

ADMINISTRATIVE DIVISION – CIVIL RIGHTS & TITLE IX
POLICY NUMBER – CR 1.00
POLICY TITLE – Policy Against Discrimination, Harassment & Sexual Misconduct
SCOPE OF POLICY – USC UPSTATE
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RESPONSIBLE OFFICER – CIVIL RIGHTS & TITLE IX COORDINATOR
ADMINISTRATIVE OFFICE – OFFICE OF THE CHANCELLOR

Purpose

The University of South Carolina Upstate is committed to providing an environment free from discrimination, harassment, sexual misconduct, and related retaliation. This commitment helps realize the university’s primary mission and aligns with institutional values and to complying with all requirements set forth by civil rights laws, including Title IX, and related federal and state authority.

Definitions

Prohibited Conduct: Discrimination, Harassment, Sexual Misconduct and related Retaliation. Appendix 1 contains examples of various types of prohibited conduct.

Discrimination: Discrimination includes Disparate Treatment Discrimination and Disparate Impact Discrimination.

Disparate Treatment Discrimination: Disparate treatment discrimination is any unlawful distinction, preference, or detriment to an individual as compared to others that is based on an individual’s Protected Class and that: 1) excludes an individual from participation in; 2) denies the individual benefits of; or 3) otherwise adversely affects a term or condition of an individual’s employment, education, living environment, or participation in a university program or activity.

Disparate Impact Discrimination:

Employment: In the employment context, disparate impact discrimination occurs when there is sufficient evidence that policies, tests, or practices that are neutral on their face disproportionately exclude or adversely impact a group of individuals within the Protected Class, where the policies, tests, or practices are not job-related and not consistent with business necessity. The university considers the following factors in assessing disparate impact:

1. Does the policy, test, or practice have a disparate impact on the basis of a particular Protected Class? This typically requires a statistical analysis.
2. Is the policy, test, or practice job-related and consistent with business necessity?
3. If job-related and consistent with business necessity, is there a less discriminatory alternative available?

Student/Educational Program or Activity: In the student or educational context, disparate impact discrimination occurs when there is sufficient evidence that seemingly neutral policies, tests, or practices, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students or others seeking to participate in an educational program or activity on the basis of protected class. In determining whether a seemingly neutral policy has an unlawful disparate impact on the basis of Protected Class, the university will conduct the following three-part inquiry:

1. Has the policy, test, or practice resulted in an adverse impact on Students or Third Parties of a particular Protected Class?
2. Is the policy, test, or practice necessary to meet an important educational goal?
3. If necessary to meet an important educational goal, are there comparably effective alternative policies, tests, or practices, available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected Protected Class or is the proffered justification a pretext for discrimination?

Harassment: Harassment is a form of Discrimination, which includes Hostile Environment and/or Quid Pro Quo.

Hostile Environment: Unwelcome conduct (oral, written, graphic or physical) directed against any individual or group of individuals because of or based upon one or more protected class, that is sufficiently severe, pervasive, or persistent that it interferes with or limits the ability of an individual or group to participate in or benefit from programs, services and activities provided by the university. In evaluating whether a hostile environment exists, the university will evaluate the totality of known circumstances, including, but not limited to:

1. the frequency, nature and severity of the conduct;
2. whether the conduct was physically threatening;
3. the effect of the conduct on the Complainant's mental or emotional state;
4. whether the conduct was directed at more than one person;
5. whether the conduct arose in the context of other discriminatory conduct;
6. whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or The University of South Carolina Upstate's programs or activities;
7. whether the conduct implicates academic freedom or protected speech (see Appendix 2: Academic Freedom);
8. other relevant factors that may arise from consideration of the reported facts and circumstances;
9. the identity of and relationship between the Respondent and Complainant(s);

10. whether the conduct was humiliating.

A single or isolated incident of harassment may be severe enough to create a hostile environment. Minor slights, annoyances, and isolated incidents (unless extremely egregious) will not rise to the level of harassment. To violate this policy, the conduct must create a hostile environment, as described above, to a reasonable, similarly situated, person.

Quid Pro Quo: When submission to or rejection of unwelcome conduct is used, explicitly or implicitly, as the basis for decisions affecting an individual's education (*e.g.*, admission, academic standing, grades, assignment); employment (*e.g.*, hiring, advancement, assignment); or participation in a university program or activity (*e.g.*, campus housing).

Sexual Misconduct: Sexual misconduct includes sexual assault, relationship violence, stalking, sexual exploitation, and sexual harassment (university definition and/or Title IX).

Sexual Assault: Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see the definition of consent and Appendix 3: Incapacitation).

Sexual assault includes: non-consensual sexual contact, non-consensual sexual penetration, incest, and statutory rape.

Non-consensual sexual contact: The intentional touching of another person's clothed or unclothed body parts without consent for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

This definition explicitly applies when the victim is incapable of giving consent due to age, mental or physical impairment (temporary or permanent). Sexual contact includes: contact with the breasts, buttocks, groin, genitals, or other intimate part of someone's body; touching another with any of these body parts or an object touching for the purposes of sexual degradation or humiliation, not just gratification; or making another touch you or themselves with or on any of these body parts. Non-consensual sexual contact includes forcible fondling and any act identified as criminal sexual contact.

Non-consensual sexual penetration: Penetration, no matter how slight, of the vagina or anus (including genital or anal opening) with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant. Sexual penetration includes: vaginal penetration by a penis, object, tongue, finger or other body part; anal penetration by a penis, object, tongue, finger or other body part; and oral copulation (mouth to genital contact or genital to mouth contact); no matter how slight the penetration or contact.

Non-consensual sexual penetration includes forcible rape, forcible sodomy, and sexual assault with an object.

Forcible Rape: 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 Complainant.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age of consent in the applicable jurisdiction or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Incest: Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Non-forcible sexual intercourse with a person who is under the statutory age of consent in the applicable jurisdiction.

Relationship Violence: Relationship violence includes dating violence and domestic violence.

In both definitions, violence includes threats of violence, which may include but be not limited to, threats against the Complainant, people close to the Complainant, a pet, or property.

Dating Violence: any act of violence or threats of violence committed by a person:

1. who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
2. where the existence of such a relationship will be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Any act of violence or threat of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under South Carolina state law, or by any other person against an adult or minor Complainant who is protected from that person's acts under South Carolina state law.

Stalking: A course of conduct directed at a specific person that would cause a reasonable person under similar circumstances or with similar identities to fear for their own safety or the safety of others or suffer substantial emotional distress. Course of conduct means two or more instances, including but not limited to; unwelcome acts in which an individual 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. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Sexual Exploitation: Sexual Exploitation involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

1. taking sexual advantage of another person without consent;
2. taking advantage of another's sexuality; or
3. extending the bounds of consensual sexual activity without the knowledge of the other individual.

Sexual Harassment: Includes University Sexual Harassment and Title IX Sexual Harassment.

University Sexual Harassment: Instances that meet the definition of harassment as outlined in the policy and are based on sex. All such acts of sexual harassment are forms of sexual misconduct under this policy.

Title IX Sexual Harassment: The Title IX regulations define Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the university conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo); or
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's education program or activity; or
3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in this policy.

This definition is intended to meet the regulatory definition of sexual harassment in 34 C.F.R. §106.30.

Retaliation: Any adverse action against any person by another, such as intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by this policy, or because the individual has made a report or complaint of prohibited conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding, or hearing under this policy. Retaliation includes such conduct through associates or agents of a Complainant, Respondent, or participant in any investigation or proceeding related to this policy. (See Appendix 4: Retaliation).

Complaint: Under this policy, a document filed by a Complainant or signed by the Civil Rights & Title IX Coordinator or designee alleging prohibited conduct and requesting that the university proceed with a resolution as outlined in this policy.

Consent: Consent is the clear, knowing, and voluntary, agreement to participate in mutually agreed-upon acts. Consent can be given by words and/or actions, as long as those words and/or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) the sexual activity. It is the responsibility of each party to determine that the other(s) has consented before engaging in the sexual activity.

Additional elements of consent include:

- A. Consent cannot be obtained through force, where there is a reasonable belief of the threat of force, or by taking advantage of another person's incapacitation (See Appendix 3: Incapacitation). In evaluating whether consent has been freely sought and given, the university will consider the presence of any force, threat of force, or coercion; whether the Complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular sexual act.
 1. Force is the use or threat of physical violence or intimidation to overcome a person's freedom of will to choose whether or not to participate in sexual activity.
 2. Coercion is unreasonable pressure for sexual activity. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- B. Consent to one form of sexual activity does not imply or constitute consent to another form of sexual activity.
- C. Consent on a prior occasion does not constitute consent on a subsequent occasion.
- D. Consent to an act with one person does not constitute consent to an act with any other person.
- E. The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be real time and mutual consent to sexual activity.
- F. Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn and clearly communicated.
- G. Consent cannot be inferred from the absence of a "no."
- H. Consent cannot be inferred from silence, passivity, or lack of verbal or physical resistance. Consent may not be given by an individual who has not reached the legal age of consent under applicable law.

Education Program or Activity: Locations, events, or circumstances over which the university exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, including employment, and also include any building owned or controlled by a student organization that is officially recognized by the university.

Employee: Any person having an employment relationship with the university. Employees might be university officers, faculty, staff, student-employees, and other individuals employed by the university regardless of classification, including all full-time, part-time, temporary, research grant, time limited and contract employees.

Faculty: University personnel who are engaged in research, instruction both inside and outside the classroom, service and/or administration. Faculty can be further classified as having tenure-track, professional-track, or honorific appointments. For purpose of this policy, faculty include part-time, temporary and adjunct faculty.

Party: A broad term that encompasses Complainant(s) and Respondent(s) in a matter.

Complainant: An individual who is alleged to be the victim of prohibited conduct under this policy. An individual may be a Complainant regardless of whether that individual makes a report or participates in the review of that report by the university.

Respondent: An individual who has been reported to have engaged in prohibited conduct under this policy.

Protected Class: Age, ancestry, citizenship status, color, disability, ethnicity, familial status, gender (including transgender), gender identity or expression, genetic information, HIV/AIDs status, military status, national origin, pregnancy (false pregnancy, termination of pregnancy, childbirth, recovery therefrom or related medical conditions, breastfeeding), race, religion (including religious dress and grooming practices), sex, sexual orientation, veteran status, or any other bases under federal, state, local law, or regulations.

Report: A notification to the University of South Carolina Upstate's Civil Rights & Title IX Coordinator of a concern of prohibited conduct, either by a Complainant or a third party.

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 individuals who are not currently enrolled at the university remain subject to the disciplinary process for conduct that occurred while they were enrolled.

Policy Statement

Discrimination or harassment based on age, ancestry, citizenship status, color, disability, ethnicity, familial status, gender (including transgender), gender identity or expression, genetic information, HIV/AIDs status, military status, national origin, pregnancy (false pregnancy, termination of pregnancy, childbirth, recovery therefrom or related medical conditions, breastfeeding), race, religion (including religious dress and grooming practices), sex, sexual orientation, veteran status, or any other bases under federal, state, local law, or regulations is prohibited. Sexual Misconduct, including sexual assault, relationship violence, stalking, sexual exploitation, and sexual harassment

(university definition and/or Title IX), is prohibited. The university prohibits discrimination and harassment based on protected class along with sexual misconduct in all education programs and activities, including employment and admissions, for faculty, staff, prospective employees, students, student organizations, and other persons utilizing the university's resources (e.g. third-parties such as volunteers, visitors, or contractors).

It is the responsibility of every member of the University of South Carolina Upstate community to foster an environment free from prohibited conduct, as defined by this policy. All members of the community are expected to take reasonable actions to prevent or stop an act of prohibited conduct and the university will help prevent retaliation from occurring.

This policy provides information about campus and community resources, the difference between privacy and legal confidentiality, how to make a report of discrimination, harassment, sexual misconduct, or related retaliation, available supportive measures, and information about resolution options, including how to file a complaint requesting an investigative or informal resolution. The specific procedures for resolving a complaint under this policy can be found in the [Discrimination, Harassment, Sexual Misconduct resolution procedures](#).

Any employee or student of the University of South Carolina Upstate who violates this policy may be subject to disciplinary action, which may include termination or separation from the university. Some forms of prohibited conduct may also violate federal, state and/or local law, and criminal prosecution may occur independently of any disciplinary action imposed by the university.

Scope and Jurisdiction:

This policy applies to all members of the University of South Carolina Upstate community, including students, faculty, staff and third parties such as affiliates, volunteers, vendors, contractors, consultants, guests, alumni, applicants for admission or employment, or other individuals.

This Policy applies to acts of prohibited conduct that occur in a university education program or activity, which includes:

- all of the university's operations, including locations, events, or circumstances over which the university exercises substantial control over both the Respondent and the context in which the conduct occurs;
- any building owned or controlled by a student organization that is officially recognized by the university.

The term education program or activity includes employment and admissions. The university's education program or activities includes on-campus, off-campus, or online conduct, and conduct outside of the United States. Examples include university-sponsored, university-funded, or otherwise university-supported study off campus, research, internship, mentorship, summer session, conferences, meetings, social events, or other affiliated programs or premises. Conduct outside of the United States may include, for example, university-sponsored, university-funded, or otherwise university-supported study abroad.

Under certain circumstances, this Policy may also apply to reports of prohibited conduct that occur outside of the education program or activity but have continuing effects in the education program or activity, or that fall within the scope of conduct otherwise regulated by the university. This may include, for example, a report of an off-campus Sexual Assault committed by a student, faculty, or staff.

Jurisdiction under Title IX

For some forms of prohibited conduct covered under this Policy, the university's jurisdiction is limited by Federal law.

Title IX complaints will cover alleged sexual misconduct that:

- a. Takes place in the context of an education program or activity of the university; and
- b. Occurs against a person in the United States; and
- c. Where the Complainant is participating in or attempting to participate in the education program or activity of the university; and
- d. Meets the regulatory definition of sexual harassment in 34 C.F.R. §106.30; and
- e. Where the Respondent is an individual the university has authority to discipline; and
- f. For the purpose of this policy, Title IX complaints refer to matters that fall within the scope of the procedural requirements provided by 34 C.F.R. § 106.45. If the reported conduct does not meet the basis above (a-e), the university will dismiss the complaint as a Title IX complaint.

However, in keeping with the university's educational mission and commitment to foster a learning, living, and working environment free from discrimination, harassment, sexual misconduct, and related retaliation the university will move forward under the same resolution process for sexual misconduct that occurs outside of Title IX Jurisdiction (*e.g.*, not in the United States, or as noted above, outside of the education program or activity).

Jurisdiction Regarding Third Parties

Any individual may make a report to the university of prohibited conduct and receive access to reasonably available supportive measures. A student, employee or other individual who is participating in, or attempting to participate in the university's education program or activity may also file a complaint requesting an investigation under this Policy. In addition, the Title IX Coordinator may file a complaint on behalf of a third party where the reported conduct occurred in the university's education program or activity.

The university's ability to respond to a report of prohibited conduct under this Policy is based on its disciplinary authority over the Respondent. If the Respondent is not an

employee or student, the university's ability to take disciplinary action will be limited and is determined by the context of the prohibited conduct and the nature of the relationship of the third-party Respondent to the university.

Reporting Requirements

All University of South Carolina Upstate employees are required to report incidents of prohibited conduct, as defined in this policy, to the Civil Rights & Title IX Coordinator or designees, who has the authority to institute corrective measures on behalf of the university.

Additional information on how to report and exceptions to the reporting requirements is outlined in the procedures section of this policy.

Supportive Measures

1. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or Respondent when a report is received. Supportive measures are available before or after the filing of a complaint or where no complaint has been filed. Supportive measures are designed to restore or preserve equal access to the university's education program or activities, including employment, without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment, or deter prohibited conduct.
2. Supportive measures are offered to a Complainant at the time a report is received.
3. Supportive measures are offered to a Respondent at the time of Notice of Complaint.
4. The University of South Carolina Upstate will also provide reasonably available supportive measures for third parties, provided that the supportive measures are within the scope of that individual's relationship to the university.
 - a. Supportive measures may include, but are not limited to, counseling, extensions of deadlines, or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual no contact directives, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.
 - b. The university will consider a number of factors in determining which supportive measures to take, including the needs of the student or employee seeking supportive measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and other relevant factors.
 - c. The Civil Rights & Title IX Coordinator and designees are responsible for ensuring

the implementation of supportive measures and coordinating the university's response with the appropriate offices on campus. The university will maintain the privacy of any supportive measures provided under this Policy to the extent practicable and will promptly address any violation of the protective measures.

Emergency Removal and Suspension of Employee Respondents

Emergency Removal

Certain circumstances may warrant removing a Respondent from a University of South Carolina Upstate educational program or activity. The university may remove a Respondent on an emergency basis from university property or employment, education, or research programs or activities. Before imposing an emergency removal, the university will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of prohibited conduct and justifies removal of the Respondent from the university program or activity.

The Civil Rights & Title IX Coordinator or designees will promptly provide the Respondent with written notice of any emergency removal and an opportunity to challenge the removal. During any challenge, the Respondent must comply with the notice of removal. That notice will include a statement that the use of any information the Respondent chooses to provide may subsequently be used in implementing any aspect of this Policy, including the investigation and adjudication. The Respondent will have three business days to submit a written challenge of the emergency removal to the Civil Rights & Title IX Coordinator or designee, who has until the end of the next business day to respond.

Nothing in this policy precludes the university from taking other appropriate action under separate university processes, if applicable.

Suspension of Employee Respondents

Following a report of Prohibited Conduct, the university may place a non-student employee Respondent on a suspension without pay or otherwise modify duties.

Obligation to Provide Truthful Information

All university community members are expected to provide truthful information in any proceeding under this policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are erroneous or are not later substantiated. It is a violation of this policy, and considered process abuse, for anyone to:

1. Obstruct, prohibit, exert improper influence over, or interfere with any individual making a report, participating in a process, or carrying out a responsibility covered by this policy;
2. Falsify or misrepresent information in or related to a process covered by this policy;

3. Make a false allegation;
 - a. A false allegation is, knowingly or with reckless disregard for the truth, making false allegations of discrimination, harassment, or sexual misconduct.
 - b. The absence of a finding of a policy violation is not equivalent to a false allegation
4. Disrupt or interfere with the orderly conduct of any proceeding conducted under this policy; or
5. Fail to comply with any directive or sanction issued pursuant to this policy.

Prevention and Education Programs:

All faculty, staff, student employees, graduate assistants, and students are required to take sexual misconduct training and other anti-discrimination and harassment training as directed by the university. All individuals who are responsible for effectuating any part of this policy are required to be trained on the substantive requirements of Title IX. (See Appendix 5: Prevention and Education).

Procedures

Reporting:

The University of South Carolina Upstate encourages anyone who has experienced prohibited conduct to report it directly to the university. Certain individuals have a reporting requirement to make reports of prohibited conduct to the Civil Rights & Title IX Coordinator (see Section 3: Reporting Requirement). An individual does not need to know whether they wish to request any particular course of action or how to label what happened. Individuals with questions or concerns about the university's processes may also contact the Civil Rights & Title IX Coordinator directly to learn more about resources and procedural options.

Any individual may make a report of prohibited conduct under this Policy regardless of affiliation with the University of South Carolina Upstate and regardless of whether or not the person reporting is the person alleged to be the victim of conduct.

1. Reporting to the Civil Rights & Title IX Coordinator:

Reports of prohibited conduct or questions about this policy and procedures can be made to the Civil Rights & Title IX Coordinator, or designees, through one of the following ways:

- a. Online: reporting form at:

[Title IX Violation Report](#)

[Civil Rights Violation Report](#)

b. Phone: 864-503-7193;

c. Email: titleix@uscupstate.edu; or

Mail or in person: Civil Rights & Title IX Coordinator, University of South Carolina Upstate, 800 University Way, Spartanburg, SC 29303

2. Anonymous Reporting:

Note that anonymous reports do not fulfill an employee's requirement to report prohibited conduct as outlined in the policy (see section Reporting Requirements). Depending on the nature of the information provided, the university's ability to respond may be limited. Insofar as possible, the anonymity of the reporter will be maintained. However, a reporter's identity may have to be disclosed, at the discretion of the university, to comply with the law, to conduct a thorough investigation, or to provide fair procedural review for alleged individual(s).

Individuals, including members of the university community, may submit reports anonymously via the Integrity Line:

a. Toll Free: 844-890-0006; or

b. Website: www.lighthouse-services.com/sc

3. Reporting Requirements

All University of South Carolina Upstate employees are required to report incidents of prohibited conduct, as defined in this policy, to the Civil Rights & Title IX Coordinator, or designees, who has authority to institute corrective measures on behalf of the university. In particular, supervisors who become aware of a report of prohibited conduct are obligated to report the allegation to the Civil Rights & Title IX Coordinator.

Exemptions to Reporting Requirements:

a. Confidential Resources:

A confidential resource acting within the scope of their confidential role or an employee who directly reports to a confidential resource and is acting within the scope of the confidential work, is exempt from the reporting requirements outlined in this policy. Examples of confidential resources can be found in the Appendix 6: Confidential Resources.

b. Student-Employees Reporting Requirements:

A student-employee must report any information learned during the course of their work. When disclosures are made to student-employees who are operating outside of their official work capacity, the student-employee is exempt from the reporting requirement. If unsure, the student-employee should ask the person disclosing to

them if they are seeking to connect with the university for support; if yes, they should follow the reporting requirements outlined in this policy.

c. Public Survivor Support Events:

Unless the individual is explicitly seeking assistance from the university, employees are not required to report disclosures of information regarding sexual misconduct pursuant to this policy while at public survivor support events including, but not limited to: “Take Back the Night,” candlelight vigils, protests, and survivor speak-outs.

Additional information about reporting timeframes, amnesty, privacy versus confidentiality, and reporting requirements under the law can be found in Appendix 7: Reporting.

4. Time Frame for Reporting

The university does not limit the timeframe for reporting. However, the passage of time may impact or limit the university’s jurisdiction and/or the ability to gather relevant evidence that may have been lost given the passage of time. Depending on the relationship of the Respondent to the university, the university may not have the authority to impose disciplinary action; this may occur when a student Respondent has graduated or an employee Respondent is no longer employed by the university. If the Respondent is no longer affiliated with the university (for example, a report is made after a student has left or graduated or an employee no longer works for the university), the university will still provide reasonably available supportive measures to the Complainant, assist the Complainant in identifying external reporting options, and may take other appropriate action to address the reported conduct. Should a Respondent leave the university during an investigative resolution, the university reserves the right to continue the investigation and implement disciplinary actions relating to their ability to their ability to return to the university and participate in the university’s education programs and activities.

Process Following a Report of Prohibited Conduct:

The University of South Carolina Upstate recognizes that deciding whether to make a report of prohibited conduct is a personal decision (note: certain individuals must fulfill their reporting requirements). Making a report is different from filing a complaint. When the university receives a report of prohibited conduct, the university will offer supportive measures to a Complainant, inform the Complainant of the availability of supportive measures with or without the filing of a complaint, and explain to the Complainant the process for filing a complaint. The university will consider the Complainant’s wishes with respect to supportive measures and seek to respect a Complainant’s autonomy in making the determination regarding how to proceed.

An individual who is uncertain what they wish to do in response to an alleged incident of prohibited conduct, including how or whether to report the conduct, may contact and consult a Confidential Resource to address questions and concerns in a confidential setting.

Preliminary Inquiry

Upon receipt of a report of prohibited conduct, the Civil Rights & Title IX Coordinator will engage in a preliminary inquiry to assess and understand the nature of the report, provide outreach to a Complainant, offer supportive measures, and determine whether this Policy applies to the report, and if so, what form of resolution is reasonably available and appropriate. Centralized outreach through the Civil Rights & Title IX Coordinator ensures that all university community members have access to information about the university's resources, policies, and procedural options for resolving the report.

Overview of Resolutions

At the conclusion of the preliminary inquiry, the following resolution options may be possible:

- No Further Action – which may involve referral to another university policy
- Supportive Measures Only – regardless of whether a complaint is filed
- Investigative Resolution – following a complaint by the Complainant or Title IX Coordinator
- Informal Resolution -voluntarily and mutually agreed upon by all parties, following a complaint by the Complainant or Title IX Coordinator, or when a Respondent accepts responsibility
- Other Resolution – educational conversations or coaching, considered non-disciplinary

In order to initiate an investigative or informal resolution, a complaint must be filed with the Civil Rights & Title IX Coordinator.

1. Complaint

If a Complainant wishes to sign a complaint, they can work with the Civil Rights & Title IX Coordinator to do so. A complaint is a document filed by a Complainant or signed by the Civil Rights & Title IX Coordinator or designee alleging prohibited conduct and requesting that the university proceed with a resolution as outlined in this policy. Upon receipt, the Civil Rights & Title IX Coordinator will determine which Prohibited Conduct is being alleged (including Title IX matter as defined in 34 C.F.R. § 106.30 and defined in this policy).

The Civil Rights & Title IX Coordinator also has the discretion to file a complaint. In evaluating the appropriate manner of resolution, including whether the Civil Rights & Title IX Coordinator will file a complaint in the absence of a complaint by the Complainant, the Civil Rights & Title IX Coordinator will consider the following factors:

- a. whether the Complainant has requested anonymity;
- b. whether the Complainant wants to participate in an investigation;
- c. the severity and impact of the alleged misconduct and whether the misconduct was committed with a weapon;

- d. the respective ages of the parties and whether the Complainant is a minor under the age of 18;
- e. whether the Respondent has admitted to the alleged Prohibited Conduct;
- f. whether the Respondent has a history of committing such Prohibited Conduct or whether there have been other complaints about the same Respondent or the extent of prior remedial methods taken with the Respondent;
- g. whether the Respondent is alleged to have threatened further Prohibited Conduct;
- h. whether the misconduct was committed by multiple Respondents or whether the report reveals a pattern of misconduct (e.g., at a given location or by a particular group); and
- i. the existence of independent evidence that may be available without the participation of the Complainant.

The university will take all reasonable steps to respond to the report consistent with a Complainant's requested course of action, but its ability to do so may be limited based on the considerations outlined above.

2. Investigative Resolution

Following the filing of a complaint, if requested or otherwise required, the university will initiate an investigative resolution to determine if there is sufficient evidence, by a preponderance of the evidence, to establish that this policy has been violated. The investigation, hearing and appeals processes are described in the accompanying [Discrimination, Harassment, Sexual Misconduct resolution procedures](#).

3. Informal Resolution

Following the filing of a complaint, if requested or otherwise required, with the written consent of the Complainant and Respondent, the university may initiate an informal resolution process. Informal resolutions include instances where the Respondent accepts responsibility for any or all allegations in a complaint.

4. Other Resolution

The university reserves the right to have educational conversations and conduct coaching with anyone covered under this policy outside of the investigative and informal processes. Having an educational conversation is non-disciplinary and does not preclude the university's ability to move forward with an informal or investigative resolution process.

5. Conduct that may violate other University Policies

When reported conduct may violate this policy and other university policies, the Civil Rights & Title IX Coordinator or designee will consult with the appropriate university office(s) to determine how the matter should be resolved. This may, but is not required to, involve a joint resolution by more than one office.

6. Process Abuse

The Civil Rights & Title IX Coordinator may combine allegations of process abuse with their resolution processes and/or forward reports of process abuse to the Dean of Students, Employment Relations, Human Resources, and the Office of Academic Affairs for appropriate disciplinary action, if substantiated.

Expectations During Resolutions

All resolution processes are conducted in accordance with federal and state law. In all stages of the resolution process, Complainants and Respondents can expect:

- a. a prompt, fair, impartial, and equitable investigation and resolution of allegations of prohibited conduct conducted by individuals with sufficient training and/or experience related to their role;
- b. an investigator, decision-maker, and/or facilitator of informal resolution free from conflict of interest or bias for or against Complainants or Respondents generally or the individual parties related to the report or complaint;
- c. privacy in accordance with this Policy and any legal requirements;
- d. access to reasonably available supportive measures, without fee or charge;
- e. freedom from Retaliation for making a report of prohibited conduct or participating in any proceeding under this policy;
- f. a presumption that the Respondent is not responsible until a determination is made at the conclusion of the resolution process;
- g. written notice of any meeting or proceeding at which the party's presence is contemplated by this Policy, including the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- h. an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- i. freedom to discuss the allegations under investigation or to gather and present relevant evidence;
- j. the opportunity to be accompanied by an advisor of choice, including the right to have that advisor accompany the party at any meeting or proceeding and to have the university provide an advisor to conduct cross-examination on the party's behalf at any live hearing;
- k. an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence;
- l. notice of reasonably prompt time frames for major stages of the process, with written notice of permissible extensions for good cause;
- m. written notice of a complaint, including notice of potential Policy violations and the nature of the alleged Prohibited Conduct;
- n. timely and equal access to any information that will be used in informal or formal disciplinary meetings or hearings under this Policy, including all information gathered that is directly related to the allegations in the complaint as well as the information

contained in the investigation report;

- o. written notice of the outcome of investigative or informal resolution processes, including the determination of a Policy violation, any sanctions, and the rationale; and
- p. the opportunity to appeal the outcome.

More information on resolution procedures can be found in the [Discrimination, Harassment, Sexual Misconduct resolution procedures](#).

7. Documentation and Records Retention:

The university will create and maintain the following records for a period of seven years (as aligned with current law): (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.

Related University, State and Federal Policies

[Americans with Disabilities Act](#)

[Age Discrimination in Employment Act](#)

[Executive Order 11246](#)

[Genetic Information Nondiscrimination Act](#)

[Jeanne Clery Disclosure of Campus Security Act \(Clery Act\) as amended by the Violence Against Women Reauthorization Act of 2013 \(VAWA\)](#)

[Jessica Horton Act](#)

[Pregnancy Discrimination Act](#)

[Title VI of the Civil Right Act of 1964](#)

[Title VII of the Civil Rights Act of 1964](#)

[Title IX of the Education Amendments of 1972](#) and its implementing regulations, 20 U.S.C. §1681 *et seq.*

[Vietnam Era Veterans' Readjustment Assistance Act of 1974](#)

HISTORY OF REVISIONS

- **August 16, 2023 – New policy approval**
- **December 1, 2023 – Administrative Office change to Office of the Chancellor**
- **May 1, 2026 – New IBRS definition and changes to continuing student education**

Appendices

[Appendix 1 Examples of Prohibited Conduct](#)

[Appendix 2 Academic Freedom](#)

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[Appendix 5 Prevention and Education](#)

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Appendix 8 Additional Information about Relevant Federal Laws

Appendix 1: Examples of Prohibited Conduct

Discrimination:

Examples of potential discrimination under this Policy include but are not limited to those that result in the interference with, limitation, or denial of access to:

- An employee's, or applicant for employment's, access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment).
- A student's, or admission applicant's, ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignment, campus housing; athletics).
- An authorized volunteer's ability to participate in a volunteer activity.
- A guest's or visitor's ability to participate in, access, or benefit from the university's programs or activities.
- Failing to provide reasonable accommodations, consistent with state and federal law, to a qualified individual with a disability.
- Failing to accommodate religious beliefs of students, faculty, and staff.

Hostile Environment:

Examples of hostile environment may include but are not limited to:

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing as defined further in the Hazing policy and Upstate's Code of Student Conduct;
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate, hurt, control, or diminish another person, physically or mentally, that is not speech or conduct otherwise protected by the First Amendment.

Sexual Exploitation:

Examples of sexual exploitation include, but are not limited to:

- observing another individual's nudity or sexual activity, or allowing another to observe the same, without the knowledge and consent of all parties involved;
- exposing one's genitals in non-consensual circumstances, including unwelcome sexting;
- streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
- prostituting another individual;
- knowingly exposing another individual to a sexually-transmitted disease (STD) or infection (STI) or human immunodeficiency virus (HIV) without the individual's knowledge;

- knowingly failing to use contraception, or deliberately removing or compromising contraception (Stealth) without the other party's knowledge; and/or
- inducing incapacitation (e.g. through the distribution of alcohol or other drug, such as Xanax, Ambien, Benadryl, Rohypnol ["Roofies"], Ketamine, GHB, etc.) for the purpose of taking sexual advantage of another person.

Appendix 2: Academic Freedom

All members of the University of South Carolina Upstate community, including students, faculty and staff, are expected to conduct themselves in a manner that does not infringe the academic freedom of members of the academic community. Scholarly, educational, or artistic expression in written, oral, graphic, or any other form, which is permitted by law shall not be limited by this policy.

The university's prohibition against harassment is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom. Where speech or conduct is protected by policy, academic freedom and/or free speech rights, it will not be considered a violation of this Policy, although supportive measures or remedies may be offered to those impacted.

See Upstate's Code of Student Conduct and Faculty Manual

Appendix 3: Incapacitation

Incapacitation, for the purposes of this policy, is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically impaired, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. Incapacitation means a person cannot understand the fact, nature, or extent of the sexual activity because they lack the physical and mental capacity to make informed, reasonable judgements about whether or not to engage in sexual activity.

When alcohol or other drugs are involved, incapacitation is a state of intoxication or impairment that is so severe that it interferes with a person's capacity to make informed and knowing decisions. Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized determination. The university does not expect students or employees to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, some signs that a person may be incapacitated include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, emotional volatility, or unconsciousness.

Another effect of excessive alcohol consumption can be memory impairment or an inability to recall entire or partial events (sometimes referred to as "black-out" or "brown-out"). A person may experience this symptom while appearing to be functioning "normally," including communicating through actions or words that can reasonably and objectively be interpreted as communicating consent to engage in sexual conduct. Total or partial loss of memory alone, may not be sufficient, without additional evidence, to prove that a person was incapacitated under this Policy. Whether sexual contact under these circumstances constitutes prohibited conduct depends on the presence or absence of the outwardly observable factors indicating that a person is incapacitated, as described above.

An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person's level of intoxication and capacity to give consent. In evaluating consent in cases of reported incapacitation, the university asks two questions:

- a. Did the Respondent know that the Complainant was incapacitated? and if not,
 - b. Would a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated?

If the answer to either of these questions is "yes," the conduct is likely a violation of this policy based on the inability to give consent. It is important to remember that the use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual activity. Even where there is insufficient evidence to establish incapacitation, a

Complainant's level of impairment may still be a relevant factor in establishing whether consent was sought and freely given.

A Respondent's voluntary intoxication is not a defense for any behavior that violates this policy.

Appendix 4: Retaliation

The university will not tolerate retaliation in any form against any individual who partakes in a protected disclosure under this policy or otherwise participates in a resolution process with the Civil Rights & Title IX Coordinator. This may include, but is not limited to, those who make or receive an allegation, file a report, serve as a witness, or assist a Complainant or Respondent. Please consider the following steps to help prevent retaliation from occurring:

- Avoid publicly discussing the allegation or resolution process;
- Do not interfere with the resolution process;
- In a setting where you have authority over others involved in the resolution, be mindful not to isolate them or deny them information, equipment, or benefits provided to others in similar roles because of their participation in a disclosure or resolution;
- Provide clear and accurate information to the Civil Rights & Title IX Coordinator; and
- Do not threaten, harass, or coerce anyone involved in a report and/or resolution.

Appendix 5: Prevention and Education

The university is committed to the prevention of prohibited conduct through regular and ongoing education and awareness programs.

Incoming students and new employees receive primary prevention and awareness programming, and returning students and current employees receive ongoing training and related programs. Officials in the resolutions process must be free of conflict of interests and bias and must receive training under the Title IX regulations on:

- a. Definition of sexual harassment as defined by the regulations;
- b. Scope of the school's programs or activities;
- c. How to conduct an investigation and grievance;
- d. How to serve impartially;
- e. How to avoid prejudice;
- f. Any technology to be used at a live hearing;
- g. Issues of relevance of questions and evidence including training on the rape shield law;
- h. Relevance, to create an investigative report that fairly summarizes relevant evidence;
- i. Training material must not rely on sex stereotypes.

Institutions are required to make these training materials available on its website or upon request for inspection by members of the public (see section Documentation and Records Retention Policies).

Appendix 6: Confidential Resources

Medical Assistance:

All individuals who experience prohibited conduct are welcome to seek immediate medical treatment and preserve physical evidence even if they have not decided whether they wish to pursue any campus or law enforcement action. This will help to ensure that a Complainant receives proper care, preserve any available evidence, and enhance their opportunity to pursue a disciplinary or criminal action at a later time. Local hospitals have trained Sexual Assault Nurse Examiners who can conduct a forensic examination. The University Police can also assist in preserving other forms of evidence and/or providing referrals or transportation to community resources.

In addition, testing and treatment for sexually transmitted infections, HIV, and pregnancy are available by appointment at the University Health Services at 864-503-5191.

Campus Confidential Resources:

A Complainant can seek assistance and support from these individuals without triggering a university report that could reveal the Complainant's identity or that the Complainant has disclosed the incident. While maintaining a Complainant's confidentiality, some university resources will share de-identified data, for Clery reporting. This limited report — which includes no information that would directly or indirectly identify the Complainant — helps keep the university informed of the general extent and nature of prohibited conduct on and off campus so as to track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses.

USC Upstate Counseling Services

John M. Rampey Jr. Center

490 Hodge Drive

Spartanburg, SC 29303

864-503-5195

<https://www.uscupstate.edu/campus-life/counseling-services/>

USC Upstate Student Health Services

The University Way Clinic

995 University Way

Spartanburg, SC 29303

The Rampey Clinic

490 Hodge Drive

Spartanburg, SC 29303

864-503-5191

<https://www.uscupstate.edu/campus-life/health-services/>

Appendix 7: Reporting

A. Mandatory Reporting of Suspected Child Abuse

Any employee of the University of South Carolina Upstate community who has reasonable cause to suspect abuse, or neglect, of a minor under the age of 18 must make a report to university law enforcement, who will facilitate a report to local law enforcement. For more information see policy [UNIV 4.00 Programs Involving Minors](#).

B. Reporting to Law Enforcement

The university encourages all individuals to consider their options to report any crime to USC Upstate Police Department, and/or to local law enforcement. A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the university will assist a Complainant in contacting law enforcement at any time. Pursuant to the Jessica Horton Act, the university is required to report instances of Sexual Assault and murder that occur on campus to the South Carolina Law Enforcement Division. Under limited circumstances posing a threat to health or safety of any university community member, the university may independently notify law enforcement.

An individual may make a report to the university, to law enforcement, to neither, or to both. University investigative processes and law enforcement investigations operate independently of one another.

C. Amnesty Statement

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. There are protections for amnesty under Upstate's Code of Student Conduct and [Chapter 53, Title 44, Article 19 of the Code of Laws for South Carolina \(Drug or Alcohol-Related Overdose Medical Treatment\)](#).

D. Privacy and Confidentiality

The University of South Carolina Upstate is committed to protecting the privacy of all individuals involved in a report of prohibited conduct under this policy.

Privacy and confidentiality have distinct meanings under this policy:

Privacy: refers to the discretion that will be exercised by the university in the course of responding to any report or complaint. Information related to a report of prohibited conduct will be shared on a need to know basis, in order to assist in the assessment, investigation, and resolution of the report and related issues. During the course of a resolution, information may be disclosed as necessary to facilitate the thoroughness and integrity of the resolution. In all such proceedings, the university will maintain the privacy of the parties to the extent reasonably possible.

Confidentiality: Those with legally-protected or privileged relationships, can keep information strictly between them and the individual they are serving. Examples of

confidential resources include professional mental health counselors, medical professionals, attorneys, ordained clergy/pastoral counselors and rape crisis counselors (Appendix: Confidential Resources). Similarly, an individual's medical and counseling records are confidential and cannot be released without the individual's written permission or unless permitted or required consistent with ethical or legal obligations. More information about confidentiality and the release of information by the university can be found in the Appendix. (See Appendix: Confidential Resources). Some confidential resources may have other reporting requirements under the law. For example, when a report involves suspected abuse of a minor under the age of 18, these Confidential Resources are required by state law to notify child protective services and/or local law enforcement.

Appendix 8: Additional information about relevant federal laws

Concerns about the university's application of Title IX or any civil rights law can be made externally to:

Assistant Secretary for Civil Rights
Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)
Contact: <http://www.eeoc.gov/contact/>

Clery Act:

Pursuant to the Clery Act, the University of South Carolina Upstate must disclose statistics about Clery Act crimes in its [daily crime log](#) and [Annual Security Report](#) and provides those statistics to the United States Department of Education. If a report of Sexual Assault, Dating Violence, Domestic Violence, or Stalking discloses a serious or continuing threat to the campus community, the university will issue a timely notification to the community to protect the health and safety of the community as required by the Clery Act. In all of these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident. In addition, Confidential Resources may submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or student. The university will not release the name of the Complainant, the Respondent, or witnesses to the general public except as otherwise permitted or required by law.

Campus Security Authorities (CSAs):

Some employees, because of their role on campus, also have reporting responsibilities under the Clery Act. Employees who are considered Campus Security Authorities (CSAs) have a duty to report Sexual Assault, Dating Violence, Domestic Violence, Stalking, and other Clery Act-defined crimes. This reporting helps to provide the community with a clear picture of the extent and nature of campus crime in order to ensure greater community safety and enable campus community members to make important decisions about their own safety.

Release of Information by the University:

Per federal regulations, the university will also maintain the confidentiality of any supportive measures provided to a Complainant, to the extent that maintaining such confidentiality would not impair the university's ability to provide the supportive measures. The university may also share non-personally identifying information about reports received in aggregate form, including

data about outcomes and sanctions. All University of South Carolina Upstate proceedings are conducted in compliance with the requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act (as amended by VAWA), Title IX, state and local law, and university policy.