

## **Title IX Sexual Harassment Policy**

Effective: 2020.08.14

### **I. Introduction**

At the Universidad del Sagrado Corazón, we educate people in intellectual liberty and moral conscience, willing to participate in building a community in justice and peace. The dignity of every human being and the Christian values are the center of our academic project.

Committed to our mission, Universidad del Sagrado Corazón we are committed to fostering a non-discriminatory and safe environment free from all forms of discrimination because of sex and sexual harassment.

In support of that commitment, Sagrado has the resources to address complaints in a serious and responsible manner including providing supportive measures and an unbiased and fair grievance process for the resolution of sexual harassment complaints as defined by the 2020 Title IX regulations. All members of the Sagrado community share the responsibility of creating a safe campus environment and a culture of respect.

### **II. Regulatory Context**

Enacted in 1972, Title IX of the Education Amendments (“Title IX”) is a Federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities in educational institutions that receive federal financial assistance.

In 1975, the U.S. Department of Education promulgated regulations that reinforce Title IX’s non-discrimination mandate, addressing prohibition of sex discrimination in hiring, admissions, athletics, and other aspects of education programs or activities. The regulations also require higher education institutions to:

- designate an employee to coordinate its efforts to comply with Title IX;
- disseminate a nondiscrimination notice; and
- adopt and publish grievance procedures providing for prompt and equitable resolution of complaints.

In May 19, 2020, the Department promulgated regulations that impose legally binding rules on institutions of higher education with respect to responding to sexual harassment as defined by the 2020 Title IX regulations, and the nature of the legal obligations.

The regulations of 2020 require institutions of higher education to:

- promptly respond to individuals who are alleged to be Victims of sexual harassment by offering supportive measures;
- follow a fair grievance process to resolve sexual harassment allegations when a Complainant requests an investigation, or a Coordinator decides on the University's behalf that an investigation is necessary; and
- provide remedies to Complainants of sexual harassment.

Title IX and this Policy do not replace and is not subject to the civil or criminal justice systems.

### **III. Definitions**

For purposes of Title IX, this Policy and the *Procedure for Title IX Sexual Harassment Complaints*, these terms have the following meaning.

*Claim* means information of a conduct that is or may constitute sexual harassment made by a Victim, a witness or any person other than the Complainant to the Coordinator or a person authorized by the University to receive such claims. A claim is not considered a formal complaint for purposes of this Policy and the Procedure.

*Complainant* means an individual who is alleged to be the Victim of conduct that is or could constitute sexual harassment and submits a formal complaint.

*Consent* must be informed, voluntary, and can be withdrawn at any time. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the scope of sexual activity. There is no consent when there is force (expressed or implied), or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining a valid consent. Silence or absence of resistance does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person. If a person is mentally or physically incapacitated or impaired so that he or she cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to the consumption of alcohol, illicit drugs or controlled substances, or being asleep or unconscious. Individuals should be aware of the potential consequences of the use of alcohol, illicit drugs or controlled substances that can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. If there is a question about whether someone consented to sexual activity after consuming alcohol, illicit drugs or controlled substances, the University will examine the issue from the perspective of a reasonable person. Specifically, the University will consider whether the Respondent knew or reasonably should have known about the impact of alcohol, illicit drugs or controlled substances on the Complainant's ability to give consent.

*Dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Victim. The term “dating violence” is more specifically defined at 34 U.S.C. 12291(a)(10).

*Discrimination because of sex or discrimination* means that anyone may experience sex discrimination, including sexual harassment, irrespective of gender identity or sexual orientation including the theory of sex stereotyping.

*Domestic violence* means family violence or intimate partner violence committed by spouses or ex-spouses, boyfriends or girlfriends, and ex-boyfriends or ex-girlfriends. The term “domestic violence” is more specifically defined at 34 U.S.C. 12291(a)(8).

*Education program or activity* includes locations, events, or circumstances over which the University exercised substantial control over the Respondent and the context in which the sexual harassment occurs. Substantial control and context are defined by the extent to which the University funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred including any building owned or controlled by a student organization that is officially recognized by the University.

*Formal complaint* means a document filed by a Complainant or signed by the Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment.

*Incapacity* is the inability (temporary or permanent) to give consent, because the person is mentally or physically helpless due to the consumption of alcohol, illicit drugs or controlled substances, either voluntarily or involuntarily, or the person is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. Some signs of incapacity may include, but are not limited to, lack of control over physical movements (for example, stumbling, falling down), lack of awareness of circumstances or surroundings, the inability to speak or communicate orally, or the inability to communicate for any reason. It is a violation of this Policy to engage in sexual activity with a person who is incapacitated, regardless of whether the person appeared to be a willing participant. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person’s level of intoxication.

*Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment including employees, faculty members, consultants, contractors, suppliers, visitors and others.

*Sexual assault* means any non-consensual sexual act including when the Victim lacks capacity to consent and includes sexual abuse, rape and attempted rape among other forms of sexual offenses. The term “sexual assault” is more specifically defined at 20 U.S.C. 1092(f)(6)(A)(v).

*Sexual harassment* as defined by the 2020 Title IX regulations means a conduct on the basis of sex that satisfies one or more of the following:

- an University employee that conditions the provision of an aid, benefit, or service on a person's participation in an unwelcome sexual conduct, also known as *quid pro quo*;
- sexual assault, dating violence, domestic violence, or stalking, as defined in this Policy;
- 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.

*Stalking* means a conduct directed at a specific person that would cause a reasonable person to feel fear. The term “stalking” is more specifically defined at 34 U.S.C. 12291(a)(30).

*Victim* means a person against whom a conduct of sexual harassment is or may have been committed and who may have filed a claim, but not a formal complaint.

#### **IV. General Policy - Response to sexual harassment**

Sagrado will respond promptly and in a manner that is not deliberately indifferent to all claims and formal complaints to which the University has actual knowledge of sexual harassment, in an education program or activity. Although all members of the Sagrado community are encouraged to report sexual harassment immediately in order to maximize the University’s ability to respond promptly and equitably, the University does not limit the time frame for reporting. However, the University’s ability to investigate and respond effectively may be reduced with the passage of time.

##### **A. Supportive measures**

Supportive measures are designed to restore or preserve equal access to Sagrado’s education program or activity without unreasonably burdening the other party. Its purpose is to: (a) protect the safety of all parties or Sagrado’s educational environment, or (b) deter sexual harassment.

Sagrado will offer the Victim and/or the Complainant and/or the Respondent supportive measures that are non-disciplinary, non-punitive individualized services and these are appropriate, reasonable and available without a fee or charge to the Victim, Complainant or the Respondent.

Upon receipt of a claim or a formal complaint, the Coordinator will contact the Victim, the Complainant and/or the Respondent to discuss the supportive measures available and to consider their wishes and will inform them of the supportive measures that will be implemented.

The Coordinator may offer one or a combination of supportive measures that may include are not limited to:

- counselling;
- extensions of deadlines or other course-related adjustments;
- modifications of work or class schedules;
- campus escort services;
- mutual restrictions on contact between the parties;
- changes in work or housing locations;
- leaves of absence;
- increased security and monitoring of certain areas of the campus; and
- other similar measures.

The Coordinator will coordinate the effective implementation of supportive measures that will be kept confidential to the extent that maintaining such confidentiality does not impair Sagrado’s ability to provide the supportive measures.

The Coordinator will document the supportive measures provided or the reasons for not providing one in light of the known circumstances, as well as the refusal of the Victim, Complainant and/or Respondent to receive a supportive measure.

### **B. Response to a Formal Complaint**

In response to a formal complaint, Sagrado will treat Complainants and Respondents equitably by offering supportive measures and following the grievance process established in the *Procedure for Title IX Sexual Harassment Complaints* before the imposition of any disciplinary sanctions or other actions that are not supportive measures.

### **C. Emergency removal**

Sagrado may remove a Respondent from an education program or activity on an emergency basis if, after undertaking an individualized safety and risk analysis, the University determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. Sagrado will provide the Respondent with a written notice and an opportunity to challenge the decision immediately following the removal.

### **D. Administrative leave**

Sagrado may also place a non-student employee Respondent on administrative leave during the pendency of the grievance process for a variety of reasons including, without limitation, if and when the University determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies an administrative leave. Sagrado will provide the Respondent with a written notice and an opportunity to challenge the decision immediately following the leave.

### **E. Requests for non-disclosure of identity**

Sagrado has designated the Coordinator to evaluate requests for non-disclosure of the identity of a Victim or the Complainant. Upon a request for non-disclosure, the Coordinator, in consultation with a small number of key University administrators, will weigh the request against Sagrado's obligation to provide a safe, non-discriminatory environment. The Coordinator and the key administrators may consider whether:

1. The Respondent is likely to commit additional acts of sexual or other violence, such as:
  - there have been other sexual harassment complaints about the same Respondent;
  - Respondent has a history of arrests or records from a prior institution indicating a history of violence;
  - Respondent threatened further sexual harassment or other violence against the Complainant or others;
  - the sexual harassment was committed by multiple Respondents.
2. The sexual harassment was perpetrated with a weapon.
3. The Victim or the Complainant is a minor.
4. Respondent is a Sagrado employee.
5. Sagrado possesses other means to investigate the sexual harassment (e.g., security cameras or personnel, physical evidence).
6. The information received reveals a pattern (for example, via consumption alcohol, the illicit use of drugs or controlled substances) at a given location or by a particular person or group.

The presence of one or more of these factors could lead Sagrado to investigate and, if appropriate, pursue a disciplinary action against the Respondent under this Policy or other institutional policies.

If none of these factors are present, Sagrado may honor a request for non-disclosure. But, if the Coordinator determines that the University cannot maintain a request for non-disclosure, the Coordinator will inform the Victim or Complainant prior to starting the investigation.

## **V. Privacy and confidentiality**

Sagrado encourages all members of the community to seek the help they need without fear that the information they provide will be shared. We value the privacy of our students, faculty, staff and other members of our community. We also value the confidentiality of the information that we receive.

Sagrado will keep confidential the identity of any person who reports or files a formal complaint of sexual harassment (including the Victim, Complainant, Respondent and witness) and the investigation, hearing, informal resolution process, appeal and reports and determinations, except as may be permitted by the *Family Educational Rights and Privacy Act* (FERPA), or as required by law.

To the extent possible, we will respect the privacy of the persons and the confidentiality of information within the parameters established by federal and Puerto Rico law that may require us to report sexual harassment in certain circumstances.

## **VI. Campus resources for the University community**

Sagrado has different support resources for members of the University community who need help to manage a sexual harassment situation.

### **1. Emergency / immediate assistance**

Sagrado encourages all community members affected by sexual harassment to seek immediate assistance. Doing so promptly may be important to ensure the person's physical safety or to obtain medical care or other support and it may also be necessary to preserve evidence. Assistance for Sagrado community is available 24 hours a day, 7 days a week at 939-969-1515, and the blue light towers located throughout the campus.

### **2. On-campus assistance**

The following offices are available to provide support to the university community:

- Centro Sofia;
- paramedics;
- Office of the Title IX Coordinator;
- Security Office;
- Organizational Development and Human Resources Office;
- Student Affairs Office;
- Internal Audit Office.

### **3. Off-campus assistance**

- Staff and faculty members also have the Employee Support Program.
- The University can provide information about other off-campus supports to those persons who need them.

## **VII. Recordkeeping**

For a period of seven (7) years, the Coordinator will maintain records of:

1. All sexual harassment investigations including:
  - responsibility determinations;
  - audio or audiovisual recordings or transcripts;
  - disciplinary sanctions imposed on the Respondent; and
  - remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity.
2. Appeals and the results.
3. Informal resolutions and the results.
4. The materials used to train the Coordinator, Investigator, Hearing Officer, Appeal Officer, Advisor and Facilitator. Training materials are publicly available on Sagrado's website.
5. The actions, including any supportive measures, taken in response to a claim or formal complaint of sexual harassment. If a Complainant or Respondent did not receive a supportive measure, Sagrado will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **VIII. Retaliation**

Sagrado prohibits any act of retaliation including, but not limited to, intimidation, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by this Policy because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

Retaliation also includes acts of intimidation, threat, coercion, or discrimination in complaints that do not involve sexual harassment but arise out of the same facts or circumstances as a report or complaint of sexual harassment under this Policy.

It is not considered retaliation (a) the exercise of rights protected under the First Amendment, or (b) charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy.

Complaints alleging retaliation will be investigated following the grievance process in the *Procedure for Title IX Sexual Harassment Complaints*.

## **IX. Questions about this Policy**

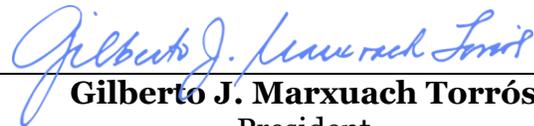
This Policy is issued by the President of the University, with the advice of the Office of the General Legal Counsel, under extraordinary circumstances due to the emergency of COVID-19 and pursuant to the *Policy for Review and Approval of Policies and Procedures* available at <https://politicassagrado.edu/>.

Questions regarding the scope and interpretation of this Policy should be directed to the Office of the Title IX Coordinator by email at [tituloix@sagrado.edu](mailto:tituloix@sagrado.edu).

## **X. Reporting violations**

Violations to this Policy should be directed to the Office General Legal Counsel unit at [cameliac.fernandez@sagrado.edu](mailto:cameliac.fernandez@sagrado.edu), or the Office of Internal Audit at [auditoriainterna@sagrado.edu](mailto:auditoriainterna@sagrado.edu). Any violations to this Policy will be addressed in accordance with the Sagrado's policies and procedures.

Universidad del Sagrado Corazón reserves the right to interpret this Policy in its administration, implementation and enforcement. If there is any ambiguity in any provision of this Policy, Sagrado reserves the discretion to interpret it in accordance with the purpose for which it was established, the impact on University operations and good faith, unless otherwise provided by law.

  
\_\_\_\_\_  
**Gilberto J. Marxuach Torrós**  
President