise from" allegations of sexual harassment (for example, where a student has brought a weapon to school unrelated to any sexual harassment allegations, or sexual harassment, sexual misconduct or interpersonal violence, as defined by other university policies), emergency removal as described herein does not apply and the university is free to respond under its code of conduct or in accordance with applicable laws.
11. The university may place a student-employee on an administrative leave, in a non-emergency situation, if it is determined that placement of the student-employee on an administrative leave may be appropriate to provide supportive measures to the complainant. However, doing so must not unreasonably burden the student-employee, or jeopardize or impair the student-employee's access to educational benefits and opportunities if alternative and less restrictive measures would be more appropriate.

#### D. Placing Employees on Administrative Leave

1. This policy does not preclude the imposition of an emergency removal of an employee.
2. The process for putting a non-student employee-respondent on administrative leave can only begin after a formal complaint has been filed against the respondent. Administrative leave under these conditions is meant for non-emergency situations, and if pursued must occur in a manner consistent with any applicable university policy or faculty manual.
3. The administrative leave is designed to provide a temporary separation of the non-student employee, while the grievance process ensues under a reasonably prompt time frame. The employee's rights under Title VII, Section 504 of the Rehabilitation Act, Americans with Disabilities Act, or applicable employment laws must be respected.

#### E. Action Required When a Formal Complaint is Filed

When a formal complaint is received, written notice must be provided to both parties and must include:

1. Sufficient details known at the time and provide sufficient time to prepare a response before any initial interview.
2. A statement that the respondent is presumed to not be responsible until a determination is made at the conclusion of the grievance process.
  - a. Notice of a right to an advisor of the party's choice. Each party has the right to an advisor of their choice. However, the University of South Carolina reserves the right to limit participation of the advisor during the investigative process and during the



- grievance process, except as otherwise described below relating to the right of each party to have cross examination conducted by their advisor at a live hearing.
- b. An explanation of the right of the parties to review and inspect the evidence.
  - c. As explanation of the availability of informal resolution.
  - d. The provision of any code of conduct that prohibits knowingly making false statements or providing false information.

F. Time Frame for Investigating/Grievance Process

1. Once a formal complaint is filed, the investigation and grievance process must take place within reasonably prompt period, with limited good cause extensions being provided or granted both parties, with notice to each party.
2. The University will provide notice of receipt of a formal complaint to both parties within five (5) calendar days of receipt of a formal complaint.
3. Upon receipt of the notice of the complaint, the respondent shall be provided ten (10) calendar days to provide a written response to the formal complaint.
4. Upon receipt of any written response from the respondent, the response will be provided to the complainant within five (5) calendar days, and the complainant shall be provided five (5) university business days to provide a written response.
5. If the respondent files a counter complaint, the complainant will have ten (10) calendar days to provide a written response and the respondent will have five (5) business days to respond to the complainant's written response.
6. At the conclusion of the investigation, each party and their advisors will be provided a copy of the relevant evidence collected during the investigation, and will have ten (10) calendar days to provide a response.
7. The investigator will then prepare an Investigative Report and provide it to the parties and advisors (and appropriate department: Student Conduct, Human Resources, and Provost).
8. A live hearing must be held no sooner than ten (10) calendar days after parties receive the investigative report.
9. The hearing officer must issue a decision within ten (10) calendar days of conclusion of the hearing, the parties will have ten (10) calendar days to file any appeal of the hearing decision.

10. Parties have ten (10) calendar days to respond to an appeal. The appellate officer shall issue a decision within ten (10) calendar days of expiration of time for parties to respond to an appeal.

#### G. Burden of Proof and Presentation of Evidence

Throughout the investigation and grievance process, the burden of proof and of gathering evidence remains with the University of South Carolina and does not rest on the parties. However, each party must be afforded the opportunity to provide inculpatory evidence (evidence which tends to prove responsibility), as well as exculpatory evidence (evidence which tends to disprove responsibility).

#### H. Restrictions on Disclosure by the Parties Are Not Permitted

The University of South Carolina is not permitted to restrict parties from discussing the complaint with others. Specifically, the University of South Carolina may not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

#### I. Right to Inspect and Review Evidence

1. Each party must be provided an equal opportunity to inspect and review any information obtained as part of the investigation directly related to the allegation in a formal complaint, including evidence upon which the university does not intend to rely in making a responsibility decision. This includes the right to inspect and review inculpatory as well as exculpatory evidence, whether obtained from a party or other source, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation.
2. Except as indicated below, any evidence obtained by EOP from any individual or otherwise obtained, that is shared by the EOP office with a party to inspect and review must be responded to by that party within five (5) days of receipt of the evidence.
3. Before the investigator issues a report, the parties must have at least ten (10) days to review any relevant information directly related to the allegations raised in a formal complaint gathered by the investigators, including inculpatory and exculpatory evidence. At the end of that ten (10) day period, the parties have the right to submit a written response, which the investigator will consider before completing the investigative report.

#### J. Mandatory and Permissive Dismissals of Complaints

1. With respect to a Title IX sexual harassment complaint, the university is required to investigate the allegations of a formal complaint. However, this requirement does not apply to complaints which the university must dismiss (referred to as mandatory dismissals).

2. Applicability of Title IX complaints and university policy: Although a complaint may, by definition, necessitate a mandatory dismissal under Title IX, the university has elected, as a matter of policy, to proceed with the resolution procedures outlined in this section if the complaint meets this definition of permissible scope/jurisdiction including activity off campus, but within the continental United States, and has a substantial connection to the university.
3. The EOP office must issue a mandatory dismissal of a complaint if:
  - a. the conduct alleged by the complainant in the formal complaint would not constitute sexual harassment, as defined herein, even if the allegations are proved; or
  - b. the conduct did not occur in the university's education program or activity; or
  - c. the conduct did not occur against a person in the United States.
4. The EOP office may also dismiss a formal complaint if:
  - a. a complainant notifies the Title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
  - b. the respondent is no longer enrolled or employed by the university; or
  - c. the specific circumstances prevent the university from gathering evidence sufficient to reach a determination.

#### K. Submittal of Investigative Report for Live Hearing

1. After completion of the investigation by the EOP office, it shall forward the investigative report to the hearing officer to convene a live hearing for a responsibility and sanction determination. Copies shall also be provided to appropriate university department (Office of Student Conduct, Office of the Executive Vice President for Academic Affairs and Provost, Vice President for Human Resources).
2. The live hearing must not occur earlier than (ten) 10 calendar days after the parties are provided copies of the investigative report and evidence.
3. The decision maker's decision must be issued no later than ten (10) calendar days following the conclusion of the live hearing. When the decision maker's decision is provided to the parties, it must be accompanied by a transcript or audio or video recording of the live hearing. The transcript or recording must be provided in a manner determined reasonable by the university.
4. The hearing officer's responsibility and sanction decision shall become final if not appealed within the ten (10) calendar days of the hearing officer's decision, subject to

any additional rights provided by South Carolina law, university policy or faculty of applicable faculty manuals.

#### L. Hearings

1. Each hearing must be live and must afford each party's advisor the opportunity to cross-examine the other party and the other party's witnesses.
2. If a party does not have an advisor at the hearing, the university must appoint an advisor of the university's choice to conduct cross-examination of the other party and the other party's witnesses. A party who desires the appointment of an advisor to conduct cross examination must submit such request to the hearing officer no later than two (2) business day after receipt of the investigative report. Complainants have the opportunity to consult with SAVIP about the availability of potential advisors available through city/state resources. A party may object to the appointed advisor, based upon bias or conflict of interest, by presenting a written objection to the hearing officer no later than two university business days after the party is provided notice of the appointment.
3. If a party or witness does not submit to cross-examination at the live hearing, the decision maker must not rely on any statement of that party or witness in reaching a responsibility determination. The prohibition on reliance of statements applies not only to statements made during the hearing, but also to any statement of the party or witness who does not submit to cross-examination. Accordingly, police reports, SANE reports, medical reports, and other documents and/or record may not be relied on to the extent that they contain the statements of a party or witness who has not submitted to cross-examination. However, the decision maker cannot draw an inference about ~~the~~ responsibility based solely on a party's or a witness' absence from the live hearing, or refusal to answer cross-examination or other questions.
4. Live hearings may be conducted with all parties in the same location, or virtually, providing participants can simultaneously see and hear each other.
5. A recording and/or transcript of each live hearing must be created and made available for the parties to review and inspect.
6. The live hearing must be overseen by a decision maker who:
  - a. is not the Title IX coordinator or the investigator;
  - b. is free from conflict of interest or bias, including bias for or against complainants or respondents;
  - c. who has been trained on topics which include how to serve impartially; issues of relevance, including how to apply the rape-shield protections afforded complainants; and any technology to be used at the hearing.

7. The responsibility decision must be made by a decision-maker, who cannot be the investigator or Title IX coordinator. The decision-maker must issue a written determination regarding responsibility after a live hearing has been conducted.

#### M. Appeals of EOP Dismissals/Appeals of Responsibility Determinations

Any dismissal decision of the EOP office, and any responsibility determination is subject to appeal by either party on the following bases:

1. a procedural irregularity that affected the outcome;
2. new evidence was discovered that was not reasonably available when the dismissal or responsibility determination was made that could affect the outcome; or
3. the Title IX coordinator, investigator(s), or decision maker, as appropriate, had a conflict of interest or bias for or against complainants or respondents generally, or specifically in the case in question.

#### N. Procedural Requirements for Appeals

1. When one party appeals a dismissal or responsibility decision, the other party must be notified in writing, and will have 10 calendar days to provide a written response to the appeal.
2. The appellate authority must be different from anyone who made the dismissal decision or responsibility determination and must not be the investigator or Title IX coordinator. The appellate authority will consist of a three-person panel comprised of a University of South Carolina law professor, and (depending upon the identities of the parties involved in the case) the appropriate deputy Title IX coordinator or designee, and one other person from the appropriate university division or department (student affairs, academic affairs or human resources).
3. The appellate authority must be free from conflict of interest and bias, receive appropriate training, including anti-bias training, and otherwise comply with the requirements of the Title IX Regulations.
4. Both parties must be given a reasonable, equal opportunity to submit a written statement in support of or challenging the responsibility determination or dismissal.
5. The outcome of the appeal must be in writing, must include the rationale for the appellate decision and must be provided simultaneously to both parties.
6. Each party will be afforded ten (10) calendar days after a dismissal or responsibility determination is provided to that party to file an appeal of the dismissal or responsibility determination.

7. The appellate authority shall issue the decision on any appeal within ten (10) calendar days of the expiration of the parties' rights to submit written responses to an appeal, with extensions being provided for good cause, as determined by the appellate authority, upon notice of the extension to both parties. The appellate authority shall affirm the decision or remand the case to the investigator or the hearing officer, as appropriate, for further proceedings.

#### O. Evidentiary Standard

The preponderance of evidence standard shall apply to any dismissal or responsibility determination made pursuant to this policy.

#### P. Informal Resolution

1. Informal resolutions may be utilized after a report is filed but may never be utilized to resolve a complaint in which an employee is accused of sexually harassing a student.
2. If the case is one suitable for informal resolution, at any time prior to reaching a responsibility determination, the university may facilitate an informal resolution that does not involve a full investigation and adjudication provided that the university:
  - a. provides written notice to the parties, disclosing the allegation(s);
  - b. discloses the requirements of the informal resolution process, including the circumstances under which the university may preclude the parties from resuming a formal complaint arising from the same allegations;
  - c. informs the parties that at any time prior to agreeing to the resolution, any party has a right to withdraw from the informal resolution and resume the grievance process with respect to the underlined formal complaint;
  - d. informs the parties of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared. At UofSC, participation in an informal resolution process and the results of that process are maintained in the office that oversees that process. For students, those files are maintained in the Office of Student Conduct, and are considered part of the student's educational record and can only be released by the Office of Student Conduct in accordance with the Family Educational Rights and Privacy Act (FERPA). For employees, such files are maintained by the Office of Equal Opportunity Programs, the disclosure of which is subject to university policy and applicable law.
3. Every informal resolution must be the result of the parties' voluntary written consent to the informal resolution process.

4. The university may not require informal resolution as a condition of enrollment or continuing enrollment, as a condition of employment or continuing employment, or as a condition to the enjoyment of any other right. Additionally, the university may not condition informal resolution upon the waiver of the right to an investigation and adjudication of a formal complaint of sexual harassment.
5. Information and/or statements shared during the informal resolution process that are outside the formal complaint are considered confidential and only part of the informal resolution process; such information and/or statements cannot be used outside the informal resolution process, even if participants later formally resolve the matter through a formal process. Likewise, information and/or statements shared during the informal resolution process cannot be used by the university to levy additional charges of misconduct, even if such would violate a university regulation.
6. If an incident involves more than two individuals, the university may determine that informal resolution is not appropriate.
7. Participation of advisors in the informal resolution process: The advisor is meant to support the student as they go through the informal resolution process, not speak for the student. As the informal resolution process is intended to be non-adversarial, only the student can speak about issues surrounding the reported incident. Participants can speak with the advisors by requesting reasonable breaks during the process. Participants are only allowed to have one advisor permitted during scheduled meetings.
8. If participants do not abide by the informal resolution outcome, it could result in an additional violation of university regulations for failure to comply. Additionally, if a violation for noncompliance does occur, the other party would be made aware of that outcome.
9. At UofSC, the informal resolution process for students will be overseen by the Deputy Title IX coordinator for students who has delegated this responsibility to the office of student conduct. The informal resolution process for employees will be administered by EOP.

#### Q. Sanctions

1. Student Adjudications: Sanctions utilized under this policy must be designed to restore or preserve equal access to the university's education programs or activities. However, sanctions for violating this policy may range from a written warning or reprimand to expulsion or termination, depending on the facts and circumstances of the case. Possible sanctions for university students are documented in the Student Code of Conduct (STAF 6.26), some examples may include the following:
  - a. Issuance of no contact order
  - b. Campus restriction

- c. Conduct probation
  - d. Assessment with a counseling agency
  - e. Removal from university housing
  - f. Suspension
  - g. Expulsion
2. Faculty and Staff Adjudications: In addition to the rights set forth herein or in the Title IX Regulations, faculty or staff members who are subject to disciplinary action shall be afforded any rights and privileges to which they are entitled pursuant to South Carolina law, university HR Policy 1.39 Disciplinary Action and Termination for Cause; HR Policy 1.42 Grievance; and/or as set forth in any applicable faculty manual.

#### R. Reporting Categories for Employees

- 1. In support of a complainant's request for confidentiality and the university's interest in learning about incidents of prohibited conduct, the university designates the roles and responsibilities of several categories of employees with respect to confidentiality and reporting requirements.
- 2. Privileged Employees: These employees will not report disclosures of sexual harassment, as defended herein, to the Title IX Coordinator. However, they still must comply with mandatory reporting under South Carolina state law. Following is the contact information for these employees:

Student Health Services- Counseling and Psychiatry  
Thomson Building  
1409 Devine Street  
Columbia, SC 29208  
Counseling: 803-777-5223  
Psychiatry: 803-777-1833

- 3. Confidential Resources
  - a. Services, including the on-campus Sexual Assault and Violence Intervention & Prevention (SAVIP) office and Student Health Services, including staff and student workers, can talk to a complainant without revealing any personally identifying information about an incident to the university. A complainant can seek assistance and support from these individuals without triggering a university investigation that could reveal the complainant's identity or that the complainant has disclosed the incident. While maintaining a complainant's confidentiality, the SAVIP office provides reports to USCPD consisting of de-identified data, for Clery reporting. This limited report – which includes no information that would directly or indirectly



identify the complainant – helps keep the Title IX Coordinator informed of the general extent and nature of sexual and interpersonal violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, SAVIP staff will consult with the complainant to ensure that no personally identifying details are shared. Following is contact information for these resources:

**Sexual Assault and Violence Intervention & Prevention (SAVIP)**

Thomson Building  
1409 Devine St.  
Columbia, SC 29208  
803-777-8248

**Student Health Services**

(Includes Primary Care, Women’s Health, Sports Medicine & Physical Therapy, Allergy Immunization & Travel Clinic, Pharmacy, Lab, Radiology and student and faculty/staff wellness and prevention services, Center for Health and Well-Being)

1401 Devine St.  
Columbia, SC 29208  
803-777- 8283

- b. A complainant who speaks to a confidential resource must understand that, if the complainant wants to maintain confidentiality, the university may be unable to investigate the particular incident or pursue disciplinary action against the alleged offender. Additionally, a complainant must understand that Title IX and university policy includes protection against retaliation and that if the complainant pursues disciplinary action against the alleged offender, UofSC will take steps to prevent retaliation and take appropriate action if any retaliation does occur. Nevertheless, if the complainant wants to maintain confidentiality, these confidential resources will still assist the complainant, consistent with the Title IX Regulations and university policy, in receiving other necessary protection and support, such as complainant advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules. A complainant who at first requests confidentiality may later decide to file a formal complaint or report the incident to local law enforcement, and thus have the incident fully investigated. These confidential resources will provide the complainant with assistance if the complainant wishes to do so.

**S. Reporting Requirements**

- 1. Other than the privileged and confidential resources described above, all University of South Carolina employees are required to report incidents of sexual harassment, as defined in this policy, to the Title IX Coordinators or any deputy Title IX coordinator.

2. The categories of employees indicated below are designated university officials with authority to institute corrective action upon receiving a report of sexual harassment, as defined in this policy.

- a. President
- b. Executive Vice President for Academic Affairs and Provost
- c. Title IX Coordinator and Deputy Title IX Coordinators
- d. Chancellors and Vice Chancellors
- e. Vice President for Human Resources
- f. Vice President for Student Affairs
- g. Associate/Vice Provosts
- h. Deans, Associate & Assistant Deans
- i. Athletics Director, Associate or Assistant Athletics Directors
- j. Department Chairs
- k. Chief of Police and Deputy Chief of Police

#### T. False Statements

1. Charging someone with a code of conduct violation for making a materially false statement in bad faith during a grievance process or proceeding does not constitute retaliation. However, a responsibility determination alone is not sufficient to conclude any party made a materially false statement in bad faith.
2. Willful false accusations by complainants or abuse of the EOP process may result in sanctions, to include reprimand, suspension, demotion, or dismissal.

#### U. Retaliation

1. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sexual discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, or specifically the part of the Title IX regulation which prohibits retaliation, constitutes retaliation.
2. The University of South Carolina nor any person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in the investigation, proceeding, or hearing pursuant to this policy or the Title IX regulations.
3. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by the Title IX regulations or this policy.

## V. Amnesty Statement for Students

1. As a caring community, the university wants to foster an environment in which students take responsibility to call for help when another student is in need. Consistent with the sentiment behind Chapter 53, Title 44, Article 19 of the Code of Laws for South Carolina (Drug or Alcohol-Related Overdose Medical Treatment), any student who files a complaint or who acts as a third-party witness in an investigation under this policy will not be subject to punitive disciplinary action by the office of student conduct for using and/or consuming alcohol or drugs at or near the time of the alleged incident, provided that any such alcohol or drug use does not place the health or safety of any other student at risk.

## W. Title IX Coordinator/Deputy Title IX Coordinators

The University of South Carolina has designated Clifford Scott, Director of the Office of Equal Opportunity Programs, as Title IX Coordinator

1600 Hampton Street; Suite 805, Columbia, SC 29208  
Phone: 803-777-3854; Fax: 803-777-2296  
Email: eop@mailbox.sc.edu or scott7@mailbox.sc.edu.

### Deputy Title IX Coordinators

Dr. Carl R. Wells, Assistant EOP Director and Director of Training  
1600 Hampton Street Suite 805, Columbia, SC 29208  
Phone: 803-777-3854 Fax: 803-777-2296  
eop@mailbox.sc.edu or wellscr@mailbox.sc.edu

Dr. Marc H. Shook, Dean of Students  
1520 Devine St. Patterson Hall, Suite 002F Columbia, SC 29208  
Phone: 803-576-8326  
shookmh@mailbox.sc.edu

Judy Van Horn, Deputy Athletics Director for Internal Operations & Risk Management  
Rice Athletics Center, 1304 Heyward Street Columbia, SC 29208  
Phone: 803-777-4202  
vanhornj@mailbox.sc.edu

Dr. Cheryl Addy, Deputy Title IX Coordinator for Faculty  
102 Osborne Admin Building, Columbia, SC 29208  
Phone: 803-777-2808  
caddy@mailbox.sc.edu

Traci Batchelder, Deputy Title IX Coordinator for Staff  
1600 Hampton Street, Columbia, SC 29208

Phone: 803-777-0435  
tracilb@mailbox.sc.edu

Sexual harassment complaints may be filed with the Title IX Coordinator by:

- a. filing a report in person at the office of the Title IX Coordinator;
- b. mailing the complaint to the Title IX Coordinator at the above address;
- c. emailing the complaint to the Title IX Coordinator's email address;
- d. faxing the complaint to the Title IX Coordinator at the Title IX Coordinator's fax number;
- e. filing a complaint online (students and employees)

Students:

[https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout\\_id=6](https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout_id=6)

Employees:

[https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout\\_id=40](https://cm.maxient.com/reportingform.php?UnivofSouthCarolinaEOP&layout_id=40)

1. To file a sexual harassment complaint pursuant to the Title IX Regulations, or sexual harassment, sexual misconduct or interpersonal violence, as defined by other university policies, at University of South Carolina institutions other than the Columbia Campus, and for names and contact information for privileged or confidential individuals at those institutions, please contact the individuals indicated below:

#### **USC Aiken**

Ahmed F. Samaha, Vice Chancellor of Student Affairs  
471 University Parkway; Aiken, South Carolina 29801  
Phone: 803-641-3411/803-641-3728  
asamaha@email.sc.edu

Carla F. Hayes, Director/EOO/Title IX Coordinator (for faculty and Staff)  
471 University Parkway, Aiken, South Carolina 29801  
Phone: 803-641-3645  
CarlaH@usca.edu

#### **USC Beaufort**

Deonne Yeager, Director of Housing and Judicial Affairs & Title IX Coordinator  
1 University Blvd.; Bluffton, SC 29909  
Phone: (843) 208-8280  
deonne@uscb.edu

#### **USC Upstate**

Alphonso Atkins Jr., J.D., Chief Diversity Officer; EO/Title IX Coordinator

Phone: 864-503-5959  
chiefdiversityofficer@uscupstate.edu

### **Palmetto College Campuses**

#### **USC Lancaster**

**Student Complaints:**

Todd Lekan, Associate Dean of Academic and Student Affairs

Phone: 803-313-7009

tlekan@mailbox.sc.edu

**Faculty/Staff Complaints:**

Tracey Mobley-Chavous, Human Resources Manager

Phone: 803-313-7152

tmobley@mailbox.sc.edu

#### **USC Salkehatchie**

**Student Complaints:**

Bryan Love, Associate Dean of Academic and Student Affairs

Phone: 803-812-7466

bryanlov@mailbox.sc.edu

**Faculty/Staff Complaints:**

Lisa Bonnette, Human Resources Manager

Phone: 803-812-7361

lisarj@mailbox.sc.edu

#### **USC Sumter**

**Student Complaints:**

Kristopher Weissmann, Director of Student Affairs

Phone: 803-938-3763

weissmak@uscsumter.edu

**Faculty/Staff Complaints:**

Marchetta Williams, Human Resources Manager

Phone: 803-938-3721

mlwillia@uscsumter.edu

#### **USC Union**

**Student Complaints:**

Randy Lowell, Associate Dean of Academic and Student Affairs

Phone: 864-424-8046  
lowell@mailbox.sc.edu

Faculty/Staff Complaints:  
Susan Jett, Human Resources Manager  
Phone: 864-424-8027  
jettsp@mailbox.sc.edu

## X. Training Requirement

1. Officials in the investigation/grievance process must be free of conflict of interests and bias and must receive training under the Title IX regulations on:
2. Definition of sexual harassment as defined by the regulations;
  - a. Scope of the school's programs or activities;
  - b. How to conduct an investigation and grievance;
  - c. How to serve impartially;
  - d. How to avoid prejudice;
  - e. Any technology to be used at a live hearing;
  - f. Issues of relevance of questions and evidence including training on the rape shield law;
  - g. Relevance, to create an investigative report that fairly summarizes relevant evidence;
  - h. Training material must not rely on sex stereotypes.
3. Institutions are required to make these training materials available on its website or upon request for inspection by members of the public (See record keeping requirements below).

## Y. Record Keeping

1. These requirements include maintaining for seven years, records of: (A) all materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment; (B) any sexual harassment investigation, including any responsibility determination; (C) any required recording or transcript; (D) any sanctions imposed on the respondent; (E) any remedies provided to the complainant; (F) any appeal and its result; (G) any informal resolution and its results.

2. This policy is implemented to: comply with the requirements of the Code of Federal Regulations, 34 CFR Part 106: *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* and is subject to amendment to comply with changes in applicable laws; to establish procedures for addressing sexual harassment, and other sexual misconduct or interpersonal violence, as defined in other university policies, that are consistent with the procedures described herein

**RELATED UNIVERSITY, STATE AND FEDERAL POLICIES**

EOP 1.02 [Sexual Harassment](#)

EOP 1.03 [Prohibition of Unlawful Discrimination and Harassment](#)

EOP 1.05 [Sexual Misconduct, Intimate Partner Violence, and Stalking](#)

STAF 6.24 [Student Non-Discrimination and Non-Harassment Policy](#)

STAF 6.26 [Student Code of Conduct](#)

**HISTORY OF REVISIONS**

DATE OF REVISION	REASON FOR REVISION
December 21, 2020	New policy

## **Appendix A**

### **Definition of Consent & Incapacity**

#### **A. Consent**

1. The definition of consent regarding any sexual on in this policy as described in this policy is the definition of consent found in EOP policy 1.05 the sexual misconduct intimate partner violence and stalking policy and is also set forth below.
2. Consent: Clear, conscious, willing and affirmative agreement to engage in sexual activity. Consent must have the following elements:
  - a. Both are clear about their intent to engage in sexual activities and their desire to do so is willing.
  - b. Both individuals are fully conscious.
  - c. Consent can be withdrawn at any time.
  - d. Someone who is incapacitated cannot consent.
  - e. Neither individual is impaired by drugs and/or alcohol to the extent they do not know the who, what, when, where, why, or how of the situation.
  - f. Silence or an absence of resistance does not in and of itself constitute consent.
  - g. Coercion, force, or threat of either cancels consent.
  - h. Past consent of sexual activities does not imply future consent.
  - i. Consent to engage in sexual activity with one person does not give consent to engage in sexual activity with someone else.

#### **B. Incapacitation**

1. Mentally incapacitated – being incapable of appraising, understanding or controlling one’s conduct, whether this condition is produced by illness, defect, influence of a substance or from some other cause; or
2. Physically helpless – being unconscious, asleep, or for any other reason physically unable to communicate unwillingness or lack of consent to an act.