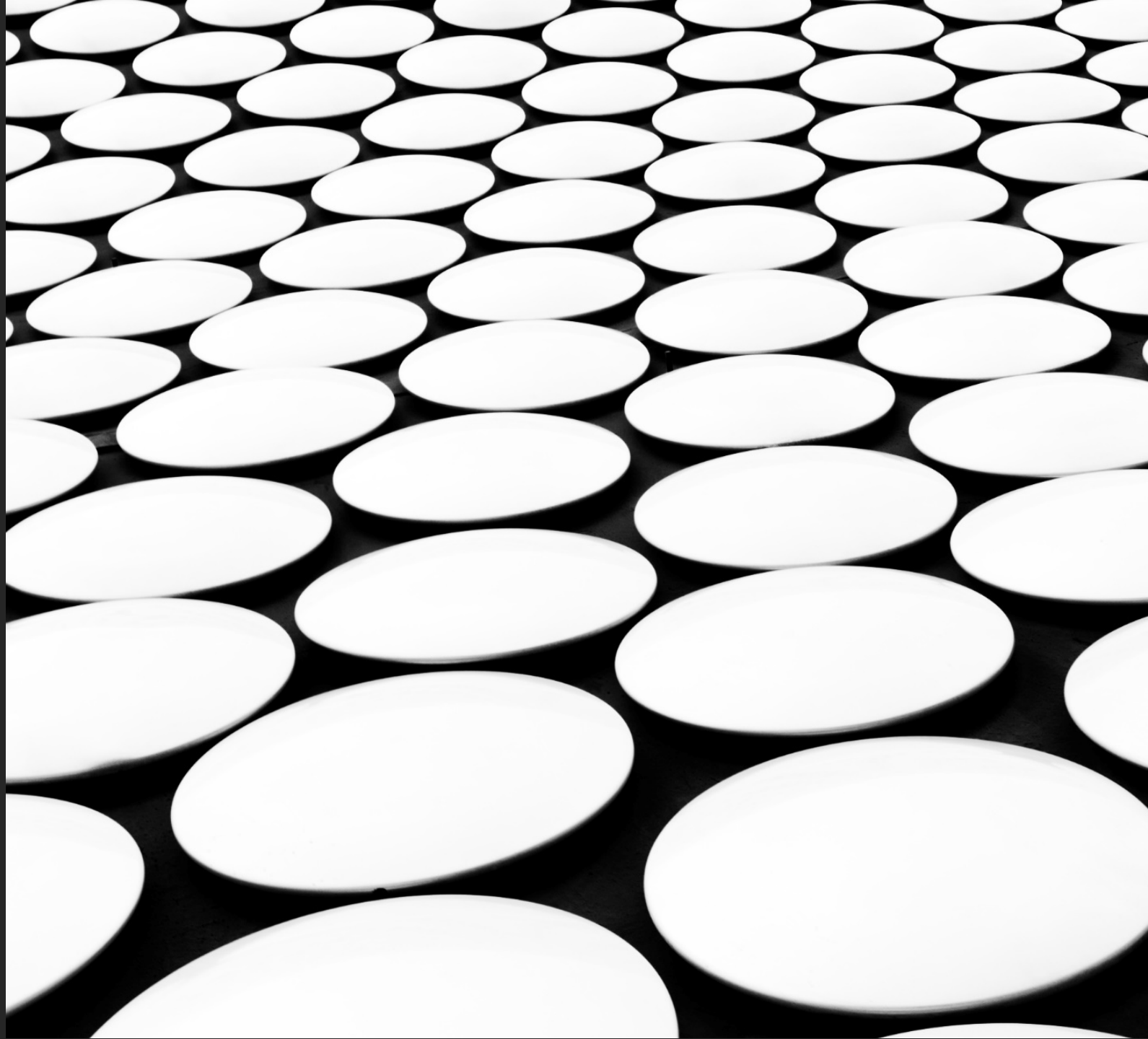

**DISCRIMINATION,
HARASSMENT,
SEXUAL
MISCONDUCT &
TITLE IX SEXUAL
HARASSMENT
POLICY &
PROCEDURES**

PREPARED FOR THE
PRESIDENT'S CABINET
JANUARY 2021



MAY 2020 – DEPARTMENT OF EDUCATION ADOPTS REVISED TITLE IX REGULATIONS

100 pages of regulations
2000+ pages of guidance to interpret the regulations

May 19 2020

August 14 2020

Implementation requirement

COMPREHENSIVE POLICY

**INCLUDING
DISCRIMINATION,
HARASSMENT,
SEXUAL MISCONDUCT
AND TITLE IX SEXUAL
HARASSMENT**

- Employee and student policies, procedures and grievance processes needed to come in alignment with the law and best practices
- Revised Regulations - Complex
- California Law Overlay

SCOPE

This policy applies to all members of the University community, including FPU employees, students, applicants for admission or employment, third-party contractors and vendors, independent contractors, volunteers and any third party who enters FPU facilities.



This policy applies to prohibited conduct alleged to have occurred: (a) on FPU property; (b) in connection with FPU activities, programs, or events; (c) online or off-campus where the conduct affects the FPU learning or working environment, would violate other University Policies had it occurred on campus, or where the University determines it has a substantial interest.

DISCRIMINATION:

Discrimination means excluding from participation, denying the benefits of, or otherwise subjecting an individual or group of individuals to different treatment based on a Protected Class. For example, unlawful discrimination may consist of a decision, policy, or practice.

Fresno Pacific University (“FPU” or “University”) does not discriminate in the operation of or access to the University’s programs on the basis of the following **protected classes**: race; color, national origin (including possessing a driver’s license issued under Vehicle Code § 12801.9), or ancestry; age; physical or mental disability, perceived disability or perceived potential disability; sex, gender, pregnancy or perceived pregnancy, childbirth, breastfeeding or medical conditions related to pregnancy, childbirth or breastfeeding; medical condition; citizenship; military and veteran status; genetic characteristics; political affiliation; or any other classifications protected by applicable federal, state, or local laws and ordinances (“Protected Class” or “Protected Classes”).

HARASSMENT

- Unwelcome verbal, visual or physical conduct based on a Protected Class which creates an intimidating, offensive, or hostile work or educational environment that interferes with a person's work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile or offensive. Harassment can be verbal (including slurs, jokes, insults, epithets, gestures or teasing), graphic (including offensive posters, symbols, cartoons, drawings, computer displays, or e-mails) or physical conduct (including physically threatening another, blocking someone's way, etc.) that denigrates or shows hostility or aversion towards an individual based on a Protected Class.
- **In California, the “victim” does not have to be the person harassed but can be anyone affected by the offensive conduct.**

TITLE IX SEXUAL HARASSMENT

- Conduct on the basis of sex that satisfies one or more of the following:
 - (i) an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
 - (ii) unwelcome conduct determined by a reasonable person to be so severe, pervasive, ***and*** objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
 - (iii) Sexual Assault, Dating Violence, Domestic Violence, or Stalking (VAWA).

SEXUAL MISCONDUCT

- Sexual Misconduct that is not TIX or TIX Violations that are not Sexual Harassment – **one-time sexual harassment (unless VAWA), Sexual harassment or VAWA crimes outside of the USA (CLERY), sex/gender disparities/discrimination.**
- California Sexual Harassment (TVII) – Quid Pro Quo and Hostile Environment based on a protected class.
- **Sexual harassment need not be motivated by sexual desire.**
 - Obscene or vulgar gestures, posters, or comments; Sexual jokes or comments about a person's body, sexual prowess, or sexual deficiencies; Propositions, or suggestive or insulting comments of a sexual nature; Derogatory cartoons, posters, and drawings; Sexually-explicit e-mails or voicemails; Uninvited touching of a sexual nature; Unwelcome sexually-related comments; Conversation about one's own or someone else's sex life; Conduct or comments consistently targeted at only one gender, even if the content is not sexual; or Teasing or other conduct directed toward a person because of the person's gender.
- **Some inappropriate workplace behavior is not protected, such as “bullying”, but the university has an interest in managing it appropriately - often go hand-in-hand.**

STANDARD OF PROOF

- New regulations allow institutions to choose between “preponderance of the evidence” or “clear and convincing”.
- California law requires (for both TVI/VII & TIX) “preponderance of the evidence” – no choice
- Intent can not factor into the determination of facts but can factor into determining corrective measures.

**“NOTICE”
&
“ACTUAL
KNOWLEDGE”**

Report

Complaint

Formal Complaint (TIX Only-
Actual Knowledge)

WHO MUST REPORT?

- Responsible Employee – All employees including student employees
- Responsible Administrators – VP Campus Life; Executive Director of HR; Title IX Coordinator
- Officials with Authority (TIX Only)
 - **Actual Knowledge (Formal Complaint).** The following positions have authority at Fresno Pacific University to institute Preventative and Corrective Measures for Title IX Sexual Harassment: The President, the Provost, all Vice Presidents, all Deans of colleges within the University, the Title IX Coordinator, the highest level administrator in the Office of Human Resources, the highest level administrator in the Department of Campus Life, and all employees who serve as either student conduct officers, hearing officers, hearing panel members, decision makers, or appeal adjudicators in cases of Title IX Sexual Harassment when serving in that role. *In all cases, Preventative and Corrective Measures must be imposed in compliance with the Grievance Process for Complaints of Title IX Sexual Harassment.*

EVALUATING REPORTS

- Responsible administrators must evaluate the report “on-it’s-face” to determine who has jurisdiction (Title IX/HR/Student Conduct), but they must be careful not to “try” a case before it goes through a grievance process.
- All reports that include sex or gender-based complaints will be evaluated and managed by the Title IX Coordinator in consultation with the other Responsible Administrators.
- Many complaints will be on the edge of the Grievance 1 or Grievance 2 process.
- New information learned in an investigation may change the course of a case.

THE UNIVERSITY'S OBLIGATIONS

- It is the responsibility of the TIX Coordinator to ensure a process free from bias or sex/gender stereotypes from those with responsibility to ensure a fair process which includes the TIX coordinator, investigator, hearing officer, appeal person (a gender or sex-based bias in a Title IX process can be a Title IX violation in and of itself).
- Supportive Measures (All reports/complaints/formal TIX complaints).
- TIX - Institutions must respond when sexual harassment occurs within an “education program or activity” against a person in the united states.
- TVI/VII – Institutions must respond when discrimination, harassment or sexual harassment/misconduct occurs in the workplace.
- Grievance Process, Due/Fair Process.

THE GRIEVANCE PROCESS

- Grievance 1:
 - Notice; Investigation; Limited Transparency (will not share evidence, reports, corrective measures); Findings; & Appeal.
- Grievance 2: (TIX Sexual Harassment only):
 - Enhanced Due Process: Notice; Investigation; Full Transparency (evidence, reports, findings, corrective measures); Live Hearing with Cross Examination; & Appeal.
- Education is essential to end and prevent illegal behavior. A G2 process is extremely difficult for all involved – physically, emotionally, mentally, spiritually on all who are involved and very costly to the university (\$50,000 or greater per case).

ALTERNATIVE OR INFORMAL RESOLUTION PROCESSES

Mediation (legal definition) or Restorative Justice options

Never (pre-adjudication) with an employee respondent including student employees (TVII & TIX)

“Voluntary” in cases with a student respondent – Including TIX Sexual Harassment

“Voluntary” in all matters – after the adjudication/appeal process is complete – must be initiated by one of the parties

**WHAT IS THE
MOST
IMPORTANT
THING TO WALK
AWAY WITH
TODAY?**

**TIMELY
REPORTING**

IF YOU ARE NOT
SURE CALL A
RESPONSIBLE
ADMINISTRATOR
(CAMPUS LIFE, TITLE IX OR
HUMAN RESOURCES)

EDUCATION – DHSM & TIX POLICY & PROCEDURES

Presidents Council

Spring 2021

Summer 2021

Directors not on President's Council

QUESTIONS?

