

## SEXUAL MISCONDUCT GRIEVANCE POLICY AND PROCEDURES TITLE IX

Gnomon

Version 2018-2019.1

Policies and procedures are subject to change with proper notice.

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## INTRODUCTION

Final regulations for the Violence Against Women Act (VAWA) amendments to the Clery Act expand rights afforded to campus survivors of sexual assault, domestic violence, dating violence, and stalking. The interplay of VAWA and Title IX implicates a range of requirements addressing policies, procedures and programs for handling asserted sexual offenses, and training carefully personnel responsible in this area. The Title IX Policy and Grievance Procedures reflect the requirements for reporting, investigation, and resolution of complaints.

## **NOTICE OF NON-DISCRIMINATION; COMPLAINTS CONCERNING DISCRIMINATION, HOSTILE ENVIRONMENT, AND/OR SEXUAL HARASSMENT UNDER TITLE IX**

### **NON-DISCRIMINATION POLICY**

Gnomon does not discriminate in admission, treatment, or access to its programs or activities on the basis of race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local, or federal law. These practices include, but are not limited to, hiring, employment promotion and transfer, admissions policies, and administration of loan programs and participation in the benefits and services of education programs or related activities sponsored by Gnomon.

The institution complies with the Civil Rights Act of 1964, as amended; Title IX of the Education Amendment Act of 1972; Section 504 of the Rehabilitation Act of 1973; Age Discrimination Act of 1975; California SB-195 Equity in Higher Education Act, and any other applicable federal, state and local law. Gnomon is committed to a multicultural workplace and education programs involving cultural and ethnic diversity among the school's community.

### **HARASSMENT & SEXUAL MISCONDUCT POLICY**

Gnomon is committed to providing a safe learning and working environment for students and employees that is free from all forms of discrimination, harassment, exploitation, or intimidation. Sexual misconduct is a form of discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and/or

verbal or physical conduct of a sexual nature. This includes, but not limited to, sexually-related drawings, pictures, jokes, teasing, uninvited touching or other sexually-related comments. Gnomon strongly opposes harassment and sexual misconduct and such behavior is prohibited by school policy, federal and state law.

This policy applies to all Gnomon community members, including students, faculty, administrators, staff, and third parties conducting business or having any official capacity with the school or on school property. Gnomon is prepared to take prompt action to prevent and correct such behavior of individuals who engage in sexual harassment, as well as any other unlawful harassment based on factors such as race, color, national origin, ancestry, sex, gender, gender identification, sexual orientation, disability, age, religion, physical and/or mental disability, medical condition, veteran status, marital status or any other characteristic protected by institutional policy or state, local, or federal law. Violations of this policy are not permitted and may result in disciplinary action up to and including expulsion or termination.

Gnomon encourages any student or employee to immediately report these incidents. Gnomon is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual misconduct, and sexual violence. Throughout the process of investigation of a report every effort will be made to protect the privacy interests of all individuals, and respect and safeguard private information, to the extent possible consistent with the legal obligations of Gnomon to investigate and respond effectively. Adverse action will not be taken against a student or employee who, in good faith, reports or participates in the investigation of a violation of this policy. Retaliation against a person who properly reports, complains about, or participates in the investigation of such harassment is strictly prohibited.

Gnomon's Non-Discrimination Policy and Harassment and Sexual Misconduct Policy and procedures are available in full on Gnomon's website at <https://www.gnomon.edu/disclosures-policies>.

Inquiries and complaints regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to:

Rashida (Rae) Randolph  
Human Resources/Acting Title IX Representative  
1015 N. Cahuenga Blvd.  
Los Angeles, CA 90038  
323.466.6663/Fax 323.466.6710  
[studentaffairs@gnomon.edu](mailto:studentaffairs@gnomon.edu)

Complaints may also be filed directly with the Department of Education Office for Civil Rights:

Office for Civil Rights  
San Francisco Office  
50 Beale Street, Suite 7200  
San Francisco, CA 94105-1813  
415.486.5555 / Fax 415.486.5570  
TDD: 800.877.8339  
[ocr.sanfrancisco@ed.gov](mailto:ocr.sanfrancisco@ed.gov)

## **PROCESSES AND PROCEDURES FOR INVESTIGATION OF DISCRIMINATION, HARASSMENT AND SEXUAL MISCONDUCT**

Title IX of the Higher Education Amendments of 1972, 20 US Code § 1681(a), a federal law which prohibits discrimination on the basis of sex in education programs or activities, and includes addressing sexual harassment, sexual violence and other gender-based harassment occurring in an institution of education.

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

Title IX’s sex discrimination classification extends to claims based on gender identity or nonconformity with stereotypical notions of masculinity or femininity. The U.S. Department of Education’s Office for Civil Rights (OCR) is the primary authority for investigating alleged violations of Title IX in educational institutions.

When sexual harassment or sexual violence has occurred and is brought to the attention of the acting Title IX Representative, Gnomon will take steps to end the harassment or violence, prevent its reoccurrence, and address its effects. A Title IX civil investigation is a fact-finding proceeding and decision-making process the school uses to determine: (1) whether or not the conduct occurred; and (2) if the conduct occurred, what actions the school will take to end the sexual violence, eliminate the hostile environment, and prevent its recurrence, which may include imposing sanctions on the alleged perpetrator (here forth referred to as “Respondant”) and providing remedies for the victim (here forth referred to as “Complainant”) and broader student population.

### Jurisdiction

Title IX Policy is implemented through Gnomon’s Harassment & Sexual Misconduct policy. This policy applies to all Gnomon community members, students, faculty, administrators, staff, and third parties conducting business or having any official capacity with the school or on school property. Gnomon has jurisdiction over Title IX related complaints regarding conduct that occurred on campus, during or at an official Gnomon program or activity (regardless of location), or off campus when the conduct creates a hostile environment on campus.

Gnomon is prepared to take prompt action to prevent and correct behavior of individuals who engage in sexual harassment, as well as any other unlawful harassment based on factors such as race, ethnicity, religion, national origin, sexual orientation, gender, gender identity, disability, or age. If it is determined that sex-based discrimination or misconduct has occurred, appropriate discipline will be imposed and steps taken to address and stop the misconduct, as well as remedy its effects. Gnomon will cooperate with any criminal investigation, separate from the school’s (civil) investigation.

Gnomon’s acting Title IX Representative is responsible for coordinating the school’s efforts to comply with and carry out its Title IX responsibilities, oversees the school’s response to all reports of Title IX violations, and assess campus climate to identify and address any pattern or systemic problems.

The acting Title IX Representative oversees all reports and complaints raising Title IX issues, even if the complaint was initially filed with another individual or office, or the investigation will be conducted by another individual or office. The acting Title IX Representative consults with the school’s senior administration to determine the recipient’s (Gnomon) responses to all complaints involving possible sex discrimination.

## Definitions

**Complainant:** Within the school's processes the Complainant is the party making the allegations.

**Respondent:** Within the school's processes the Respondent is the person who the allegations have been made against.

**Proceeding:** Proceeding means all activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, and formal or informal meetings.

**Result:** Result means any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters within the institution. The result must include any sanctions imposed by the institution. Notwithstanding 20 US Code §1232g (FERPA), the result must also include the rationale for the result and the sanctions.

**Coercion:** Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against his/her will. 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 of will and ability to choose whether or not 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 the sexual activity.

**Incapacitation:** Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because he/she lacks conscious knowledge of the nature of the act, and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if he/she is asleep, unconscious, or otherwise unaware that sexual activity is occurring. Evaluating incapacitation also requires an assessment of whether a Respondent knew or should have known that the Complainant was incapacitated.

**Affirmative Consent:** Gnomon policy defines affirmative consent as affirmative, conscious, and an active and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. In compliance with Senate Bill 967 (SB 967) enacted by the California Legislature as Chapter 748, adding Section 67386 to the Education Code, an affirmative consent is the standard for determination of whether consent was given by both parties to sexual activities.

**Sexual Harassment:** Sexual harassment is a form of discrimination and is generally defined as unwanted sexual conduct of two main types: quid pro quo harassment and hostile environment harassment. A significant factor for determining sexual harassment is whether a reasonable person would have considered the conduct severe or pervasive so that it can be said to deprive the Complainant of access to the educational opportunities or benefits provided by the institution.

**Quid Pro Quo:** Quid pro quo harassment occurs when unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment or educational benefits or services, or submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting the individual.

**Hostile environment:** The more frequent type of sexual harassment, hostile environment harassment, occurs when intimidating, threatening, or offensive verbal or physical conduct of sexual nature, including incidents of sexual assault, or violence, which is unwelcome and is sufficiently severe or pervasive to interfere with an employee's work environment or a student's education.

Sexual harassment is not limited to conduct motivated by sexual attraction. It may occur between members of the opposite sex or members of the same sex, regardless of their sexual orientation. It also includes offensive non-sexual conduct directed at an individual because of his or her gender.

Examples:

Verbal harassment - Sexual requests, jokes, innuendoes, comments, or sexual remarks about clothing, body or sexual activities.

Physical harassment - Attempted or actual kissing, fondling, or other inappropriate touching or feeling.

Visual harassment - Drawings, written/email messages, or comments of suggestive nature.

**Sexual Violence\*:** Sexual violence is an extreme form of hostile environment/sexual harassment. The scope of these offences includes those that are forced and/or against a person's will, rape, sexual assault, sexual battery and sexual coercion.

**Sexual Assault\*:** Sexual assault is defined as any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the Complainant is incapable of giving consent because of his/her temporary or permanent mental incapacity; because of his/her youth; or physical incapacity. Sexual assault includes, but is not limited to rape, forcible sodomy, penetration with a foreign object, sexual battery or the threat of sexual assault.

**Retaliation:** Retaliation is acts or attempts to retaliate or seek retribution. Retaliation can take many forms, including threats, intimidation, pressuring, continued abuse, violence, reprisal and/or an adverse action related to employment or education. Retaliation may be committed by or against an individual or a group. A Complainant, Respondent or third party may commit or be the subject of retaliation. Retaliation against a person who properly reports or participates in the investigation of violations is strictly prohibited. Retaliation may result in additional sanctions or legal action, or both.

**Sex Offenses\*** are any sexual acts directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent.

*Rape (Except Statutory Rape):* Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of

the Complainant. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded.

*Fondling.* Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

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

*Statutory Rape.* Statutory Rape is non-forcible sexual intercourse with a person who is under the statutory age of consent.

**Stalking\*:** Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

**Intimate Partner Violence (IPV)\*:** Intimate partner violence, often referenced as Domestic Violence and/or Dating Violence, describes physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner. An intimate partner is a person with whom one has a close personal relationship that can be characterized by the following: emotional connectedness; regular contact; ongoing physical contact and sexual behavior; identity as a couple and/or; familiarity and knowledge about each other's lives. The relationship need not involve all of these dimensions. Examples of intimate partners include current or former spouses, boyfriends or girlfriends, dating partners, or sexual partners. IPV can occur between heterosexual or same-sex couples and does not require sexual intimacy. IPV can vary in frequency and severity. It occurs on a continuum, ranging from one episode that might or might not have lasting impact to chronic and severe episodes over a period of years.

The school will not tolerate IPV of any form. For the purposes of this policy, the school does not define IPV as a distinct form of misconduct. Rather, the school recognizes that sexual harassment, sexual assault, stalking, and retaliation all may be forms of IPV when committed by a person who is or has been involved in a sexual, dating or other social relationship of a romantic or intimate nature with the Complainant.

Intimate Partner Violence: Definitions (Centers for Disease Control and Prevention)  
<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/definitions.html>

\*The school will record and report all crimes in categories identified in the Clery Act and the Campus SaVE Act.

## Reporting Options

Gnomon encourages victims of sexual violence to talk to somebody about what happened – with the intention to get the victim the support he/she needs. If the school knows or reasonably should know of possible sex-based discrimination or sex-based misconduct, a thorough and impartial investigation will be promptly conducted to determine if there has been a violation of Gnomon's Harassment & Sexual Misconduct policy.

## MANDATORY REPORTING

### CAMPUS SECURITY AUTHORITIES (CLERY ACT)

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) requires schools to keep and disclose information about crime on and near their respective campuses. A Campus Security Authority (CSA) is an individual or organization specified in the institution's security policy to which students and employees may report criminal offenses. The law defines four (4) categories of a CSA: Campus Police; non-police security staff responsible for monitoring school property; people/Offices designated to whom crimes should be reported; and "Officials with significant responsibility for student and campus activities". CSA's are defined by job function, not by title. Examples of CSA's are Education Directors, Activities Coordinators, Representatives, Student Council Officers, Student Advisors, or Staff/Faculty Advisors to student organizations. The focus is on student activities; not faculty and staff. Examples of job capacities that do NOT conform to CSA requirements are: Administrative staff not responsible for student activities (e.g., payroll, facilities management); clerical staff; individual faculty who do NOT serve as advisors to registered student organizations; or Counselors who only provide care to individual students.

CSA's are obligated to report to the appropriate school authorities Clery Act qualifying crimes\* that are reported to them which occurred on Clery reportable locations. CSA's are able to receive reports of sexual misconduct and maintain the Complainant's rights of privacy. CSA's are not able to maintain the Complainant's complete confidentiality.

### Responsible Employees (Title IX)

A "Responsible Employee" is a school employee who "a student could reasonably believe has the authority or responsibility to take action"; has the authority to take action to redress the harassment; or has the duty to report sexual harassment or any other misconduct by students or employees to appropriate school officials. Gnomon deems all employees "Responsible Employees" - faculty, advisors, and staff – and thereby enabled to talk to a victim in confidence.

A Responsible Employee must report to the acting Title IX Representative all relevant details about the alleged sexual misconduct. This includes information such as the names of the Complainant and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident. Because of this, it is suggested that reporting parties carefully consider what personally identifiable information is shared. A Responsible Employee may not share information with law enforcement without the Complainant's consent or unless the Complainant has also reported the incident to law enforcement. Generally, climate surveys, classroom writing assignments, or events (such as "Take Back the Night") do not provide notice that must be reported by employees.

A Complainant has the right and can expect to have reports taken seriously by Gnomon when formally reported, and for the prompt, equitable, reliable, and impartial investigation of complaints. Under Title IX, an institution is required to take immediate and corrective action if a Responsible Employee knew or, in the exercise of reasonable care, should have known about sexual or gender-based harassment that creates a hostile environment. With the guidance of the acting Title IX Representative, the school will enact an initial assessment of the conduct, to the extent possible within the Complainant's expressed preferences, if any, as to course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community. Remedial actions may result without formal action. Gnomon cannot take appropriate action unless an incident is reported to the school.

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Failure of a Responsible Employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of school policy and can be subject to disciplinary action.

## Confidentiality vs. Privacy

A Complainant's request for confidentiality will be respected to the extent possible consistent with the school's legal obligation to investigate and respond. The school's ability to respond may be limited in the event of such a request (including pursuing discipline against the Respondent). In cases indicating pattern, predation, threat, weapons and/or violence, Gnomon will unlikely be able to honor a request for complete confidentiality. In cases where the Complainant requests confidentiality and the circumstances allow the school to honor that request, Gnomon will offer interim supports and remedies to the Complainant and the community but will not otherwise pursue formal action.

Formal reporting still affords privacy to the reporter. Privacy generally means that information related to a report of misconduct will only be shared as it becomes necessary, with a limited circle of individuals who "need to know" in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

A report of harassment or sexual misconduct may be made in person to the appropriate Gnomon official. † In addition to and/or in lieu of a verbal report, a complaint form is provided online. A form does not need to be completed to make a report. Complaints may be made in any format - submitted via email, mail, or in person.

Rashida (Rae) Randolph  
Human Resources/Acting Title IX Representative  
1015 N. Cahuenga Blvd.  
Los Angeles, CA 90038  
323.466.46663/FAX 323-466-6710  
[studentaffairs@gnomon.edu](mailto:studentaffairs@gnomon.edu).

*† See Responsible Employee and Mandatory Reporting, and CSA definitions. Off-Campus Confidential Reporting*

## Off-Campus Confidential Reporting

An individual who seeks completely confidential assistance may do so by speaking with professionals who have a legally protected capability to maintain confidentiality. Off-campus confidential reporting options are available through the Gnomon Student Assistance Program (GSAP), local rape crisis counselors, victim advocacy centers, domestic violence resources, local or state agencies, and emergency care facilities.

Information shared with these resources remain confidential and will not be shared with Gnomon or anyone else without express permission of the individual seeking services. Information about these and other resources may be obtained from the acting Title IX Representative, and online Guide to Resources and Services for Victims of Sexual Assault.

## Anonymous Reporting

Any individual may make an anonymous report concerning an act of discrimination, sexual harassment, sexual violence, and stalking or intimate partner violence. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the extent of information available about the incident or the individuals involved, may limit the school's ability to respond to an anonymous report. The anonymous reporting form can be found [here](#).

The acting Title IX Representative will receive the anonymous report and determine any appropriate steps compliant with all Clery Act obligations, including individual or community remedies as appropriate.

## False Reports

The school will not condone intentional false reporting of incidents. The school takes the accuracy of information very seriously as a charge of sexual harassment, sexual violence, stalking or intimate partner violence may have severe consequences. A good-faith complaint that results in a finding of not responsible is not considered a false or fabricated accusation of sexual misconduct. However, when a Complainant or third-party witness is found to have fabricated allegations or given false information with malicious intent or in bad faith, the Complainant may be subject to disciplinary action. It is a violation of the school's policy of Student Conduct to make an intentionally false report of any policy violation and may also violate state criminal statutes and civil defamation laws.

## Reports Involving Minors or Suspected Child Abuse

Under California law, child abuse must be reported when one who is a legally mandated reporter has knowledge of or observes a child (a person under the age of 18) in his or her professional capacity, or within the scope of his or her employment whom he or she knows, or reasonably suspects has been the victim of child abuse or neglect (PC 11166(a)). "Reasonable suspicion" occurs when "it is objectively reasonable for a person to entertain such a suspicion based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect child abuse (PC 11166(a)(1)). The intent of this definition is: if you suspect, report.

All school employees, whether designated as a mandatory reporter under federal or California state law or not, are required to immediately report any suspected child abuse and neglect to the acting Title IX Representative, or Gnomon senior administration. The source of abuse does not need to be known in order to file a report. In addition to notifying the acting Title IX Representative, any individual may make a direct report by calling 911 if a child is in immediate danger, or if there is no immediate danger, contact the Child Protection Hotline 24 hours a day, 7 days a week, at (800) 540-4000.

The school will report all suspected child abuse and neglect, including sexual assault, to law enforcement and/or to Los Angeles County Department of Child and Family Services. The school must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee, student, or volunteer to investigate suspected child abuse. This is the role of Child Protective Services and law enforcement authorities.

## COMPLAINT PROCESS STATEMENTS

The acting Title IX Representative has primary responsibility for investigating reports of discrimination, harassment and sexual misconduct. The acting Title IX Representative is situated to appropriately respond to, and investigate suspected discrimination or harassment, and identify and remedy systemic problems. The acting Title IX Representative is also the gatekeeper for determining when complaints merit formal investigation.

When the acting Title IX Representative becomes aware of a specific incident or course of conduct that may constitute a violation of the school's Non-Discrimination, Harassment & Sexual Misconduct policy, through a direct complaint or otherwise, the acting Title IX Representative will immediately begin an investigation upon request of the Complainant, or evaluate the complaint to determine if a formal investigation is necessary to protect the parties or the broader school community, and what policy violations should be alleged as part of the complaint. If deemed necessary, interim remedial measures (Appendix A) such as no contact orders, and other means necessary to avoid contact between the Complainant and the Respondent may be taken prior to completion of the investigation. The acting Title IX Representative will work with the appropriate school departments to implement interim measures as necessary. Officials involved in these proceedings are appropriately trained on the handling of complaints of sexual harassment, Gnomon's Harassment & Sexual Misconduct Policy, Title IX and grievance policy and procedures, and applicable confidentiality requirements.

### Equitable Rights, Responsibilities and Opportunities

A Complainant and Respondent are provided equitable rights and opportunities throughout all proceedings – e.g. have others present in meetings; receive timely notice of meetings at which one or the other or both may be present; simultaneous notifications of results. Proceedings are completed in a reasonable and prompt timeframe wherein both parties, and appropriate officials, have timely access to information that will be used during informal and formal disciplinary meetings.

Written notification of results, rationale, and available appeal procedures are delivered simultaneously.

### Retaliation Statement

An individual reporting sexual harassment or misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not proven. It is a violation of school policy to retaliate in any way against an individual as a result of that person's filing a complaint, or for participating in the investigation of a complaint. Any person found to have retaliated against another for making a complaint under Title IX, being a witness in a Title IX investigation, or being otherwise involved in the complaint and/or investigative process, will be subject to discipline up to and including expulsion or termination, or legal action, or both. Acts of suspected retaliation should be reported immediately to the acting Title IX Representative.

### Coordination with Law Enforcement

Gnomon encourages Complainants to pursue criminal action for incidents of sexual harassment, sexual violence and intimate partner violence that may also be crimes under California law. The school will assist a Complainant in making a criminal report and cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process to the extent permitted by law.

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The school's policy, definitions and burden of proof may differ from California criminal law. A Complainant may seek recourse under this policy and/or pursue criminal action. Neither law enforcement's determination whether or not to prosecute a Respondent, nor the outcome of any criminal prosecution, are determinative of whether a violation of this policy has occurred. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. If a criminal complaint is filed with a local law enforcement agency, Gnomon will comply with law enforcement agency requests for cooperation and that such cooperation may require the school to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency gathers evidence. Gnomon will promptly resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

## Assembly Bill No. 1433 (AB 1433)

On September 29, 2014 AB 1433 was enacted by the California Legislature as Chapter 798, amending Section 67380 of, and to add Section 67383 to the Education Code relating to student safety. All reported or knowledge of Part 1 violent crimes, sexual assault, or hate crime, committed on or off campus is immediately, or as soon as practically possible, forwarded to the appropriate law enforcement agency, as provided. The report is forwarded without identifying the Complainant, unless the Complainant consents to being identified after the Complainant has been informed of his or her right to have his or personally identifying information withheld. AB 1433 provides that these requirements do not constitute a waiver of, or exemption to, any law providing for the confidentiality of information.

## Amnesty for Alcohol or Other Drug Use

Gnomon encourages the reporting of prohibited conduct under this policy. Individuals who participate as a Complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to student conduct sanctions for a violation of the school's Drug and Alcohol Abuse Policy at or near the time of the incident, unless the school determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty (SB 967 EDC § 67386(b)(10)). Gnomon may, however, initiate an educational discussion or pursue other educational remedies.

## Timeliness and Locality

Complainants and third-party witnesses are encouraged to report sexual harassment, sexual violence and intimate partner violence as soon as possible in order to maximize the school's ability to respond promptly and effectively. Gnomon does not impose limitations on the time frame for reporting.

An incident does not have to occur on campus to be reported to the school. Off campus conduct that is likely to have a substantial effect on the Complainant's on campus life and activities or poses a threat or danger to members of the Gnomon community may also be addressed under this policy.

## Conflict of Interest or Allegation of Bias

The grievance process cannot be equitable unless it is impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed. All Gnomon officials involved in the investigation, findings determination, and appeals should not have other job responsibilities that may create a conflict of interest. If the assigned investigator has a conflict of interest with either of the parties or the subject matter of the case, the investigator may recuse himself/herself,

or the party alleging a conflict of interest may request that a different investigator be assigned to the case.

The Complainant or Respondent may petition for an alternative investigator based on a conflict of interest by providing notice in writing to the acting Title IX Representative as soon as practicable upon discovery of the potential conflict. The request should detail the nature of the conflict of interest and why the requesting party believes that the assigned investigator cannot conduct a fair and impartial investigation. The decision of whether or not to assign an alternative investigator rests with the acting Title IX Representative or appropriate Gnomon official. A written response to the request will be provided within three (3) business days upon receipt of the request. Gnomon reserves the right to obtain an independent outside investigator if the situation presented or the parties involved would create an inherent conflict of interest.

## FERPA

Compliance with these provisions does not constitute a violation of section 444 of the General Education Provisions Act (20 US Code § 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA). Gnomon may disclose the outcome of any student conduct proceedings to the person filing the complaint without prior written consent when the disclosure is to a Complainant of an alleged perpetrator of a crime of violence including physical sexual misconduct. Furthermore, FERPA permits the school to notify the student filing the complaint of any sanctions assigned to another student that may affect him or her.

## **INVESTIGATION OF A COMPLAINT**

The Complainant will be informed of available resources such as victim advocacy, academic support, counseling, disability services, and health and mental health support and services.

Proceedings, including the implementation of disciplinary action(s) for students or employees, are generally completed within sixty (60) calendar days from the time the acting Title IX Representative receives sufficient information regarding the complaint to begin an investigation. The school will inform both parties at regular intervals of the status of its investigation. Generally, information gathering should be completed within thirty (30) calendar days of notice of a complaint. Review of any physical documentation of the incident, including but not limited to, screenshots, audio and visual recordings, text message logs, emails, phone logs, social media postings, etc. is completed during this time. Informational interviews with Complainant, Respondent, and relevant witnesses, will occur to the extent they are willing to be interviewed.

Once information gathering is complete, the investigator will prepare an information summary, which generally includes findings of fact and an analysis under relevant school policies. It is within the discretion of the investigator and acting Title IX Representative to determine if further information gathering is warranted and/or if the information summary should be modified based on the feedback of Complainant and Respondent.

At the conclusion of the evaluation of the information summary, the acting Title IX Representative and appropriate Gnomon officials will determine the appropriate manner of resolution and, if appropriate, refer the report for further investigation, informal or formal resolution. The determination as to how to proceed will be communicated to the Complainant in writing. If the investigator determines that no formal investigation is required, the investigator will provide the reasons for this determination in writing.

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For example, in some cases there is not enough information available to make a baseline determination that a violation of the Non-Discrimination, Harassment & Sexual Misconduct policy applies (i.e. it may be unclear that the alleged harassment was on the basis of sex, gender expression or identity, or sexual orientation). In other instances, the issue reported can be resolved informally or through other processes without an investigation. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution. A Respondent will be notified when the school seeks action that would impact a Respondent, such as protective measures that restrict his/her movement on campus, the initiation of an investigation or the decision to involve the Respondent in informal resolution.

In a determination of a formal investigation, the investigator will conduct the investigation in a manner appropriate to the circumstances of the case. Proceedings are designed to provide an unbiased and reliable gathering of the facts. The investigation will be thorough, impartial and equitable. All individuals will be treated with appropriate sensitivity and respect and conducted in a manner that is respectful of individual privacy concerns.

All Title IX complaints involving sexual violence may not be mediated.

Proceedings typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the school will provide an opportunity for the parties to present witnesses and other evidence.

When an investigation is complete, the investigator will prepare a full investigation report ("Report"). The Report will include an overview of the complaint, a review of all relevant information gathered (including the information summary), Respondent's and Complainant's written response(s) to the information summary (if any), and a finding regarding violation of any relevant school policies. If the finding indicates a violation of school policy, the investigator may also include recommended disciplinary action(s).

This report and recommendations made by the acting Title IX Representative are submitted to the appropriate Gnomon officials for review and approval of the report, and authorization of issuance of findings and any recommended disciplinary action(s). A notice of findings - whether a violation of school policy occurred or not - will be sent simultaneously to both Complainant and Respondent. This notice includes actions to be taken to resolve the complaint.

Each party is allowed to appeal the investigation findings and/or sanctions as provided by Non-Academic Appeal guidelines. Failure to appeal within the specified time period will make the original decision final and conclusive. A submission for appeal does not predicate alterations to the findings and/or sanctions.

Although Gnomon strives to complete all investigations, issue a report, and implement student and/or employee disciplinary actions within sixty (60) calendar days of receipt of notice, occasionally more time may be needed to complete an investigation and associated processes. If additional time is necessary, Complainant and Respondent will be notified in writing.

## Grievance Investigation Procedure

Procedural requirements applicable to complaints of sexual violence under other federal laws may also apply, including the requirements of the Clery Act. The rights established under Title IX are interpreted consistent with any federally guaranteed due process rights.

A timely investigation process consists of, at least, the following components as applicable to the specific complaint to provide for a prompt, adequate, reliable, and impartial disciplinary proceeding\*:

1. Complaint or Notice
  - a) The school is presumed notified if a Responsible Employee knew, or in the exercise of reasonable care, should have known about the sexual harassment or violence.
  - b) Actual or constructive notice or complaint may be made in-person, verbally or in written format by the Complainant, witness, or third-party. Complaints may be filed using the online complaint form (Appendix C). Notice may also be indirect from sources such as social media outlets, videos, or other forms of media.
  - c) Anonymous reports may be submitted to the acting Title IX Representative using the Anonymous report form found on Gnomon's website.
  - d) Any report of a violent crime, sexual assault, or hate crime, committed on or off campus is forwarded immediately, or as soon as practically possible, to the appropriate law enforcement agency, as provided (AB 1433).
2. Preliminary Investigation (initial strategy)
  - a) Perform initial inquiry to determine if a comprehensive investigation is desired or necessary.
  - b) Determine if there is reasonable cause to charge the accused individual, and what policy violations should be alleged as part of the complaint.
  - c) Investigate all complaints to determine: the extent of the harassment; the acuity of the threat it represents to students; and what might be necessary to put an end to it.
  - d) Identify, provide and implement interim remedial measures (at no cost) to the Complainant.
  - e) In a manner appropriate to the circumstances of the case, investigation typically include interviews with the Complainant, the Respondent and any witnesses. The interviews will be supplemented by the gathering of any physical, documentary or other evidence. As part of the investigation, the opportunity for the parties to present witnesses and other evidence is available.
  - f) Maintain requisite documentation that a comprehensive civil rights investigation and is completed and kept for record keeping and investigative files.
  - g) Responding to Anonymous Reports - Determine if a trend or pattern may be apparent, and if so attempt some form of remedial response.
3. Case Review
  - a) Determine if there is substantiating evidence indicating that policy has been violated.
  - b) b. If that threshold is reached, coordinate for a formal investigation, and prepare for issuance of notification of charge(s).
  - a. c. If investigation cannot produce sufficient evidence of policy violation, the case will be closed, no formal investigation conducted and no formal charge will be issued.
4. Charge
  - a) Prepare and deliver a notice of investigation and notice of charges to both Complainant and Respondent.
  - b) The charge letter will address specific allegations of violation(s) to the Non-discrimination and/or Harassment & Sexual Misconduct policy. Comprehensive and sufficient details are included as basis for allegations.
5. Formal Comprehensive Investigation
  - a) Commence a thorough, reliable, equitable, and impartial investigation.
  - b) Any interim measures in effect will continue and may be modified during an investigation.
  - c) Determine the strategy for the investigation.
    1. Intended timeframe to complete the investigation
    2. Witness interviews
    3. Evidence gathering

4. Review and analyze information and evidence gathered
  - d) A full investigation report is completed which includes at minimum a statement of the allegations and issues, the positions of the parties, a summary of the evidence, findings of fact, and a determination by the investigator as to whether it is more likely than not (“preponderance of the evidence”) that violation(s) of the misconduct policy occurred.
  - e) The report also may contain a recommendation by the investigator for actions to resolve the complaint, including educational programs, remedies for the Complainant, appropriate discipline for the Respondent, and referral to disciplinary procedures as appropriate.
6. Findings
  - a) Based on a review and evaluation of the full investigation report, a determination is made that a policy violation did or did not occur based on the preponderance of the evidence.
  - b) Affirmative consent is the standard by which determination of whether consent was given by both parties to sexual activity.
  - c) The results of the findings cite the reasons for this conclusion in a written report. This notice may also include actions to be taken to resolve the complaint. The notice of findings will be sent simultaneously to both the Complainant and the Respondent.
  - d) The Respondent is allowed to respond and indicate acceptance of the findings, acceptance of the findings in part and reject them in part or may reject all findings.
7. Implementation of Remedies/Sanctions
  - a) Sanctions imposed are implemented immediately.
  - b) Sanctions will remain in effects during any appeal.
  - c) Any modifications to sanctions will be applied upon issuance of the final decision.
8. Appeal
  - a) Both Complainant and Respondent may request an (1) appeal of the decision and sanctions rendered.
  - b) The request for an appeal follows the Non-Academic Appeal Process and guidelines.
  - c) An appeal must be submitted within five (5) business days of issuance of the original finding(s).
  - d) Each party will be notified if an appeal request is made, as well as the outcome of the appeal.
  - e) If the request for appeal is not based on the list of acceptable grounds for appeal, the request will be denied.
  - f) Failure to appeal within the specific time period will make the original decision final and conclusive.

\*This list is intended to be thorough and comprehensive, not exhaustive.

## **COMPLAINANT AND RESPONDENT RIGHTS AND RESPONSIBILITIES**

An investigation is a balanced and equitable process that provides the same opportunities to both parties throughout the investigation. The Complainant and Respondent are entitled to the same level of support in all aspects of the proceedings, investigation process, findings, implementation of sanctions, and appeals. Both the Complainant and Respondent are entitled to, and have the responsibility for the following\*:

- a) Both parties will be informed of their rights and responsibilities that apply during the proceeding.
- b) Both parties have the right to end the informal grievance process and begin the formal process at any time.
- c) Both parties have the opportunity to provide a statement regarding the incident, a list of witnesses, and any other relevant information. Third-party expert testimony is not permitted.

- d) Each party is accommodated a designated Gnomon official to assist in disseminating information including, but not limited to, policies, procedures, and rights to promote a thorough and unbiased investigation and disciplinary proceeding.
- e) Both parties are afforded similar and timely access to any information utilized in the investigative process.
- f) The Complainant and the Respondent are allowed one (1) representative/advisor of their choice, at their own expense. These procedures are entirely administrative in nature and are not considered legal proceedings. An attorney may not serve in this role. This representative/advisor may accompany the Complainant/Respondent to any related meetings or proceedings. The representative may not speak or otherwise actively participate in meetings or proceedings, though they may communicate with the Complainant or Respondent as necessary, as long as it does not disrupt the proceedings. At the discretion of the investigator(s), if the representative/advisor is disruptive he/she will be removed from any and/or all meetings or proceedings.
- g) Neither party is restricted from discussing and sharing information relating to their complaint with others that may support them or assist them in presenting their case.
- h) Evidence of the Complainant's past relationships with anyone other than the Respondent is disallowed.
- i) Direct questioning and cross-examination of the Respondent and Complainant by each other is not permitted.
- j) Either party may request to not be in the same room at the same time.
- k) The Complainant is not required to be present at any disciplinary process as a prerequisite to proceed.
- l) Both parties will be informed at regular intervals of the status of its investigation.
- m) Both parties are provided fair and equitable rights to appeal/review the initial investigation/determination regarding the complaint, the investigative findings, and/or the sanctions/remedies.
- n) Both parties have equal opportunities to participate in any further process.
- o) Notice in writing of the findings and any appeal process will be sent simultaneously to both parties.
- p) Each party is permitted one (1) appeal to the findings and/or sanctions. If no appeal is submitted within the accorded timeframe the findings will be determined as final.
- q) The Complainant and/or Respondent may appeal only the parts of final outcome directly relating to him/her. Dissatisfaction with the outcome of the hearing is not grounds for appeal.
- r) All parties will be informed of any changes that occur prior to the time that the results become final, and when such results become final.

\*This list is intended to be thorough and comprehensive, not exhaustive.

## **RECOMMENDATIONS AND APPLICATION OF SANCTIONS AND REMEDIES**

Upon finding(s) of sexual misconduct, recommendations for sanctions and remedies ensue. The intent for sanctions and remedies is not to "undo" an act of sexual misconduct, rather an attempt to include some restoration of harm caused. Conduct codes and related procedures apply to behaviors exhibited by students; while policies under Human Resources govern the behaviors of employees. Regardless of whether the behavior was exhibited by a student, employee, or community member, the school has an obligation under Title IX to protect a harassed/affected student's access to an education. Sexual misconduct, hostile work environment, and sexual violence must be addressed, even if the individual(s) who caused it cannot be identified. Sanctions may be issued individually, or a combination of sanctions

may be imposed. Sanctions are determined on a case-by-case basis; however reasonable steps will be taken to foster consistency for similar violations and circumstances.

Imposition of sanctions alone is not an adequate remedy to address sexual harassment and sexual violence on campus. In addition to implementation of sanctions, an evaluation and review of school policies and campus-wide climate are made.

Adjustments to response processes, increased monitoring, supervision or security at locations where sexual misconduct is reported to occur, and increased education and prevention efforts to targeted populations shall be considered. These considerations in addition to sanctions and remedies allow the school's interim and long-term intent to stop the sexual misconduct and prevent its recurrence.

### Sanctioning and Remedies:

Recommendations for disciplinary sanctions (Appendix B) are processed by the designated Gnomon official or School Director. Once the report is finalized, written notice, including information regarding employment action, if any, shall be delivered to the Respondent (and Complainant as appropriate pursuant to FERPA and relevant employment privacy laws). The written notification may be sent via email and will include information on appeals. The designated Gnomon official will meet with the Complainant and Respondent separately to review the recommended sanction(s).

Each party is allowed an (1) appeal to the findings and/or sanction through the Non-Academic Appeal process and guidelines. If an appeal is submitted, the appropriate Gnomon official(s) will review relevant documentation, including the report, and Complainant's and Respondent's statements, if any. An appeal must be submitted within five (5) business days of the issuance of the original finding(s). If an appeal does not meet the qualifying grounds for appeal, and/or not submitted within the time allotted, the findings and sanctions become final. If modified or alternative disciplinary actions are imposed, a letter including final findings and/or sanctions and thoroughly documented specific reasons for the adjustments shall be delivered to the Respondent (and Complainant as appropriate pursuant to FERPA and/or other relevant laws). A copy will be distributed to the acting Title IX Representative.

In cases where employee disciplinary action is recommended, designated Gnomon official(s) will begin the due process procedure, pursuant to Gnomon's employment policy, and applicable federal and state laws.

### Finality of Process

This procedure is intended to apply to alleged discrimination or harassment in violation of Title IX. All other misconduct or grievances by students against students or employees against students will be addressed through Academic/Non-Academic Misconduct procedures.

The findings and associated employment or student disciplinary actions based on this process, including all associated appeals and statutory rights outlined in school policies and this document, are final and will not be further addressed through the student conduct process, departmental administration, or human resource processes. Information obtained in these proceedings may be shared with local law enforcement, external governing bodies (e.g. the U.S. Department of Education Office of Civil Right) with a properly issued subpoena.

## APPENDIX A

### INTERIM REMEDIAL REMEDIES

Interim measures are those services, accommodations, or other assistance that the school puts in place for Complainants after receiving notice of alleged sexual misconduct but before any final outcomes – investigatory, disciplinary, or remedial – have been determined. Gnomon wants students to be safe, to receive appropriate medical attention, and to get the help they need to heal and to continue equal access their educational opportunities.

Some possible interim measures are listed below, and the school determines which measures are appropriate for a particular Complainant on a case-by-case basis. Not all of the measures listed below will be necessary in every case to keep Complainants safe and ensure their equal access to educational programs and activities. If the Complainant or advocate identifies an interim measure that is not already provided by Gnomon, the school will consider whether the request can be granted. In those instances where interim measures affect both a Complainant and the alleged perpetrator, Gnomon will minimize the burden on the Complainant wherever appropriate.

Available Interim Measures:

- Assistance in obtaining, and information about off campus Complainant advocacy, medical and mental health, and counseling and support services.
- Campus No Contact Order.
- Rescheduling of exams and assignments (in conjunction with appropriate faculty).
- Providing alternative course completion options (with the agreement of the appropriate faculty).
- Transferring to another section of a lecture or laboratory.
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty).
- Limit an individual access to certain school facilities or activities pending resolution of the matter.
- Voluntary leave of absence or withdrawal.
- Providing an escort to ensure safe movement between classes and activities.
- Providing academic support services, such as tutoring.
- Interim suspension or school-imposed leave.
- Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

## APPENDIX B

### SANCTIONS AND REMEDIES

Appropriate sanctions in response to a Respondent found responsible for a violation of this policy may include, but are not limited to, those set forth below.

The Complainant and Respondent will each have the opportunity to present a written statement about impact and/or requested sanctions. Statements will be reviewed only if the Respondent has been found responsible for one or more violation.

In general:

- Any Respondent who is determined to have committed sexual assault may receive a sanction ranging from suspension or probation, to expulsion or termination.
- Any Respondent who is determined to have committed non-consensual sexual contact or any other prohibited form of conduct may receive a sanction ranging from conduct warning to expulsion or termination.

Deviation from the recommended sanctions may be applicable, based upon a full consideration of the following factors: (1) the Respondent's prior discipline history; (2) how the school has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6) whether the Respondent has accepted responsibility for his/her actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances.

Restorative justice outcomes may also be considered when taking into account the safety of the community as a whole. These outcomes allow a Respondent to learn about the origins of his/her behavior, his/her responsibility for this behavior, and how he/she can change this behavior. Service, education or rehabilitation, or research projects may also be assigned.

In appropriate cases, it may be determined that the conduct was motivated by bias, insofar as a Complainant was selected on the basis of his or her race, color, ethnicity, national origin, religion, age, disability or other protected class. If the student misconduct is deemed motivated by bias, it may be elected to increase the sanction imposed as a result of this motivation.

Sanctions and corrective actions that may be imposed under this policy include:

**Written Warning:** Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action. Restrictions or conditions may also be imposed.

**Restitution:** Repayment to the school or to an affected party for damages resulting from a violation of this policy. To enforce this sanction, Gnomon reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

**Suspension:** Exclusion from school premises, attending classes or employment, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Conditions for return to Gnomon may be specified in the suspension notice.

**Dismissal:** Termination of student status and exclusion from all Gnomon premises, activities, privileges, and Alumni services. Conditions for consideration for readmittance may be specified in the dismissal notice. This action will be permanently recorded on the student's academic transcript.

**Expulsion/Termination:** Permanent termination of student status or employment, and exclusion from **all Gnomon premises, activities, privileges, and Alumni services**. This action will be permanently recorded on the student's academic transcript. Other sanctions may be imposed instead of, or in addition to, those specified here. More than one of the sanctions listed above may be imposed for any single violation. These examples are not all inclusive. Furthermore, exceptions or deviations from the normal procedure may occur whenever Gnomon deems it appropriate. Expulsion/Termination decisions will be based on an assessment of all relevant factors.