

## POLICY ON NON-TITLE IX SEXUAL HARASSMENT AGAINST STUDENTS

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### **I. Policy Overview**

This policy sets forth the American Film Institute's ("AFI's") obligations under the California Education Code as it relates to sexual harassment against students that is not covered under the jurisdiction of the AFI's Title IX Policy.

### **II. Notice of Non-Discrimination**

Pursuant to California Education Code Section 66281.5, it is the policy of AFI that all persons, regardless of sex, should enjoy freedom from discrimination of any kind at AFI.

Our Title IX Coordinator for purposes of Title IX compliance as well as for the purposes described in section 66281.8 of the California Education Code is:

Patty Smith  
titleix@afi.com  
323.856.7622

### **III. Scope**

This policy applies to all actively enrolled students who experience prohibited sexual harassment involving any individual subject to AFI's policies, including students, employees and third parties where applicable, in connection with any educational activity or other program of AFI, as well as incidents that occurred outside of those educational activities or programs,

whether they occurred on or off-campus, if, based on the allegations, there is any reason to believe that the incident(s) could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

#### **IV. Prohibited Sexual Harassment**

- A. This policy incorporates by reference all definitions of Prohibited Sexual Harassment contained in AFI's Title IX Policy – which can be found at [www.afi.com/title-ix](http://www.afi.com/title-ix). This policy is used for conduct that is prohibited by the Title IX Policy but is outside the scope of that policy.
- B. In addition to the Title IX Policy definitions, the following are prohibited by this policy:
  1. Sexual Harassment, defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature, made by someone from or in the work or educational setting, under any of the following conditions:
    - a. Submission to the conduct is explicitly or implicitly made a term or a condition of an individual's employment, academic status, or progress.
    - b. Submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual.
    - c. The conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment.
    - d. Submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.
  2. Sexual Violence, defined as physical sexual acts perpetrated against a person without the person's affirmative consent. Physical sexual acts include both of the following:
    - a. Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim
    - b. Sexual battery, defined as the intentional touching of another person's intimate parts without consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

3. Sexual Exploitation, defined as a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:
  - a. the prostituting of another person;
  - b. the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion;
  - c. the recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure;
  - d. the viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

## **V. Definitions**

- A. This policy incorporates by reference all other definitions contained in AFI's Title IX Policy.
- B. In addition to these definitions, the following definitions are included under the purview of this policy:
  1. Responsible Employee - means an employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority. Responsible Employee includes but is not limited to any of the following positions or job duties regardless of the specific job title:
    - Conservatory administrators including the dean and vice-deans;
    - Title IX Coordinator;
    - Faculty and associate faculty, teachers, instructors, or lecturers;
    - Fellow instructors / teaching assistants, while performing the duties of employment by AFI; and
    - Internship or externship directors or coordinators;

Excluded from the above are any individual acting in a professional capacity for which confidentiality is mandated by law. Such an individual shall inform each student who provides the individual with information regarding sexual harassment of the student's ability to report to a responsible employee and direct the student to those specific reporting resources.

## **VI. Reporting Prohibited Sexual Harassment**

- A. Notice of Allegations** - AFI has notice of sexual harassment or allegations of sexual harassment under this policy when such conduct is reported to a Responsible Employee or where such Responsible Employee, in the exercise of reasonable care, knew or should have known about the sexual harassment prohibited by this policy. However, all employees of AFI are required to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator, consistent with the requests of the complainant as described below in Section XIV, Confidentiality.

Regardless of whether or not a complaint has been filed under this policy, if AFI knows, or should reasonably know, about possible sexual harassment involving individuals subject to AFI's policy at the time of the alleged conduct, AFI shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond unless AFI determines that an investigation is not required or that it can honor a request for confidentiality.

### **B. Requests for Confidentiality Made by Complainants**

1. A complainant may request confidentiality, even when such a request, may preclude a meaningful investigation or potential discipline of the potential respondent or that no investigation or disciplinary action be pursued to address the alleged sexual harassment.
2. AFI will consider such a request seriously and will generally grant such requests. However, given AFI's statutory responsibility to provide a safe and nondiscriminatory environment for all students, AFI may disclose a complainant's identity and/or proceed with an investigation over the objection of complainant where AFI considers whether any of the following apply:
  - a. there are multiple or prior reports of sexual harassment or misconduct against the respondent;
  - b. the respondent allegedly used a weapon, physical restraints, and/or engaged in battery;
  - c. the respondent is a faculty or staff member with oversight of students;
  - d. there is a power imbalance between complainant and respondent;
  - e. complainant believes that the complainant will be less safe if complainant's name is disclosed and/or an investigation is conducted;
  - f. AFI is able to conduct a thorough investigation and obtain relevant evidence in the absence of complainant's cooperation.
3. Where AFI determines that it must disclose complainant's identity to respondent and/or proceed with an investigation:
  - a. AFI shall notify complainant prior to making the disclosure and/or initiating the investigation.

- b. AFI shall take immediate steps to provide for the safety of complainant where appropriate.
  - c. Upon the request of complainant, AFI shall notify respondent that complainant requested the AFI not investigate or seek discipline.
4. Where AFI determines that it can honor complainant's request for confidentiality, AFI shall take reasonable steps to respond to the complaint, consistent with complainant's request, to limit the effects of the alleged sexual harassment and prevent recurrence without formal action against the alleged respondent. These steps may include, but are not limited to:
    - a. Monitoring, supervision and/or security at the location(s) or activities where the alleged harassment occurred;
    - b. Providing additional training and/or educational materials to students and employees;
    - c. Conducting climate surveys regarding sexual violence and harassment
  5. Where AFI determines that it can honor complainant's request for confidentiality, AFI shall take immediate steps to provide for the safety of complainant while keeping complainant's identity confidential as appropriate. Complainant shall be notified that the steps may be limited by the request for confidentiality. These steps may include changing course schedules, assignments, or tests.

C. **Response to Report** - Upon a report of sexual harassment, where there is an identifiable complainant, the Title IX Coordinator (or designee) will promptly contact the complainant to:

1. Confirm that the institution has received a report that the student may have been a victim of sexual harassment;
2. Discuss the availability of Supportive Measures;
3. Consider the complainant's wishes with respect to Supportive Measures;
4. Inform the complainant of the availability of Supportive Measures with or without the filing of a complaint;
5. Explain to the complainant the process for filing a complaint and explain the institution's investigation process including the manner in which the institution responds to reports of sexual harassment and a description of potential disciplinary consequences;
6. Request that the student meet with the Title IX Coordinator (or designee) to discuss options for responding to the report.
7. The Title IX Coordinator will inform the complainant that an investigation may be initiated even where the complainant chooses not to file a complaint, as required by California law, unless specifically requested by the complainant not to initiate an investigation. AFI, consistent with California law, shall make the decision whether an investigation should occur.

- D. Outreach/Information Packet** – Additionally, upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, AFI shall provide to the identifiable complainant, an information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about:
1. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
  2. How and to whom the alleged offense should be reported;
  3. Options regarding law enforcement and campus authorities, including notification of the option to:
    - a. Notify proper law enforcement authorities, including on-campus and local police;
    - b. Be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
    - c. Decline to notify such authorities.
  4. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
  5. Information about applicable and available services both at the institution and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate;
  6. Options for available reasonably available assistance and accommodations and how to request them;
  7. Information about the participation of victim advocates and other supporting individuals;
  8. Confirmation or acknowledgment that AFI has received a report that the student may have been a victim of sexual harassment;
  9. A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited; and
  10. A statement that this policy is established pursuant to California law and is consistent with Title IX for the investigation of student sexual harassment complaints.

AFI's information packet for victims of sexual harassment as described in this policy can be found at [www.afi.com/title-ix](http://www.afi.com/title-ix) or is available from the Title IX Coordinator.

- E. Implementation of Supportive Measures** - AFI shall treat parties equitably by offering Supportive Measures, as defined by the Title IX Policy, to the parties, and by following the grievance process in this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the respondent. AFI will maintain as confidential any Supportive Measures provided

to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of AFI to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measures in accordance with the requirements set out at Section XVI, Recordkeeping, below.

- F. **Requests for Accommodations** – AFI shall consider and respond to requests for accommodation relating to prior instances of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student’s access to education where both individuals are, at the time of the request, subject to AFI’s policies.

**G. No-Contact Directives**

**1. Unilateral No-Contact Directives**

- a. When requested by a complainant or otherwise determined to be appropriate, AFI shall issue an interim, unilateral no-contact directive prohibiting the respondent from contacting the complaint during the pendency of the grievance process.
- b. Upon issuance of an interim no-contact directive, AFI shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.
- c. Where a unilateral no-contact directive is issued after a decision of responsibility, it shall only apply against the party found responsible.

**2. Mutual No-Contact Directives**

- a. AFI shall not automatically issue a mutual no-contact directive but shall consider the specific circumstances of each case to determine whether such a directive is appropriate to:
  - i. Protect the non-complaining party’s safety or well-being; or
  - ii. To respond to interference in the grievance process.
- b. Upon issuance of a mutual no-contact directive, AFI shall provide the parties with a written justification for the directive and an explanation of the terms of the directive, including the circumstances, if any, under which a violation could be subject to disciplinary action.

- H. **Emergency Removal** - Nothing in this policy precludes AFI from removing a respondent from AFI’s education program or activity on an emergency basis, provided that AFI undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

- I. **Administrative Leave** - AFI reserves the right to place a non-Fellow employee respondent on administrative leave during the pendency of a grievance process under this policy.
- J. **Amnesty for Fellow Code of Conduct Violations** – A Fellow who participates as a complainant or witness in an investigation of conduct prohibited by this policy will not be subject to disciplinary sanctions for a violation of AFI’s Fellow conduct policy at or near the time of the incident, unless AFI determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

## VII. **Grievance Procedures Principles**

- A. **Non-Adversarial Process** – the investigation and adjudication of alleged misconduct is not an adversarial process between the complainant, the respondent(s), and the witnesses. It is a process for AFI to comply with AFI’s obligations under existing law.
- B. **Evidentiary Standard** – any finding of responsibility, whether made via written determination after an investigation or via written determination after a live hearing shall use the *preponderance of the evidence* standard. This standard requires that *it is more likely than not* that the alleged conduct occurred.
- C. **Burden of Proof**
  - 1. The complainant does not have the burden of proving the underlying allegation(s) or allegation(s) of misconduct
  - 2. The respondent does not have the burden of disproving the underlying allegation(s) or allegation(s) of misconduct.
  - 3. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on AFI and not on the parties, provided that AFI cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless AFI obtains that party’s voluntary, written consent to do so for a grievance process under this section (if a party is not an “eligible student,” as defined in 34 CFR 99.3, then AFI must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3).
- D. AFI will require and ensure that any individual designated as a Title IX Coordinator, investigator, decision-maker, or any person to facilitate an informal resolution process is neutral and does not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent.



AFI may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.

- E. AFI shall ensure that the investigation and adjudication of complaints is impartial and trauma-informed.
- F. All parties have an opportunity to have a support person or advisor accompany the party to any stage of the process. All parties have the right to consult with an attorney, at their own expense, at any stage of the process if they wish to do so. AFI will provide a party with an advisor if the party is unable to.
- G. **Extensions of Time in the Grievance Process** - The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Such requests will not be unreasonably denied by AFI where the request is related to a period of examination or school closure.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

- H. AFI will provide periodic updates on the grievance process to the complainant and respondent consistent with the timelines referenced in this policy.

### **VIII. Evidentiary Principles**

The following principles apply equally to the investigatory phase and the hearing phase of a grievance process under this policy where a determination is made by AFI that a hearing phase is necessary.

- A. An investigator and/or hearing officer shall not consider the past sexual history of a complainant or respondent except in the following limited circumstances:
  - 1. Only where prior or subsequent sexual history between the complainant and anyone other than the respondent is directly relevant to provide that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual;
  - 2. Where the existence of a dating relationship or prior or subsequent consensual sexual relations between the complainant and respondent is relevant to how the parties communicated consent in prior or subsequent sexual relations.
- B. Where an investigator and/or hearing officer allows consideration of evidence of a dating relationship or prior or subsequent consensual sexual relations between

complainant and respondent pursuant to the above, the mere fact that complainant and respondent engaged in other consensual sexual relations with one another is never sufficient, in isolation, to establish that the conduct in question was consensual.

- C. Prior to allowing consideration of any evidence described in this section, the investigator and/or hearing officer shall provide a written explanation to the parties as to why consideration of this evidence is consistent with these standards.
- D. Parties shall be given the opportunity to identify witnesses and other evidence to assist in determining whether a violation of this policy has occurred. Parties are informed that any evidence available, but not disclosed during the investigation, might not be considered at a subsequent hearing, if such a hearing takes place.

#### **IX. Informal Resolution of Complaints of Prohibited Sexual Harassment**

- A. Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility AFI may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that AFI:
  - 1. Provides to the parties a written notice disclosing:
    - a. The allegations;
    - b. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the complaint; and
    - c. Obtains the parties' voluntary, written consent to the informal resolution process and does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
  - 2. Completes the informal resolution process within sixty (60) days of receiving the complaint, unless unusual or complex circumstances exist
- B. AFI cannot mandate mediation to resolve allegations of sexual harassment and cannot allow mediation, even on a voluntary basis, to resolve allegations of sexual violence.
- C. AFI will not require informal resolution as a prerequisite to the receipt of remedial measures from AFI which safeguard the complainant's access to education.
- D. AFI does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of

the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. AFI shall not require the parties to participate in an informal resolution process.

**X. Procedural Steps for Investigation of Complaints**

A. **Notice of Investigation** - AFI's Title IX Coordinator initiates the investigation process by providing written notification to both parties that AFI is conducting a formal investigation into the complaint (a Formal Complaint, as defined in the Title IX Policy is not required). This written notification shall contain the following:

1. This policy (as a link or attachment);
2. Notice of the allegations of prohibited conduct as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known;
3. Identification of the alleged institutional policy violations under review;
4. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
5. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney;
6. Notice to the parties regarding appropriate counseling resources developed and maintained by AFI for parties in misconduct matters involving sexual harassment;
7. Notification to the parties that they may inspect and review evidence, as set forth in this policy; and
8. A statement (or reference to any provision in AFI's code of conduct) that AFI prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

B. **Consolidation of Related Complaints** - Where multiple complaints arise out of the same set of factual allegations or where multiple policies may be implicated by the same set of factual allegations, AFI reserves the discretion to bifurcate, consolidate and/or combine the investigation and/or adjudication of those complaints.

C. **Amended Notice of Investigation** - If, in the course of an investigation, AFI decides to investigate allegations about the complainant or respondent that are not included in the initial notice of investigation, AFI must provide notice of the additional allegations to the parties whose identities are known.

D. If not serving as the Investigator, the Title IX Coordinator will appoint an Investigator, who may be an employee or official of AFI or may be an external

investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three (3) days of notice of the appointment. The Title IX Coordinator will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not

- E. When investigating a complaint, AFI shall, within 30 days of notifying the parties of the investigation, unless unusual or complex circumstances exist:
  - 1. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process;
  - 2. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including the evidence upon which AFI does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
  - 3. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report;
  - 4. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
  - 5. Create an investigative report that fairly summarizes relevant evidence.
  
- F. At least ten (10) days prior to a hearing, if one is held, or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

## **XI. Hearings for Complaints of Prohibited Sexual Harassment**

- A. Following the investigation, AFI shall make a determination as to whether a live hearing is necessary to determine whether the alleged conduct is more likely than not to have occurred. In making this determination, AFI shall consider:
- Whether the parties elected to participate in the investigation;
  - Whether each party had the opportunity to suggest questions to be asked of the other party or witnesses, or both, during the investigation; and
  - Whether the credibility of witnesses is at issue and significant disciplinary sanctions are possible such that a live hearing would help to resolve credibility determinations.

Where AFI has determined that it is appropriate and necessary to hold a live hearing, the following procedures shall be used:

- B. Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, AFI shall conduct a live hearing in front of the decision-maker, which shall be an individual, for the purposes of determining responsibility for allegations of sexual harassment in the complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s). A decision-maker may include internal employees or external third-parties contracted by AFI. All potential decision makers will receive annual training as specified by this policy. The parties each may challenge the participation of the decision maker for conflict of interest or other good cause. The Title IX Coordinator will make the final decision whether to select an alternate upon a challenge from a party.

**C. Pre-Hearing Procedures**

1. The parties shall separately participate in a pre-hearing meeting with the hearing officer to discuss the process and administration of the live hearing.
  2. Prior to or during this meeting, the hearing officer will set the deadlines for submitting and exchanging the names of witnesses, evidence and pre-hearing questions.
  3. All parties shall have the opportunity to submit written questions to the hearing officer in advance of the live hearing.
- D. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the complainant and respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
- E. Live hearings may be conducted with all parties physically present in the same geographic location or, at AFI's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

- F. At the request of either party, AFI shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- G. The AFI shall provide an explanation of the meaning of the *preponderance of the evidence* standard and affirm that it will apply to the adjudication of the issues before the hearing officer.

#### **H. Questioning at the Live Hearing**

- 1. The parties shall have the opportunity to submit written questions to the hearing officer in advance of the hearing;
- 2. No direct examination or cross examination of any party or witness shall be conducted by a party or party advisor. Direct examination or cross examination will only be conducted by the hearing officer;
- 3. The hearing officer shall prohibit questions of either party or of any witnesses that are repetitive, irrelevant or harassing;
- 4. The parties or their advisors shall have the opportunity to note a written objection to the question(s) posed. Neither the hearing officer nor AFI are obligated to respond to the objection – other than to include any objection in the record.
- 5. The hearing officer shall have the authority and obligation to discard or rephrase any question that the hearing officer determines to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the California Rules of Evidence.
- 6. Generally, the parties or their advisor(s) may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. The hearing officer has the discretion, for good cause, to accept or exclude such new evidence offered at the hearing.

#### **I. Use of Witness Statements**

- 1. If a party or witness does not submit to cross examination at the live hearing, for cases involving significant disciplinary sanctions against students, the hearing officer must not rely on any statement of that party or witness that has not been subject to cross-examination when making a credibility determination but may reach a determination based on evidence that does not constitute a statement by the party. For purposes of this paragraph, cross examination refers to questions posed by the hearing officer, whether its own or questions provided by a party.

2. The hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions

#### **J. Written Determination of the Decision-Maker**

1. Either after the submission of the final investigative report if there is no live hearing or after the completion of the live hearing, unless unusual or complex circumstances exist, the decision-maker shall issue a written determination regarding responsibility. Such a written determination shall be issued within fourteen days of the conclusion of the live hearing or, if there is no hearing, of the submission of the final investigative report to the parties.
2. For the decision-maker to find that a policy violation occurred, the decision-maker must utilize the preponderance of the evidence standard.
3. The written determination must be sent simultaneously to both parties and must include:
  - a. Notice of the outcome of the complaint including identification of the allegations potentially constituting sexual harassment as defined by this policy;
  - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of AFI's policy to the facts;
  - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to AFI's education program or activity will be provided to the complainant; and
  - f. The procedures and permissible bases for appeal, as set forth in this policy.
4. In the written determination, AFI shall provide assurances that it will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.
5. The determination regarding responsibility becomes final either on the date that AFI provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **XII. Appeals**

### **A. Grounds**

Within ten (10) days receiving the written determination, either party may appeal from a determination of responsibility, and from AFI's dismissal of a complaint or any allegations therein, on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), and/or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The appeal must be made in writing and sent to the Title IX Coordinator.

### **B. Response to Appeals**

As to all appeals, the Title IX Coordinator (or designee) shall:

1. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal are not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy; and
4. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within ten (10) days of receipt of the appeal, which shall be transmitted within two (2) business days to the appeal decision-maker(s).

### **C. Decision on Appeal**

Within twenty (20) days of receiving the appeal and the response, the appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the appeal decision-maker(s) shall identify which aspects merit further review.

## **XIII. Remedies and Sanctions**

- A. Remedies must be designed to restore or preserve equal access to AFI's education program or activity.



- B. A student found responsible for a violation of this policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident are underway or anticipated. An employee found responsible for a violation of this policy will be subject to sanction(s) up to and including termination of employment.
- C. Possible sanctions and remedies that AFI may implement following any determination of responsibility against a student may include: expulsion, withdrawal of an awarded degree, a no contact order, written warning, suspension, a fine, restitution, community service, probation, reference to counseling, termination of employment, and notation in the respondent's official student or personnel file of the fact of the violation and the sanction.
- D. The Title IX Coordinator is responsible for effective implementation of any remedies.

#### **XIV. Confidentiality**

- A. Consistent with the requirements of this policy, AFI shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that AFI will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know, and, in order to process complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for AFI to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct

Counselors working at or on behalf of AFI are Confidential Resources. In most cases, Confidential Resources at AFI will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that AFI will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of

communications with Confidential Resources. Reports or records maintained by AFI (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of AFI's compilation of campus crime statistics. In addition, when appropriate and legally permissible, AFI shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any complainants.

Under California law, any health practitioner employed in a health facility, clinic, physician's office, or local or state public health department or clinic is required to make a report to local law enforcement if he or she provides medical services for a *physical condition* to a person who he or she knows or reasonably suspects is suffering from: (1) a wound or physical injury inflicted by a firearm; or (2) any wound or other physical injury where the injury is the result of assaultive or abusive conduct (including Sexual Assault, and Dating and Domestic Violence). This requirement does *not* apply to sexual assault and domestic violence counselors and advocates.

## **XV. Training**

AFI provides training to all non-confidential responsible employees, as defined above, relating to sexual harassment. AFI requires all non-confidential responsible employees, as defined below, to report sexual harassment and has provided direction and training as to the reporting of sexual harassment.

All employees of AFI are provided training on the identification of sexual harassment including training on the process of notification to the appropriate institutional official(s). All employees are notified of their obligation to report sexual harassment to the appropriate institutional officials.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of AFI's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudice of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual comprehensive, trauma-informed training on the issues related to domestic violence, dating violence, sexual assault, and

stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Such training will address trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process, best practices for assessment of a sexual harassment or sexual violence complaint, best practices for questioning of the complainant, respondent, and witnesses, and implicit bias and racial inequities, both broadly and in school disciplinary processes.

Materials shall include statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity.

## **XVI. Recordkeeping**

A. AFI shall maintain for a period of seven years records of:

1. Each investigation conducted under this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to AFI's education programs or activities;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. Records of any actions, including any Supportive Measures, taken in response to a report or complaint under this policy. In each instance, AFI will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to AFI's education program or activity. If AFI does not provide a complainant with Supportive Measures, then AFI must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit AFI in the future from providing additional explanations or detailing additional measures taken.

## **XVII. Effective Date**

This policy is effective as of July 1, 2022, and was approved by AFI's Board of Trustees on June 9, 2022.