

SOUTHWESTERN

LAW SCHOOL Los Angeles, CA

Sexual Misconduct Policy

Administrative policy approved July 29, 2024. Effective August 1, 2024.

Revision history: Substantive edits were made in July 2024 to comply with federal regulations.

Related policies: Student Records Policy – FERPA; Policy to Prevent Discrimination, Harassment, and Retaliation; Policy Statement Regarding Students and Applicants with Disabilities

Scheduled Review Date: April 2026 (Title IX Coordinator)

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A. Policy Statement and Prohibited Conduct

Southwestern Law School prohibits discrimination based on sex in its employment, educational programs, extracurricular activities, or other programs. Title IX of the Education Amendments of 1972 prohibits sex discrimination. Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, the Violence Against Women Reauthorization Act of 2013 amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics ("Clery Act"), and other applicable statutes.

This Sexual Misconduct Policy ("Policy") prohibits all forms of sex-based discrimination, harassment, and misconduct, including sexual assault, non-consensual sexual contact, intimate partner violence, sexual exploitation, and stalking. All covered conduct will be referred to in this Policy as "Prohibited Conduct."

This Policy applies to all members of the Southwestern community regardless of sex, sexual orientation, gender identity, or gender expression. It covers both educational and employment contexts, including admissions and job applicants. Other forms of discrimination and harassment that are not sex-based are covered by Southwestern's Policy to Prevent Discrimination, Harassment, and Retaliation.

Southwestern expects all members of the Southwestern community to maintain and facilitate a safe, welcoming, and respectful environment on campus. All Southwestern community members should take reasonable and prudent steps to prevent or stop Prohibited Conduct. The Law School supports individuals who choose to take such action, and this Policy prohibits retaliation against anyone who reports, complains about, or otherwise participates in good faith in any matter related to this Policy.

To report information about Prohibited Conduct or to inquire about this Policy or Title IX, please contact Southwestern's Title IX Coordinator, Jessica Johnson, at TitleIX@swlaw.edu or (213) 738-6733. Inquiries may also be made to the [U.S. Department of Education's Office for Civil Rights](https://www.ed.gov/office-for-civil-rights) at ocr.sanfrancisco@ed.gov or (415) 486-5555.

B. Scope of Policy

1. Effective date

This Policy applies to all reports of Prohibited Conduct occurring on or after the effective date of this Policy. If the date of the reported Prohibited Conduct preceded the effective date of this Policy, the definitions of misconduct existing when the report is made will be used. However, the resolution processes under this Policy will be used to investigate and resolve all reports made or pending on

or after the Policy's effective date, regardless of when the incident occurred.

2. Covered individuals and locations

This Policy applies to all Southwestern students and employees and covers conduct that occurs on-campus or in Southwestern programs and activities in the United States, including online. This Policy also applies to off-campus conduct that may affect a substantial Law School interest, including access to an educational program, safety and security, compliance with state or federal laws, and meeting the Law School's educational mission.

The Law School strongly encourages reports of Prohibited Conduct regardless of the status of involved individuals (e.g., student, employee, or third party) or location. Additionally, a Southwestern student or employee is protected in their right to make a complaint about sexual misconduct even if they choose to leave the Law School because of the misconduct or for other reasons.

C. Personnel

The Law School has designated Jessica Johnson as the Law School's Title IX Coordinator and Marcie Canal as the Deputy Title IX Coordinator. Individuals may contact the Title IX Coordinator and Deputy Title IX Coordinator by email at TitleIX@swlaw.edu or by telephone at (213) 738-6733 and (213) 738-6847, respectively, during regular business hours.

The Title IX Coordinator monitors the Law School's overall compliance with Title IX, ensures appropriate training and education, and oversees the Law School's investigation, response, and resolution of reports made under this Policy. Upon receiving reports of Prohibited Conduct, the Title IX Coordinator ensures that appropriate action is taken to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects.

The Title IX Coordinator and Deputy Title IX Coordinator are neutral resources and support for all individuals, including those who have experienced misconduct, those alleged to be responsible for misconduct, and third parties.

The Title IX Coordinator and Deputy Title IX Coordinator will be supported by the Title IX Team, which may include the Associate Dean of Diversity, Equity, and Inclusion, the Vice Dean(s), faculty members, and staff members. The Title IX Team is a small circle of individuals who have a need to know of any alleged Prohibited Conduct to implement this Policy.

Southwestern provides training to the Title IX Team and all individuals within the community who are involved in responding to, investigating, or resolving reports of Prohibited Conduct. If the Law School retains an individual outside the community to respond to, investigate, or resolve reports of Prohibited Conduct, the individual will have

adequate training consistent with the Law School's standards and state and federal regulations.

D. Definitions

Under this Policy, "Reporting Party" refers to the individual who is the subject of the Prohibited Conduct. "Respondent" refers to the individual alleged to have engaged in Prohibited Conduct. The Reporting Party and Respondent will be referred to collectively as the "Parties" and individually as a "Party."

Southwestern will use the following definitions and explanations of key terms when implementing this Policy:

1. Affirmative consent

Affirmative consent means the conscious and voluntary agreement to engage in sexual activity. Affirmative consent is informed and reciprocal, freely and actively given, mutually understandable, not indefinite, and not unlimited. Affirmative consent is required for any sexual activity to occur between two or more individuals. It is the responsibility of each person involved in the sexual activity to ensure they have the affirmative consent of the other(s) to engage in the sexual activity.

The Respondent cannot defend themselves by claiming they believed the Reporting Party affirmatively consented to sexual activity if that belief was due to the Respondent's own intoxication or recklessness or if the Respondent did not take reasonable steps to confirm the Reporting Party's affirmative consent based on the circumstances reasonably known to them at the time.

An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion about whether consent was sought or given.

Consent may be withdrawn at any time by any individual involved in sexual activity.

2. Coercion

Coercion involves applying unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, to compel a person to engage in sexual activity. Consent obtained through coercion is not valid. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom and ability to choose whether to engage in sexual activity.

Examples of coercion include threatening to "out" someone based on sexual

orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in sexual activity. When someone indicates, verbally or physically, that they do not want to engage in a particular sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity, or pressure to continue beyond that point can be coercive. The Law School will evaluate the frequency, intensity, and duration of the pressure and the degree of isolation of the person subjected to the pressure.

3. Domestic violence

Domestic violence is a crime of violence committed by a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

4. Force

Force means the use or threat of physical violence to overcome an individual's freedom to participate in sexual activity or provide consent. Consent obtained by force is not valid. For the use of force to be demonstrated, there is no requirement that a Reporting Party resist the sexual advance or request. Evidence of resistance by the Reporting Party will be viewed as a clear demonstration of a lack of consent.

5. Incapacitation

Incapacitation means a state where an individual cannot make an informed or rational decision to engage in sexual activity due to a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) or is physically helpless. For example, an individual is incapacitated and, therefore, unable to give consent if the individual is asleep, unconscious, or otherwise unaware that sexual activity is occurring. An individual will also be considered incapacitated if the person cannot understand the nature of the activity or communicate due to a mental or physical condition.

Incapacitation may result from the use of alcohol, drugs, or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating

incapacitation requires an assessment of how the consumption of alcohol or drugs impacts an individual's decision-making ability, awareness of consequences, ability to make informed judgments, or capacity to appreciate the nature and quality of the sexual act.

It will not be a valid excuse that the Respondent believed the Reporting Party affirmatively consented to sexual activity if the Respondent knew or reasonably should have known the Reporting Party was asleep or unconscious; the Reporting Party was incapacitated due to the influence of drugs, alcohol, or medication so that the Reporting Party could not understand the fact, nature, or extent of the sexual activity; or the Reporting Party was unable to communicate due to a mental or physical condition.

Whether the Respondent should have known that the Reporting Party was incapacitated will be evaluated using an objective reasonable person standard. The fact that the Respondent was actually unaware of the Reporting Party's incapacity is irrelevant to this analysis, particularly where the Respondent's failure to appreciate the Reporting Party's incapacitation resulted from the Respondent's failure to take reasonable steps to determine the Reporting Party's incapacitation or where the Respondent's own incapacitation caused the Respondent to misjudge the Reporting Party's incapacity.

It is the responsibility of everyone involved in sexual activity to be aware of the intoxication level of the other(s) before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all involved. If there is any doubt about the level or extent of another individual's intoxication, it is safest to forgo or cease any sexual contact or activity.

6. Intimate partner violence

Intimate partner violence includes any act of violence or threatened act of violence against a person who is or has been involved in a sexual, dating, spousal, domestic, or other intimate relationship with the Respondent.

Intimate partner violence is often referred to as dating violence or relationship violence. Intimate partner violence can encompass a broad range of behaviors, including, but not limited to, physical violence, sexual violence, psychological and emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. The existence of an intimate partner relationship will be determined based on the Reporting Party's statement, the length and type of the relationship, and the frequency of interaction between the individuals involved.

Intimate partner violence may take the form of threats, assault, property damage, violence, or threat of violence to oneself, one's sexual or romantic partner, or the family members or friends of the sexual or romantic partner. Intimate partner

violence affects individuals of all sexes, sexual orientations, gender identities and gender expressions, races, and social and economic backgrounds.

7. Intimidation

Intimidation means the use of implied threats to overcome an individual's freedom to choose whether to participate in sexual activity or provide consent. Consent obtained by intimidation is not valid.

8. Nonconsensual sexual contact

Nonconsensual sexual contact is having sexual contact with another individual by force or threat of force, without affirmative consent, or where the individual is incapacitated. Sexual contact includes intentional contact with the intimate parts of another, causing an individual to touch their own intimate body parts or disrobe. It also includes exposing intimate body parts to another without permission. Intimate body parts may include breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.

9. Retaliation

Southwestern prohibits retaliation under this Policy. Retaliation includes materially adverse action taken against a person because they were involved in disclosing, reporting, investigating, or resolving a report of Prohibited Conduct. Retaliation also includes taking a materially adverse action against a person who refuses to participate in an investigation, proceeding, or hearing. Adverse action includes conduct that threatens, intimidates, harasses, coerces, or in any other way seeks to discourage a person from engaging in activity protected under this Policy. Retaliation can be committed by or against any individual or group, not just a Reporting Party or Respondent.

Retaliation does not include good-faith actions lawfully pursued in response to a report of Prohibited Conduct, even if the report is later not proven. Retaliation may be present even when there is a finding of no responsibility for the allegations of Prohibited Conduct. Peer retaliation, defined as retaliation by one student against another student, is also prohibited under this Policy.

Southwestern will take immediate and responsive action to any report of retaliation and will pursue disciplinary action as appropriate. The Law School will use the same procedures outlined in this Policy for other forms of sex discrimination.

10. Sex discrimination

Sex discrimination refers to the disparate treatment of a person or group based on sex, including based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. The conduct need not be sexual to qualify as sex discrimination.

11. **Sex-based harassment**

Sex-based harassment is a form of sex discrimination. Sex-based harassment means sexual harassment and other harassment based on sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex-based harassment includes sexual assault, stalking, and intimate partner violence.

a. *Quid pro quo harassment*

Quid pro quo harassment occurs when an employee, agent, or other person authorized by Southwestern to provide aid, a benefit, or service under the Law School's education program or activity explicitly or impliedly conditions the provision of that aid, a benefit, or service on a person's participation in unwelcome sexual conduct. Quid pro quo conduct may include direct propositions of a sexual nature between those for whom a power imbalance or supervisory or other authority relationship exists; offering educational or employment benefits in exchange for sexual favors; making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades, or letters of recommendation including subtle pressure for sexual activity; or making or threatening to retaliate after a negative response to sexual advances.

b. *Hostile environment harassment*

Hostile environment harassment is unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the Law School's education program or activity. Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the degree to which the conduct affected the Reporting Party's ability to access the Law School's education program or activity; the type, frequency, and duration of the conduct; the parties' ages, roles, and previous interactions within the Law School's education program or activity; and the location and context of the conduct.

Non-exhaustive examples of conduct that may create a hostile environment include:

- Verbal conduct, including making or using derogatory comments, epithets, slurs, or humor; verbal abuse of a sexual nature; graphic verbal commentaries about an individual's body; sexually degrading words used to describe an individual; suggestive or obscene letters, notes, or invitations; or objectively offensive

comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes;

- Visual conduct, including leering, making sexual gestures, displaying suggestive objects or pictures, cartoons, or posters in a public space or forum; or severe, persistent, or pervasive visual displays of suggestive, erotic, or degrading sexually oriented images that are not pedagogically appropriate;
- Written conduct, including letters, notes, or electronic communications containing comments, words, or images described above

12. **Sexual assault**

Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes:

a. *Fondling*

Fondling involves touching the private body parts of another person for the purpose of sexual gratification without the other person's consent; it includes instances where the victim is incapable of giving consent because of their age or their temporary or permanent mental incapacity.

b. *Incest*

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

c. *Molestation*

Molestation means causing an individual to touch their own intimate body parts, or disrobing, or exposure of another without permission. Intimate body parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.

d. *Rape*

Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without that person's consent.

e. *Statutory rape*

Statutory rape means sexual intercourse with a person who is under the statutory age of consent.

13. **Sexual exploitation**

Sexual exploitation occurs when an individual takes nonconsensual or abusive

sexual advantage of another for one's own advantage or benefit or to benefit or advantage anyone other than the person being exploited. Examples of sexual exploitation include, but are not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- nonconsensual sharing or streaming of images, photography, video, or audio recording of sexual activity or nudity of the person being exploited, whether the image is authentic or created or enhanced by technology, or distribution of such without the knowledge and consent of all parties involved;
- exposing one's genitals or inducing another to expose their own genitals without the other individual's consent;
- knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge; and
- inducing incapacitation to make another person vulnerable to nonconsensual sexual activity.

14. Stalking

Stalking occurs when a person engages in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety, the safety of others, or suffer substantial emotional distress.

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

A reasonable person means a reasonable person under similar circumstances and with similar identities to the Reporting Party.

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

Cyber-stalking is a particular form of stalking in which a person uses electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

Examples of stalking include, but are not limited to:

- Nonconsensual communication, including in-person communication, telephone calls, voice messages, text messages, email messages, social

networking site postings, instant messages, postings of pictures or information on websites, written letters, gifts, or any other undesired communications, or placing another person in fear;

- Following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other location frequented by a person;
- Surveillance or other types of observation, whether by physical proximity or electronic means; and
- Gathering information about a person from family, friends, co-workers, or classmates. The conduct is not required to be sexual to qualify as stalking.

E. Academic Freedom and Free Expression

This Policy is consistent with Southwestern's commitment to academic freedom and free expression.

Academic freedom means that professors, scholars, and researchers can teach, study, and publish their findings without undue interference from law, institutional regulations, or public pressure. For example, a constitutional law professor may design a course that critically examines Supreme Court decisions, recent and relevant events, or government actions regardless of their popularity or political sensitivity. This freedom is essential to advance knowledge and foster an open intellectual environment.

Academic freedom and free expression require that the Law School protect community members' expression of ideas in their teaching, learning, and research, including advocacy that may be controversial, provocative, or unpopular. This protection extends to expressing ideas, however controversial, in the classroom, residential life, and other campus-related activities. Southwestern's protection of academic freedom and free speech mean that the Law School endorses or supports a particular statement or position made by a member of the Southwestern community or a guest.

But academic freedom and free expression have limits. This Policy defines those limits. Moreover, discriminatory or harassing conduct based on an individual's sex is inconsistent with Southwestern's commitment to academic freedom and free speech. No member of the Law School community may escape responsibility for engaging in Prohibited Conduct merely by labeling the conduct speech or other expressive activity.

F. Confidentiality, Privacy, and Reporting Party Autonomy

Southwestern is committed to protecting the privacy of all individuals involved in resolving reports under this Policy. The Law School is committed to assisting students and third parties make informed choices. With respect to any report made under this Policy, Southwestern will make reasonable efforts to protect participants' privacy in accordance with applicable state and federal law while balancing the need to gather information to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects. All Law School

employees receive specific instruction about respecting and safeguarding private information. Privacy and confidentiality have distinct meanings under this Policy.

1. Privacy

Privacy generally means that information related to a report of Prohibited Conduct will be shared only with a limited circle of individuals who “need to know” to assist in resolving the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved. With limited exceptions, the Law School will not disclose personally identifiable information obtained while complying with this Policy.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in Southwestern’s Student Records Policy - FERPA. The privacy of an individual’s medical and related records may be protected by the Health Insurance Portability and Accountability Act (“HIPAA”), except health records protected by FERPA and the California Confidentiality of Medical Information Act, Cal. Civ. Code § 56.05 et seq. Access to an employee’s personnel records may be restricted by applicable California and federal law.

While privacy has certain limitations, the Law School typically will not release the names of the Reporting Party or Respondent to the public without express written consent or absent another exception consistent with the law. The release of names will be guided by applicable law, including FERPA and the Clergy Act.

2. Confidentiality

Confidentiality generally means that information shared by an individual with designated resources cannot be revealed to any other individual without the individual's express permission.

The confidentiality of information shared by an individual generally is governed by state law. Under California law, mental health providers, ordained clergy, rape crisis counselors, and attorneys (who are acting in the capacity of attorney) are examples of individuals who have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless an imminent threat of harm to self or others exists.

An individual who seeks confidential assistance may do so by speaking with professionals who have legally protected confidentiality. **Southwestern has not designated any employees as a confidential resource.** The confidential resources available to individuals on campus are listed in Section H below. Note, however, that these confidential resources are required by state law to notify child protective services or local law enforcement of any report that involves suspected abuse of a minor under 18.

3. Anonymity requests and formal action considerations

A Reporting Party may wish to report Prohibited Conduct but remain anonymous to the Respondent. The Law School will take all reasonable steps to investigate and respond to the report of Prohibited Conduct, but its ability to do so may be limited. Fundamental fairness requires that the Respondent receive notice and an opportunity to respond before disciplinary action is taken against them. Notice includes the Reporting Party's identity and information regarding the Prohibited Conduct (e.g., nature, date, location of the conduct, etc.).

A Reporting Party may also wish to report Prohibited Conduct without initiating formal action under this Policy. The Title IX Coordinator will honor the Reporting Party's request not to initiate formal action under this Policy unless the Title IX Coordinator makes a fact-specific determination that the Prohibited Conduct, as alleged, presents an imminent and serious threat to the health and safety of the Reporting Party or another Law School community member or prevents the Law School from ensuring equal access to its education programs and activities.

If a Reporting Party wishes to report Prohibited Conduct but elects not to disclose the identity of the Respondent, the Law School's ability to respond to the report will be limited.

If the Law School cannot fulfill a Reporting Party's request, the Title IX Coordinator will inform the Reporting Party about the chosen course of action. This course of action may include the Law School seeking disciplinary action against a Respondent.

G. Reporting Prohibited Conduct

1. Employee obligation to report

All Southwestern employees must report potential violations of this Policy to the Title IX Coordinator. Employees who have experienced a violation of this Policy themselves are encouraged, but not required, to report.

2. How to report

Reporting Parties are encouraged to report Prohibited Conduct as soon as possible to maximize Southwestern's ability to respond promptly and effectively. The Law School does not, however, limit the timeframe for reporting. If the Respondent is not a member of the Southwestern community, the Law School will still seek to end the Prohibited Conduct, prevent its recurrence, and address its effects. However, the Law School's ability to take disciplinary action against the Respondent will be limited.

Reports can be made by emailing TitleIX@swlaw.edu. Individuals may also call the Title IX Coordinator, Jessica Johnson, at (213) 738-6733 or the Deputy Title IX

Coordinator, Marcie Canal, at (213) 738-6847.

Southwestern strongly encourages all individuals to seek assistance from a medical provider and law enforcement immediately after an incident of sexual violence. These steps provide the best way to preserve evidence and to begin a timely investigative and remedial response. Southwestern will help any Southwestern community member get to a safe place and coordinate transportation to a hospital.

When a report is made, a Reporting Party does not have to request any particular course of action, nor does a Reporting Party need to know how to label what happened. Choosing to report and deciding how to proceed after making the report can be a process that unfolds over time. The Law School provides support that can assist each individual in making these important decisions and will respect an individual's autonomy in deciding how to proceed to the extent legally possible. In this process, the Law School will balance the individual's interest with its obligation to provide a safe and non-discriminatory environment for all members of the Law School community.

The Law School will respond to all reports of Prohibited Conduct fairly and impartially. A Reporting Party, a Respondent, and all individuals involved will be treated with dignity and respect. In response to all reports of Prohibited Conduct, the Law School will immediately assess any risk of harm to the Reporting Party, Respondent, or the broader campus community. It will take the steps necessary to address those risks. These steps may include supportive measures to provide for the safety of the individual and the campus community.

3. Coordination with law enforcement

The Reporting Party has the right to notify or decline to notify law enforcement of an incident of Prohibited Conduct. Police have legal authority that exceeds the authority of the Law School, including the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in seeking emergency protective orders. Southwestern encourages Reporting Parties to pursue criminal action for incidents of sexual harassment, sexual violence, and intimate partner violence that may also be crimes under state law. The Law School will assist a Reporting Party in making a criminal report and cooperate with law enforcement agencies if a Reporting Party decides to pursue the criminal process to the extent permitted by law.

The definitions of Prohibited Conduct and the burden of proof under this Policy may differ from those of criminal law in California or other states. A Reporting Party may seek recourse under this Policy or pursue criminal action. An individual may report to the Law School and law enforcement simultaneously. The decision of law

enforcement to pursue charges against a Respondent typically will not affect the Law School's resolution process. Likewise, the outcome of a criminal prosecution will not impact the Law School's resolution process. Proceedings under this Policy may be carried out before, simultaneously with, or following civil or criminal proceedings.

Southwestern will not delay its investigation unless specifically requested by law enforcement (e.g., LAPD). If requested by law enforcement, the Law School will defer its investigation only during the time that law enforcement is gathering evidence, which should not exceed ten calendar days, absent extenuating circumstances. During any delay period, Southwestern will continue to communicate with the Reporting Party and Respondent as appropriate regarding Title IX rights, procedural options, and the implementation of supportive measures to assure safety and well-being. The Law School will promptly resume fact-gathering when it receives notice that law enforcement has completed its initial investigation.

H. Support Resources

1. Law enforcement

Southwestern community members are encouraged to file police reports with their local police department. Residential students may file police reports with the Los Angeles Police Department (LAPD). The LAPD Olympic Community Station is the station closest to campus and is located at 1130 S. Vermont, Los Angeles, California 90006. Individuals can reach the LAPD Olympic Community Station by calling (213) 383-9102. **Please call 911 for all emergencies.**

2. Confidential counseling services

Southwestern recognizes that reporting Prohibited Conduct can be difficult. Individuals considering whether to report Prohibited Conduct may seek the support of confidential resources. Trained professionals with confidentiality privileges can provide mental health support, offer guidance in making decisions, and provide information about available resources. These resources are available regardless of when or where the incident occurred.

Any Southwestern student or employee who experiences or is affected by Prohibited Conduct under this Policy, whether as a Reporting Party, a Respondent, or a witness, will have equal access to the counseling services described below. Below are confidential resources that, by law, cannot share information without the consent of the individual seeking assistance, with some exceptions.

a. *BisonCares*

The [BisonCares](#) program, powered by Uwill, offers Southwestern students a variety of free support options and tools designed to help students

mentally and emotionally. Students receive free and immediate access to teletherapy and crisis support 24 hours a day, seven days a week, 365 days a year, by calling (833) 434-1217. Students may choose a therapist based on availability, gender, language, and focus area, and they can select a time that works best for day, evening, and weekend appointments. Students receive up to six sessions per academic year.

b. *Employee Assistance Program*

The Southwestern [Employee Assistance Program](#) (EAP) contracts with Charles Nechtem Associates (CNA) to provide personal counseling services as an employee benefit. Support provided through the EAP and CNA is completely confidential and fully paid for by Southwestern.

Employees can reach CNA 24 hours a day, seven days a week, 365 days a year, by emailing inquiries@charlesnechtem.com or calling (800) 531-0200.

3. Rape Treatment Centers

A rape treatment center typically provides comprehensive services for sexual assault victims, including specialized medical care, forensic services, counseling, and information about rights and options. Similar services are also typically available in hospital emergency rooms.

In California, medical providers who treat a physical injury sustained from an assault, physical or sexual, are required by state law to report the assault to law enforcement. The same is likely true in other jurisdictions.

In California, the patient has the right to request that a survivor advocate be present when the patient speaks with law enforcement and to request that law enforcement not pursue a criminal charge at that time. Further, private information contained in most medical records is generally protected from disclosure by HIPAA, and community medical providers will not notify Southwestern or anyone other than law enforcement.

A medical provider can provide emergency or follow-up medical services. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect, including prevention of sexually transmitted illnesses and pregnancy, and second, to collect and preserve evidence properly. There is a limited window, typically 96 hours following an incident of sexual assault, within which to preserve physical and other forms of evidence, although it may be possible to obtain evidence from towels, sheets, clothes, and other items for longer periods. It is best to gather evidence before an individual bathes or changes clothing. A survivor should bring a change of clothing to the hospital, as law enforcement or the hospital will likely keep the clothes worn at the time of the

incident as evidence. If an individual has changed clothes, they should bring the clothes worn during the incident to the examination in a clean, sanitary container such as a paper grocery bag, or wrapped in a clean sheet. Plastic containers do not breathe and may impact the integrity of the evidence.

Taking steps to gather evidence immediately does not commit an individual to any particular course of action. But deciding to seek timely medical attention and gather any evidence will preserve the full range of options to seek resolution under this Policy or through criminal prosecution. It may also be helpful in obtaining protective orders.

For residential students, the Rape Treatment Center at UCLA Santa Monica Medical Center is located at 1250 16th Street, Santa Monica, California 90404. Individuals may contact the RTC by calling (424) 259-7208. Services are available 24 hours a day, seven days a week.

4. Advisor of choice

Each Reporting Party or Respondent may bring an advisor of their choosing, including a family member or an attorney, to provide support during all portions of the resolution process. The advisor may not be a Southwestern employee and may not participate directly in or interfere with the proceedings. Although the Title IX Coordinator will make reasonable attempts to schedule proceedings consistent with the advisor's availability, the resolution process will not be delayed to accommodate the advisor. The Title IX Coordinator can remove the advisor from the proceedings if the advisor interferes with the resolution process.

I. Supportive Measures

Upon receiving a report of Prohibited Conduct, Southwestern will offer non-disciplinary, non-punitive, free, individualized supportive measures to the Reporting Party and the Respondent as appropriate and reasonably available. Supportive measures are intended to ensure equal access to the Law School's educational programs and activities without placing an undue burden on either Party. Supportive measures aim to protect the safety of everyone involved and maintain the Law School's educational environment by preventing sexual harassment, discrimination, and retaliation.

A Reporting Party or Respondent may request specific supportive measures. Supportive measures will be implemented at the discretion of Southwestern and in collaboration with appropriate faculty and deans. Supportive measures will be implemented as appropriate to ensure the safety of all parties, the broader Law School community, and the integrity of the resolution process.

A Party may challenge the Law School's decision to provide, deny, modify, or terminate supportive measures when such measures apply to them. A Title IX team member will be designated to consider the Party's challenge. The Title IX team member will typically

respond to the Party within five business days of receiving the challenge.

Southwestern will maintain the privacy of supportive measures provided under this Policy to the extent practicable and promptly address any violation of the supportive measures. All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by a supportive measure.

1. Range of supportive measures

- Access to mental health and community resources
- Issuing a mutual campus “No Contact Order”
- Rescheduling exams and assignments
- Providing alternative course completion options
- Changing a class schedule, including the ability to take an “incomplete,” drop a course without penalty, or transfer sections
- Changing a work schedule or job assignment
- Changing on-campus housing
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
- Limiting an individual’s or organization’s access to certain Law School facilities or activities pending resolution of the matter
- Approving a voluntary leave of absence
- Providing a security escort to ensure safe movement between classes and on-campus activities
- Coordinating medical services
- Providing academic support services, such as tutoring
- Issuing a mandatory leave of absence

2. Mandatory leave

Where the reported Prohibited Conduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or regular Law School functions and operations, Southwestern may place a student or employee on mandatory leave during a pending resolution process under this Policy. Pending resolution of the report, the individual may be denied access to campus, campus facilities, and all other Law School activities or privileges for which they might otherwise be eligible, as the Law School determines appropriate. When Southwestern imposes a mandatory leave, it will make reasonable efforts to expedite the investigation and resolution.

A student Respondent who has been put on mandatory leave has the right to submit a written appeal to the Associate Dean of Student Services or their designee to appeal the leave. The Associate Dean of Student Services or their designee may review the appeal to determine whether the decision to put the student Respondent on interim suspension was arbitrary or capricious. A decision

is arbitrary and capricious when there is no rational connection between the facts presented and the decision made. The Associate Dean of Student Services' decision may not be appealed. If the Associate Dean of Student Services has a conflict or is not available, a Vice Dean will render the decision.

3. Violation of supportive measures

If a Party reports that a supportive measure, including a No Contact Order, was violated, the Law School will take immediate and responsive action. The Title IX Coordinator will notify the Associate Dean of Student Services of the reported violation. The Associate Dean of Student Services will review the evidence and determine whether a violation occurred. If the Associate Dean of Student Services determines that a violation occurred, the Party in violation will be subject to disciplinary action up to and including suspension. The Associate Dean of Student Services will consult with the Title IX Coordinator to determine the appropriate sanction. The Party found to be in violation may appeal the Associate Dean of Student Services's decision to a Vice Dean. The Vice Dean will respond to the Party's challenge within five business days of receiving the challenge. The Vice Dean's decision is final.

If the Associate Dean of Student Services has a conflict or is unavailable and cannot determine whether a supportive measure was violated, a Vice Dean will review evidence of the violation, and the Party may appeal the Vice Dean's decision to the President and Dean. The President and Dean's decision is final.

J. Disclosures Required by the Clery Act

1. Timely warnings and emergency notification

A timely warning is a campus-wide notification of a serious or continuing threat to the Southwestern community. A timely warning does not include identifying information about the Reporting Party. If a report of misconduct discloses a serious or continuing threat to the Southwestern community, the Law School may issue a campus-wide timely warning, which can take the form of an email to campus to protect the health or safety of the community.

An emergency notification is a campus-wide notification upon confirmation of a significant emergency or dangerous situation involving an immediate threat to the health or safety of students, faculty, or staff on campus.

In determining an appropriate communication, Southwestern will consider several factors, including but not limited to the building or segment of the population threatened, the nature of the threat, and the credibility of information received.

2. Annual reporting responsibilities

As an institution that receives federal funding, Southwestern must issue a publicly

available Annual Security Report ("ASR") that identifies the number of certain reported crimes on campus property or adjacent to campus. The ASR does not include identifying information about the Reporting Party or Respondent.

3. **Crime log**

As a higher education institution with a campus security department, Southwestern must maintain a daily crime log that includes entries for all crimes that occur within the Clery geography and the campus safety force's regular patrol route. The crime log does not include identifying information about the Reporting Party or Respondent.

K. **Possible Sanctions for Policy Violations**

Southwestern may impose one or more of the sanctions listed below on a Respondent who is found responsible for violating this Policy. Southwestern may impose more than one sanction for any single Policy violation. Sanctions not listed may be imposed in consultation with and approval by the Title IX Coordinator. Sanctions are assessed in response to the specific violation(s) and the Respondent's prior discipline history.

Sanctions become final either on the date that the Law School provides the Parties with the written determination of the result of any appeal or, if no Party appeals, the date on which an appeal would no longer be considered timely.

Possible sanctions include, but are not limited to:

- **Warning:** Notice, in writing, that continuing or repeating Prohibited Conduct may be cause for additional disciplinary action. A warning is a less severe sanction than censure, described above.
- **Censure:** A written reprimand that officially warns a Respondent that continuing or repeating Prohibited Conduct may be cause for additional conduct sanctions, including probation, suspension, administrative leave for employees, expulsion, or termination from the Law School. Censure will be reported to the board of bar examiners.
- **Disciplinary probation:** Exclusion from participating in privileged activities for a specified period. For students, privileged activities may include, but are not limited to, elected or appointed student offices, student research, some student employment, and study-abroad opportunities. Employees may be placed on a performance plan. Additional restrictions or conditions may also be imposed. A Respondent who violates the terms of disciplinary probation or other Law School policies may result in further disciplinary action. Disciplinary probation will be reported to the board of bar examiners.
- **Suspension:** Exclusion from Law School premises, classes, privileges, or activities for a specified period, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file and will be permanently recorded on the

student's academic transcript. Conditions for readmission may be specified in the suspension notice.

- **Expulsion:** Permanent termination of student status and exclusion from Law School premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.
- **Removal from campus housing:** Students may be removed from Law School housing or barred from applying for campus housing due to violations of this Policy.
- **Revocation of admissions or degree:** Admission may be revoked by the Law School based on fraud or misrepresentation. A Southwestern degree may be revoked or suspended for violating this Policy.
- **Termination:** Permanent termination of employment with Southwestern.
- **Withholding degree:** Southwestern may withhold awarding a degree otherwise earned until the completion of the process set forth in this Policy, including the completion of all sanctions imposed, if any.
- **Other:** Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education, or research projects may also be assigned.

L. Letters of Standing

If a Respondent initiates a transfer to another law school after receiving notice of an investigation under this Policy, letters of standing will reflect the open disciplinary matter. The letter will not provide further details. Southwestern will also make a permanent transcript notation when a student withdraws from Southwestern while a disciplinary investigation or proceeding is pending.

M. Training and Prevention Program

Southwestern is committed to preventing Prohibited Conduct through awareness programs. Incoming students receive training as part of their orientation. Faculty and staff receive annual training on the Policy.

N. Modification of Resolution Process

Southwestern will follow the resolution processes detailed in Appendices A (Resolution Process for Complaints Involving a Student) and B (Resolution of Complaints Involving an Employee Reporting Party and an Employee Respondent), barring exceptional circumstances. Southwestern reserves the right to adapt or modify the grievance process, including timelines in extenuating circumstances. In such instances, Southwestern will notify both Parties of the modification and, if appropriate, the extenuating circumstances.

O. Alcohol and Substance Use

It is not the purpose of this Policy to subject individuals to disciplinary action for their own consumption of alcohol or drugs. The Law School will not subject individuals who participate in the resolution process to disciplinary action for information revealed during

the resolution process, provided that the individual's behavior did not, and does not, place the health and safety of others at risk. In all instances, the Law School may pursue educational initiatives or remedies related to an individual's consumption of alcohol or drugs.

The use of alcohol or other drugs will never function as a defense for engaging in Prohibited Conduct.

P. Past Sexual History

In general, a Reporting Party's sexual interests or prior sexual history is inadmissible during a resolution process. Where there is a current or ongoing relationship between the Reporting Party and the Respondent, and the Respondent alleges consent, the prior sexual history between the Parties may be relevant to assess the manner and nature of communications between the Parties. The mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the Reporting Party with other individuals is typically not relevant and will not be permitted.

Q. Respondent's Prior Conduct History

Throughout the resolution process, the investigator and decisionmaker will have discretion to determine what is relevant and how much weight to give evidence. When there is evidence of a pattern of conduct similar in nature by the Respondent, either before or after the conduct in question, regardless of whether there has been a finding of responsibility, this information may be deemed relevant and probative to determining responsibility and sanctions if applicable. Through the Title IX Coordinator, Southwestern may provide this information to the investigator or decisionmaker with appropriate notice to the Parties. Alternatively, a Party may request in writing that information under this section be admitted. A request to admit such information must be submitted in writing to the Title IX Coordinator. The Title IX Coordinator will assess the relevance of this information and determine if it is appropriate to include in the investigation report.

R. Consolidation of Investigations

The Title IX Coordinator can combine multiple reports against a Respondent and cross-complaints between a Reporting Party and a Respondent into a single investigation if the evidence from each incident is relevant and useful for determining the outcome of the other incident. Matters may be consolidated when they involve multiple Reporting Parties, multiple Respondents, or related conduct that would regularly have been heard under the Student Honor Code.

S. Failure to Comply with the Resolution Process

If a Party fails to comply with the resolution process outlined in Appendices A or B of this Policy, Southwestern reserves the right to bring additional charges of misconduct against the Party. The Title IX Coordinator is responsible for interpreting and applying this

provision. If an advisor fails to comply with the procedures of this Policy, Southwestern reserves the right to exclude the advisor from further participation in the process.

T. Nature of Proceedings

Proceedings under this Policy are administrative procedures, not legal, proceedings. They are designed to address Prohibited Conduct. Neither Party may audio or video record the proceedings. In addition, neither Party may use an Otter or similar AI device, in connection with the proceedings.

U. False Reports

Southwestern takes the accuracy of information very seriously, as a report of Prohibited Conduct may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated report of Prohibited Conduct.

However, when a Reporting Party or third-party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Reporting Party or third-party witness may be subject to disciplinary action. It is a violation of the Student Honor Code for a student to make an intentionally false report of any Policy violation, and it may also violate state criminal statutes and civil defamation laws. False reports by a staff member will be referred to Human Resources, and false reports by faculty members will be referred to the Vice Dean(s).

V. Records

The Title IX Coordinator will retain records of all reports and complaints under this Policy for seven years. Complaints resolved through an initial assessment or informal resolution are not part of a student's conduct file or academic record.

Affirmative findings of responsibility in matters resolved through Formal Resolution are part of a student's conduct record. Such records will be used in reviewing any further conduct or developing sanctions and will remain a part of a student's conduct record. As such, the Law School will provide them to board of bar examiners or potential employers when a student, former student, or graduate authorizes the Law School to release their student records.

In addition to records kept by the Title IX Coordinator, the conduct files of students who have been suspended or expelled from Southwestern are maintained indefinitely in the Student Services Office. Further questions about record retention should be directed to the Title IX Coordinator.

W. Policy Revisions

Southwestern reserves the right to change or modify any aspect of this Policy at any time, with or without prior notice.

Appendix A: Resolution Process for Complaints Involving a Student as Either the Reporting Party or Respondent

A. Intake Meeting and Threshold Determination

As soon as possible after receiving a report of Prohibited Conduct, the Title IX Coordinator will conduct an intake meeting with the Reporting Party. At the intake meeting, the Title IX Coordinator will provide access to and an overview of this Policy and address, as appropriate:

- Immediate physical safety and emotional well-being needs;
- The Reporting Party's right to determine whether to contact law enforcement and seek medical treatment and the importance of preservation of evidence;
- The Reporting Party's right to be assisted by individuals at the Law School in contacting law enforcement;
- Confidential and non-confidential resources and supports on-campus and off-campus;
- The range of supportive measures;
- The right to an advisor of choice during the resolution process, including the intake meeting;
- The prohibition against retaliation;
- Requirements for the Title IX Coordinator to notify the Clery Coordinator if a report involves a Clery crime

During the meeting, the Title IX Coordinator will ask the Reporting Party questions to gain a basic understanding of the reported Prohibited Conduct. The interview will include questions to understand key facts upon which the Reporting Party bases the report (i.e., who, what, where, and when). During the intake meeting, the Title IX Coordinator will ask, if appropriate, how the Reporting Party would like to move forward. See Section F.3. of this Policy regarding requests not to proceed with a resolution process.

If the Reporting Party wishes to move forward with a resolution process under this Policy, the Title IX Coordinator will make a threshold determination about whether the Reporting Party's report states facts that, if true, could constitute a violation of Southwestern's Sexual Misconduct Policy. The Title IX Coordinator will make this threshold determination within three business days of the intake meeting and will communicate the determination in writing to the Reporting Party.

If the Title IX Coordinator determines that the Reporting Party's report, if true, could constitute a violation of this Policy, the Title IX Coordinator will offer the Reporting Party the option of proceeding with a complaint through an informal or formal resolution.

B. Complaint Dismissal

Southwestern reserves the right in its sole discretion to dismiss a complaint or discontinue an investigation if the Reporting Party notifies the Title IX Coordinator that they wish to withdraw their complaint, the Respondent is no longer enrolled in or employed by the Law School, or the reported Prohibited Conduct, if proven to be true, would not constitute a violation of this Policy.

If the information provided does not suggest a potential violation of this Policy, the Title IX Coordinator will inform the Reporting Party in writing that the complaint is being dismissed. The Reporting Party may still file a report with the Department of Education Office for Civil Rights, law enforcement, or seek available civil remedies through the judicial system. The Reporting Party also may re-file the report under the Sexual Misconduct Policy if they wish to share additional or new facts.

C. Informal Resolution Process

If the Reporting Party prefers an informal resolution option, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution and determine if the Respondent is willing to engage in informal resolution. Both Parties must agree, in writing, to an informal resolution.

Even if the Parties agree to informal resolution, it is within the discretion of the Title IX Coordinator to determine that a report must proceed through formal resolution in certain cases (e.g., where a Respondent is alleged to have violated the Sexual Misconduct Policy on multiple occasions or with multiple Reporting Parties or where the reported conduct, if true, presents a threat to the safety of the Southwestern community).

Before initiating an informal resolution process, the Title IX Coordinator will provide the Parties with written notice that includes:

- The specific Prohibited Conduct alleged to have occurred;
- The requirements of the informal resolution process;
- An instruction to preserve any evidence that is relevant to the allegations;
- Notice of any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared, and whether the Law School could disclose such information in a future Law School grievance process arising from the same or different allegations;
- Notice that an agreement resulting from the informal resolution process is binding only on the Parties and is not subject to appeal;
- Notice that once an agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations;
- A statement indicating that the decision to participate in the informal resolution process does not presume that the conduct at issue has occurred;
- A statement that the Respondent is presumed not responsible for violating this Policy, unless the Respondent admits to violations of this Policy;

- An explanation that the Parties may be accompanied by an advisor of their choice, who may be a parent, colleague, friend, or attorney;
- A statement that any Party has the right to withdraw from the Informal Resolution process and initiate or resume the formal grievance procedures at any time before agreeing to a resolution;
- The date and time of the initial meeting with staff or the Title IX Coordinator, with a minimum of three business days' notice;
- Information regarding Supportive Measures, which are available equally to each Party;
- The potential terms that may be requested or offered in an Informal Resolution agreement; and
- A statement explaining Southwestern's prohibition against retaliation.

The nature of an informal resolution process is flexible, and not all complaints resolved through informal resolution will proceed in a uniform fashion. Typically, however, the Title IX Coordinator will ask the Reporting Party to prepare a written report that sets out the factual basis for the grievance and any proposed resolution. The Reporting Party will be asked to provide the written report to the Title IX Coordinator within five business days after the intake meeting. The Title IX Coordinator will share the written report with the Respondent and will instruct the Respondent to provide a written response to the report within five business days of reviewing the Reporting Party's report.

The Title IX Coordinator will then meet separately with both Parties to discuss potential alternative resolutions based on the Parties' statements and other information available. The Title IX Coordinator is not a factfinder; rather, the Title IX Coordinator identifies possible alternative resolutions to the complaint. Possible alternative resolutions may include, but are not limited to, a permanent No Contact Order between students; academic or residential reassignment; a written apology or explanation of the circumstances surrounding the complaints; educational remedies; and community service.

If the Title IX Coordinator and the Parties reach an agreement, the matter is closed. If not, the Title IX Coordinator will proceed with a formal resolution as set forth below. Any Party or the Title Coordinator may terminate the informal resolution process at any time. If the informal resolution process is terminated, the Title IX Coordinator will notify the Parties in writing and will describe the next steps and timeframes for the formal resolution.

Any resolution reached through an informal process will be confirmed in writing and provided to the Parties within five business days of reaching a resolution. If either Party does not voluntarily agree in writing to pursue informal resolution, or if the Reporting Party, Respondent, or Coordinator, at any time, determines that informal resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Reporting Party and Respondent in writing that the complaint will proceed through formal resolution.

Records of an informal resolution process can be shared with other offices as appropriate.

Any violations of the terms of the informal resolution agreement may result in disciplinary action.

D. Formal Resolution Process

The formal resolution process will include an investigation, a hearing, sanctions, if applicable, and an appeal process.

1. Notice

If the Title IX Coordinator determines that the Reporting Party's complaint will be resolved through formal resolution, the Title IX Coordinator will notify both Parties in writing. The Title IX Coordinator's written notification to the Parties will include:

- The Reporting Party's name;
- The Law School's investigation procedures and a link to the relevant policies;
- Information about the informal resolution process;
- Nature of the report, including specific Policy violations alleged, and date, time, and a brief description of the alleged violation;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal resolution process;
- A statement that both Parties are entitled to an opportunity to access relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the relevant and not otherwise impermissible evidence;
- Information about the privacy of the process;
- Information on the right to have an advisor of choice;
- The name of the investigator along with a process to identify, in advance of the interview process, any conflict of interest that the investigator may have;
- An instruction to preserve any evidence that is relevant to the allegations;
- A statement regarding the Law School's policy related to false reports and making knowingly false statements during the formal resolution process; and
- A statement explaining Southwestern's prohibition against retaliation.

The notice of the complaint will be accompanied by a request for the Respondent to meet with the Title IX Coordinator within three business days. If the Respondent does not respond to the meeting request or is unable to meet within three business days, the Title IX Coordinator will provide the following additional information in writing:

- Confidential and non-confidential resources and supports on-campus and off-campus;
- Range of supportive measures; and

- Prohibition against retaliation.

2. Investigation

The Title IX Coordinator will select a trained internal or external investigator or a two-person investigative team to conduct a reasonable, impartial, and prompt investigation of the complaint. The Title IX Coordinator will select an investigator based on several factors, including the Parties involved, the complexity of the complaint, the need to avoid any potential conflict of interest, and who may best conduct a fair and equitable investigation for all Parties involved.

The Title IX Coordinator will notify the Parties, in writing, of the name of the designated investigator when the Title IX Coordinator issues the notice of formal resolution. Each Party will have three business days to object to the investigator's selection based on bias or conflict of interest. If either Party objects, the Title IX Coordinator will evaluate whether the objection is substantiated. The Title IX Coordinator will remove and replace any investigator the Title IX Coordinator finds to have a bias or conflict of interest against either Party. The investigator will commence the investigation once the time for the Parties to object has passed or, if an objection is made, and the Title IX Coordinator determines the objection is not substantiated, from the time the Title IX Coordinator notifies the objecting Party of the determination. In consultation with the Title IX Coordinator, the investigator will establish a timeline and process for conducting the investigation. The investigation will be conducted in stages, as follows:

a. Initial fact-gathering

The investigator will interview each Party and relevant witnesses and gather documentary evidence from the Parties and any identified witnesses. The investigator will provide a copy of their notes to each person interviewed. The interviewee will have the opportunity to correct or comment on any statements made in the notes. If the interviewee has corrections or comments to the interview notes, the interviewee may submit a written response within three business days reflecting any additions or changes necessary to ensure the accuracy of the interviewee's statement. If no response is received from the interviewee, their interview summary may be included in the final investigation report and will be presumed to be accurate. In all instances where the investigator includes the interview notes as an exhibit to a report, the investigator will also include any response.

b. Draft investigation report

Once initial fact-gathering is complete, the investigator will submit a draft investigation report to the Title IX Coordinator. The Title IX Coordinator will then provide the Parties with the draft investigation report. The draft investigation report will include any relevant and not otherwise

impermissible evidence gathered for the Parties for review. If either Party has an advisor, the advisor will also receive the draft investigation report. Given the sensitive nature of the information provided, the Title IX Coordinator will provide the information in a secure manner (e.g., by providing digital copies of the materials through a protected, "read-only" web portal). Neither the Reporting Party nor the Respondent, their advisors, nor any third parties may copy, remove, photograph, print, image, videotape, record, or otherwise duplicate or remove the information provided. Any Party or advisor who fails to abide by this Policy may be subject to discipline and excluded from participating in the process.

Each Party may submit a written response to the draft investigation report within ten calendar days of being notified of their opportunity to review the report. The response will be incorporated into the final investigation report. Each Party may also submit a written request for additional investigation, including, but not limited to, a request for follow-up witness interviews to clarify or provide additional information, including offering questions to the investigator to pose to witnesses, requests for interviews with new witnesses, or requests to consider new evidence. Any request for additional investigation must explain the reason for the request.

c. *Additional fact-gathering*

The investigator may conduct follow-up interviews with the Parties and witnesses based on testimonial and documentary evidence gathered during the initial fact-gathering stage and the Parties' request for additional investigation, if any. The Parties and witnesses can expect that, in follow-up interviews, the investigator will seek responses to specific allegations or evidence (e.g., an investigator may show a Party a series of text messages between the Party and another witness and ask about the content of the text messages). To the extent additional material witnesses or evidence are identified during this additional fact-gathering stage, the investigator will conduct additional interviews and gather additional evidence consistent with the procedures outlined in Sections 2.a. and 2.b. above. Each step may be repeated as necessary to ensure a complete gathering of evidence.

d. *Final investigation report*

When the investigator determines that the investigation is complete, the investigator will submit a final investigation report to the Title IX Coordinator. The investigator will not state factual findings or ultimate findings regarding the Respondent's responsibility. The investigator will attach as exhibits to the final investigation report all relevant interview summaries and any relevant and not otherwise impermissible documentary evidence gathered during the investigation, including any written responses to the evidence submitted by the Parties.

The Title IX Coordinator may require the investigator to conduct additional investigation; if so, the investigator will conduct further investigation consistent with the procedures outlined above. If the Title IX Coordinator agrees that the investigation is complete, the Title IX Coordinator will provide the final investigation report to the Parties and each Party's advisor in the same or similar manner as the draft investigation report. The Parties will have ten business days to review the final investigation report and provide a response to the Title IX Coordinator. The Parties are entitled to an opportunity to access the relevant and not impermissible evidence. The Title IX Coordinator will provide the Parties' response, if any, to the hearing officer.

3. Hearing

The hearing is an opportunity for the Parties to address the hearing officer in person, to question the other Party and witnesses, and for the hearing officer to obtain information following the investigation that is necessary to determine whether a Policy violation occurred.

a. *Hearing officer*

The hearing will be conducted by a hearing officer selected by the Law School or an external firm from a pool of qualified candidates. The hearing officer will receive training regarding Southwestern's Sexual Misconduct Policy, handling student sexual misconduct cases, and other relevant issues.

The hearing officer must be impartial and free from bias or conflict of interest. The Parties will be informed of the identity of the hearing officer and vice versa before the pre-hearing meeting. If the hearing officer has concerns that they cannot conduct a fair or unbiased review, they must report those concerns to the Title IX Coordinator before the pre-hearing meeting. The Title IX Coordinator will assign a different hearing officer.

Similarly, the Parties will have three business days to object to the hearing officer's selection based on bias or conflict of interest. If either of the Parties objects, the Title IX Coordinator will evaluate whether the objection is substantiated. The Title IX Coordinator will remove and replace any hearing officer the Title IX Coordinator finds to have a bias or conflict of interest against either Party.

The hearing officer will conduct a live hearing, either in-person or via a communication platform (e.g., Zoom), at which they will permit indirect cross-examination of the Parties and witnesses. For purposes of this Policy, indirect cross-examination means the hearing officer will allow the Parties to submit proposed questions for the Parties and witnesses and follow-up questions based on testimony provided during the hearing. The hearing officer will ask the Parties and witnesses the proposed questions that the hearing officer determines are consistent with this Policy and are probative

of facts relevant to decide the matter. Only the hearing officer is permitted to ask questions of the Parties and witnesses. Neither Party may directly question the other Party or witness. Advisors are not permitted to directly or indirectly question the other Party or witness.

If the hearing officer determines that any question is not relevant or is otherwise impermissible, the hearing officer will exclude the question and explain the reason for excluding the question at the hearing. The hearing officer will afford the submitting Party to reframe or resubmit the question. Questions that are unclear or that might harass a Party or witness being questioned will not be permitted.

The hearing officer is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person.

Parties may submit requests to the Title IX Coordinator related to the format or nature of their participation in the hearing. The Title IX Coordinator will work with the hearing officer to accommodate reasonable requests, including the option for the hearing to occur with the Parties located in separate rooms with technology enabling the hearing officer and the Parties to simultaneously see and hear the Party answering questions.

b. *Scheduling the hearing*

The Title IX Coordinator will forward a copy of the final investigation report and the Parties' responses to the report, if any, to the hearing officer once time has elapsed for objections to the hearing officer based on bias or conflict of interest. The Title IX Coordinator will schedule a hearing date, time, and location and notify the Parties of the same. The hearing officer will strive to complete a hearing within fourteen business days of receiving the final investigation report.

c. *Pre-hearing meeting*

Before the hearing, the Title IX Coordinator will conduct a pre-hearing meeting with each Party and each Party's advisor. At this pre-hearing meeting, each Party will receive an explanation of the hearing process and can ask any questions.

d. *Witnesses*

The Reporting Party, the Respondent, and the hearing officer all have the right to call witnesses. Witnesses must have observed the conduct in question or have information relevant to the incident and cannot be called solely to speak about an individual's character. Neither Party will be permitted to call as a witness anyone who was not interviewed by the

investigator as part of Southwestern's investigation.

If either Party wishes to call witnesses, the Party must submit the name of any witness(es), a summary of why the witness's presence is relevant, and questions to the hearing officer and Title IX Coordinator no later than five business days before the hearing via email or in hardcopy format.

When witnesses are approved to be present, the Parties will be provided with a list of witnesses and any relevant documents related to the witnesses' appearance at the hearing no later than three business days before the hearing.

e. Case presentation

The hearing is intended to provide a fair and ample opportunity for each Party to present their account of the incident and for the hearing officer to determine the facts of the case and determine whether this Policy was violated. The hearing is not intended to be a repeat of the investigation. The hearing officer will be well-versed in the facts of the case based on the final investigation report and the Parties' responses to the final investigation report, if any.

The Parties, their advisors (if any), and the hearing officer will attend the hearing. Other Law School administrators may attend at the request of or with the prior approval of the hearing officer, but the Parties will be notified in advance of anyone who will be in attendance. Any individual appearing as a witness will be present only while providing a statement and responding to questions.

The hearing officer has absolute discretion to decide upon a format for the hearing and to determine which witnesses are relevant to the outcome determination. A hearing officer may decline to hear from a witness when they conclude that the information is not necessary for their decision.

All information considered by the hearing officer must be provided to the investigator before the hearing and will not be allowed during the hearing itself unless it can be clearly demonstrated that such information was not reasonably available to the Parties at the time of the investigation, despite the exercise of due diligence.

The hearing officer will afford either Party an opportunity at the end of the hearing to offer closing remarks. The Party make offer closing remarks or choose not to. Closing remarks may be made only by a Party, not their advisor.

Advisors may be present during the hearing only if the Party they are advising is also present. Advisors may not participate directly in or interfere with the proceedings.

f. *Expectations of the Parties and Witnesses*

Students, staff, and faculty have the responsibility to participate fully and truthfully in any proceeding under this Policy. If either Party chooses not to participate in the hearing, they will not be permitted to cross-examine the witnesses or any Party during the hearing. If either Party chooses not to participate in the hearing, the Law School may move forward with the hearing and imposition of findings and sanctions, if any, in absentia. In reaching findings in absentia, the hearing officer may rely on any information in the final investigation report, any documentary evidence disclosed to the investigator, any statements made during the hearing, and any documentary evidence presented at the hearing.

If the Reporting Party chooses not to participate in the hearing, the Law School's ability to fully investigate and respond to the complaint may be limited.

g. *Hearing record*

The hearing and any pre-hearing meetings or conferences are closed to the public. The Law School will keep an official transcript of the hearing; any other recording is prohibited. No camera, TV, or other equipment, including cell phones, will be permitted in the hearing room except as the Law School arranges.

h. *Standard of evidence*

The hearing officer will determine a Respondent's responsibility by a preponderance of the evidence. Stated differently, the hearing officer will decide whether it is "more likely than not," based upon all of the evidence, that the Respondent is responsible for the alleged violation(s).

i. *Refusal to respond to relevant and permissible questions*

The hearing officer may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The hearing officer will not draw an inference about whether Prohibited Conduct occurred based solely on a Party's or witness's refusal to respond to such questions.

j. *Notice of hearing outcome*

Following the hearing, the hearing officer will consider all of the evidence and decide, by a preponderance of the evidence, whether the Respondent has violated this Policy.

If the Respondent is found responsible for violating this Policy, the formal resolution process concludes with Sanctions, described in Section D.4. of this Appendix A. If the Respondent is found not to have violated this Policy, the formal resolution process has concluded. The hearing officer will strive to issue a final report within fourteen business days of the hearing. The report will include:

- Allegations;
- A reference to the policies and procedures used to evaluate the allegations;
- Description of all procedural steps taken to date;
- The hearing officer's evaluation of the relevant and not otherwise impermissible evidence along with the finding of facts;
- Determinations for each allegation, with the rationale;
- Whether remedies will be provided; and
- The procedures for an appeal.

After the formal resolution process, either Party may appeal upon the grounds described in Section D.5. of this Appendix below.

4. Sanctions

If the Respondent is found responsible for violating this Policy, Southwestern will issue sanctions commensurate with the violation(s). The Title IX Coordinator will designate three trained individuals (each a "Review Panelist") to serve on a three-person panel ("Review Panel") to determine sanctions.

Within three days of receiving the hearing officer's final report, the Title IX Coordinator will notify the Parties in writing of the designated Review Panelists' names. Each Party will have three business days to object to each Review Panelist based on bias or conflict of interest. If either Party objects, the Title IX Coordinator will evaluate whether the objection is substantiated. The Title IX Coordinator will remove and replace any Review Panelist the Title IX Coordinator finds to have a bias or conflict of interest against either Party.

The Title IX Coordinator will notify the Parties that they may submit statements to the Review Panel within five business days of receiving the final report. The Review Panel will review the Parties' impact statements and all other materials in the case, including the final report and attached exhibits, to assess the appropriate sanction. The Review Panel does not have the power or ability to alter the hearing officer's faculty or ultimate findings.

The Review Panel will issue a recommendation to the Title IX Coordinator regarding sanctions within five business days of receiving all materials in the case, including any impact statements submitted by the Parties. The Title IX Coordinator will issue final sanctions within three business days of receiving the Review Panel's recommendation. The Title IX Coordinator will issue the sanctions recommended by the Review Panel unless the Review Panel recommends sanctions that deviate from sanction guidelines (without demonstrable justification) or the Review Panel recommends sanctions that the Title IX Coordinator believes will not effectively stop the alleged harassment, prevent its recurrence, or remedy its effects. The Title IX Coordinator will notify the Parties of the sanctions simultaneously in writing.

Any student found responsible for violating this Policy who is not permanently separated from Southwestern may be required to complete non-disciplinary

educational initiatives in addition to sanctions at the discretion of the Title IX Coordinator. The Title IX Coordinator will also consider whether non-disciplinary administrative measures for the larger campus community are appropriate. Such measures may include training, climate surveys, and other initiatives.

5. Appeals

Each Party has a limited right to appeal from the findings set forth in the final report. If the hearing officer concludes that the Respondent did not violate the Policy, the Reporting Party has five business days from receiving written notice of the final report to submit a written appeal to the Title IX Coordinator. If the Respondent has been found responsible for one or more policy violations, but not others, the Reporting Party may submit a written appeal to the Title IX Coordinator within five business days of notice of the sanction. If the hearing officer decides that the Respondent did violate the Policy, the Respondent has five business days from receiving written notice of the sanction to submit a written appeal to the Title IX Coordinator.

The Party who submits the written appeal will be the "Appellant," and the responding Party will be the "Appellee." The Appellant's written appeal must be based on procedural error, new information, and actual conflict of interest or demonstrated bias.

a. Procedural error

A procedural error is one that affected the outcome of the case. The written appeal must describe the error and how it impacted the outcome.

b. New information

New information is information that arose or was not available or known to the Appellant during the investigation or hearing, and that impacted or could impact the outcome. Information known to the Appellant during the investigation or hearing but which they chose not to present is not new information. The written appeal must describe the new evidence and how it impacted the case.

c. Actual conflict of interest or demonstrated bias

An actual conflict of interest or demonstrated bias means the Title IX Coordinator, investigator, hearing officer, or Review Panel member had a conflict of interest or bias for or against the Appellant that affected the outcome. The written appeal must include any evidence supporting the alleged conflict of interest or demonstrated bias and describe how it impacted the outcome.

Appellee will have five business days to respond in writing. Thereafter, the Title IX Coordinator will refer the written appeal, including the final report, exhibits attached to the final report, and impact statements (the "Appeal Record"), to an

Appeals Board.

The Title IX Coordinator will notify each Party of the members of the Appeals Board within five business days of receiving the written appeal. Each Party will have five business days to object to members of the Appeals Board based on bias or conflict of interest. The Title IX Coordinator will consider any objection based on bias or conflict of interest. If the Title IX Coordinator determines that a member of the Appeals Board may have bias or conflict of interest, the Title IX Coordinator will remove the individual and designate a new member.

The role of the Appeals Board is limited. Appeals are not intended to be a full rehearing of the complaint. Appeals are confined to a review of the Appeal Record for the grounds stated above. The findings contained in the hearing officer's final report are presumed to have been decided reasonably and appropriately. The Appellant carries the burden of proof to demonstrate that the stated grounds for appeal would affect the outcome of the proceeding.

The Appeals Board will determine whether any grounds for the appeal are substantiated. If the Appeals Board determines that the request for appeal does not meet the standards for an appeal under this grievance process, the Appeals Board will notify both Parties of that outcome within ten business days of receiving both the Appellant's appeal and the Appellee's response. If the Appeals Board determines that the request for appeal does meet the standards for an appeal under this grievance process, the Appeals Board will take appropriate action as indicated below:

d. *Procedural error*

If the Appeals Board determines that a procedural error occurred that affected the outcome of the investigation or hearing, the Appeals Board may return the complaint to the investigator or hearing officer with instructions to correct the error and reconsider the findings as appropriate. In rare cases where the procedural error cannot be corrected by the original investigator or hearing officer, the Appeals Board may order a new investigation with a new investigator or a new hearing with a new hearing officer.

e. *New information*

If the Appeals Board determines that new information should be considered, the complaint will be returned to the hearing officer to reconsider the complaint in light of the new information only and to reconsider the original findings as appropriate. The hearing officer will prepare an addendum to the final report. The Review Panel will consider the hearing officer's addendum when determining sanctions. The Appellant will have the opportunity to submit another appeal.

f. *Actual conflict of interest or demonstrated bias*

If the Appeals Board determines that an actual conflict of interest or demonstrated bias affected the outcome of the investigation or hearing, the Appeals Board may return the complaint to the hearing officer to disregard the tainted evidence (e.g., interview summary or testimony by a biased individual) and reconsider findings. If the hearing officer is found to have an actual conflict of interest, the Appeals Board may instruct the Title IX Coordinator to coordinate a new hearing. In rare cases, the Appeals Board may order a new investigation with a new investigator or a new hearing with a new hearing officer.

The Title IX Coordinator will generally notify the Appellant and the Appellee in writing of the outcome of the appeal within ten business days of receipt of the Appellee's response statement. The Appeals Board's decision is final and not subject to review.

Appendix B: Resolution Process for Complaints Involving an Employee Reporting Party and an Employee Respondent

A. Overview

When Southwestern receives a report of Prohibited Conduct involving an employee Reporting Party and an employee Respondent, and the Reporting Party wishes to proceed with a resolution process, the Law School will follow the procedures outlined below.

Southwestern will assign a trained investigator and a trained decisionmaker to conduct a thorough and impartial investigation in a reasonably prompt timeframe. Southwestern reserves the right to utilize internal or external investigators and decisionmakers.

Each Party has the option to participate in the investigation, and both Parties have the same rights during the resolution process, including the right to an advisor, the right to submit relevant witness names and evidence, and the right to review the evidence gathered by the investigator before the decisionmaker issues a final determination. The Parties have a right to object to any personnel assigned to this matter based on bias or a conflict of interest.

B. Notice of Investigation

Before the start of an investigation, the Title IX Coordinator will issue a written notice of investigation to the Parties. The notice will include:

- The Reporting Party's name;
- The Law School's investigation procedures and a link to the relevant policies;
- Information about the informal resolution process;
- Nature of the report, including specific Policy violations and the date, time, and a brief description of the alleged violation;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the formal resolution process;
- A statement that both Parties are entitled to an opportunity to access relevant and not otherwise impermissible evidence and an investigative report that accurately summarizes the relevant and not otherwise impermissible evidence;
- Information about the privacy of the process;
- Information on the right to have an advisor of choice;
- The name of the investigator along with a process to identify, in advance of the interview process, any conflict of interest that the investigator may have;
- An instruction to preserve any evidence that is relevant to the allegations;
- A statement regarding Southwestern's policy related to false reports and making knowingly false statements during the formal resolution process; and
- A statement explaining the Law School's prohibition against retaliation.

If additional allegations or information is brought forward, the Title IX Coordinator will issue an updated notice of investigation.

C. Interviews

The investigator will hold individual interviews with the Parties and witnesses to ask relevant and not otherwise impermissible questions, including questions exploring credibility. The investigator and the Party or witness may attend each interview. A Party's advisor may attend these meetings, subject to the rules described in Section H.4. of this Policy. Additional attendees may be permitted at the discretion of the Title IX Coordinator or in connection with an approved disability-related accommodation.

The individual interviews may be conducted with all participants physically present or, at Southwestern's discretion, with all participants joining virtually through a video-conferencing option.

The Law School can remove, with or without warning, from any meeting or proceeding a Party, witness, or advisor who does not comply with the Sexual Misconduct Policy or this Appendix.

D. Evidence Review and Investigation Report

After all fact-gathering, the investigator will provide each Party and their advisor the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the evidence inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence before the conclusion of the investigation and to submit any additional relevant evidence or names of any additional witnesses with relevant information. Given the sensitive nature of the information provided, the Law School will facilitate the evidence review in a secure manner. Neither the Parties nor their advisors may copy, remove, photograph, print, image, videotape, record, or otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any advisor who fails to abide by this may be excluded from further participation in the resolution process.

The Parties will have at least five business days to inspect and review the evidence and submit a written response to the investigator. The Law School will provide access to copies of each Party's written responses. The Title IX Coordinator can extend the evidence review period based on the volume and nature of the evidence. After the evidence review, when deemed appropriate by the investigator, the investigator will conduct any additional fact-gathering as necessary. New relevant evidence that was not previously known to exist and not previously discoverable with the exercise of reasonable diligence is gathered during this second fact-gathering period and will be made available for review by the Parties and their advisors. The Parties will have five business days to provide a response to the new evidence.

The investigator will consider the Parties' written responses before finalizing the investigation report and providing the report to the decisionmaker.

E. Final Report

The decisionmaker will evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation. The decisionmaker will determine whether a violation of the Policy occurred. The decisionmaker may place less or no weight upon statements by a Party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate in the resolution process. The decisionmaker will not draw an inference about whether Prohibited Conduct occurred based solely on a Party's or witness's refusal to respond to questions.

The decisionmaker will prepare a final report that includes:

- A description of the allegations of Prohibited Conduct;
- Information about the policies and procedures used to evaluate the allegations;
- A description of the procedural steps taken from the receipt of the complaint through the determination of responsibility, including any notifications to the Parties, interviews with the Parties and witnesses, and methods used to gather other evidence;
- An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation;
- Findings of fact for each allegation, with rationale; and
- Conclusions regarding the section of this Policy that Respondent has violated with rationale.

The final report will be provided to the Title IX Coordinator. The Title IX Coordinator will share the final report with the Parties and their advisors in the same or similar manner as the investigation report.

F. Sanctions

If the decisionmaker determines that a violation of this Policy has occurred, the Title IX Coordinator will provide the final report to the Vice Deans (faculty) or the Chief Operating Officer (staff) to determine the appropriate sanctions. Each Party may submit a written impact statement to the individual responsible for determining sanctions.

The Title IX Coordinator will provide the Parties and their advisors with a notice of outcome. The notice of outcome will include:

- A statement of and rationale for any disciplinary sanctions imposed on Respondent;
- A statement on whether remedies will be provided to the Reporting Party;
- For the Reporting Party, a description of any remedies that apply to the Reporting Party;
- The Law School's procedures for the Parties to appeal, including identifying the appeals officer; and
- The opportunity to object to the appeals officer for bias or conflict of interest.

G. Appeals

Each Party may appeal the decisionmaker's determination and the sanctions imposed on the grounds of procedural error that affected the outcome of the case, new information that was not previously available or known to the Party, and actual conflict of interest or demonstrated bias that affected the outcome of the case. An appeals officer will review each Party's appeal, if any, and issue determinations. The appeals officer's decision is final.

The determination regarding responsibility will be final either on the date the Law School provides the Parties with the appeals officer's determination or, if no Party appeals, the date on which an appeal would no longer be considered timely.