



TEXAS LUTHERAN UNIVERSITY

**CIVIL RIGHTS EQUITY RESOLUTION FOR ALL  
FACULTY, STUDENTS AND EMPLOYEES**

USE AND ADAPTATION OF THIS MODEL WITH CITATION TO THE NCHERM GROUP,  
LLC/ATIXA IS PERMITTED THROUGH A LICENSE  
TO TEXAS LUTHERAN UNIVERSITY.  
ALL OTHER RIGHTS RESERVED.  
©2016. THE NCHERM GROUP, LLC/ATIXA

## **POLICY: Equal Opportunity, Harassment and Nondiscrimination**

*As used in this document, the term “reporting party” refers to the person impacted by alleged discrimination. The term “responding party” refers to the person who has allegedly engaged in discrimination.*

### **Applicable Scope**

Texas Lutheran University affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the University’s Equity Resolution Process (ERP)<sup>1</sup> as detailed below. When the responding party is a member of the TLU community, the ERP is applicable regardless of the status of the reporting party who may be a member or non-member of the campus community, including students, student organizations, faculty, administrators, staff, guests, visitors, campers, etc.

### **ADA/504 Coordinator**

The Associate Dean of Student Life and Learning for Title IX and Compliance, Bernadette K. Buchanan PhD, oversees the implementation of the University’s Affirmative Action and Equal Opportunity plan disability compliance and the University’s policy on equal opportunity, harassment and nondiscrimination. The Associate Dean of Student Life and Learning for Title IX and Compliance acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Associate Dean of Student Life and Learning for Title IX and Compliance, contact the Texas Lutheran University Vice President of Finance, Andrew Nelson [anelson@tlu.edu](mailto:anelson@tlu.edu) 830-372-8011. To raise concerns regarding a potential conflict of interest with any other administrator involved in the ERP, please contact the Associate Dean of Student Life and Learning for Title IX and Compliance.

Inquiries or requests for ADA/504 accommodations should be sent to the following:

#### **Employees:**

##### **Toi Turner**

*Director of Human Resources*

O.G. Beck Administration Building

1000 West Court Street, Suite 105A

Seguin, TX 78155

#### **Students:**

##### **Dr. Marlene Moriarity**

*Director of Counseling and Disability Services*

Alumni Student Center – Meadows Center

1000 West Court Street, Suite 101

Seguin, TX 78155

830-372-8017  
tturner@tlu.edu

830-372-8009  
mmoriarity@tlu.edu

To file a complaint regarding this policy and procedure contact:

**Dr. Bernadette K. Buchanan**

*Associate Dean of Student Life and Learning*

*for Title IX and Compliance*

*Alumni Student Center, Suite 107*

1000 West Court Street

Seguin, TX 78155

830-372-8060

bbuchanan@tlu.edu

**Title IX Coordinator**

The Associate Dean for Student Life and Learning, Bernadette K. Buchanan PhD. serves as the Title IX Coordinator and oversees implementation of the University's policy on equal opportunity, harassment (including sexual misconduct), and nondiscrimination. The Title IX Coordinator heads the Title IX Team and acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the Texas Lutheran University Vice President of Finance, Andrew Nelson [anelson@tlu.edu](mailto:anelson@tlu.edu) 830-372-8011. To raise concerns regarding a potential conflict of interest with any other administrator involved in the ERP, please contact the Title IX Coordinator.

The Title IX Coordinator has a direct reporting relationship to the President and the President's designee. The Coordinator provides ongoing consultation regarding Title IX requirements, grievance issues, and compliance programs to the President and/or President's designee and other University Officials. An annual report will be made to the President and shared with the Board of Regents containing statistical reports for the campus community on the incidence of sexual harassment and or other Title IX matters, policy changes, compliance monitoring, campus climate and culture, and prevention/education efforts. The President will also keep the Board informed on a timely basis about potential Title IX violations, consistent with the Boards' oversight responsibilities.

Inquiries about and reports regarding this policy and procedure may be made internally to:

## **TITLE IX COORDINATOR**

### **Dr. Bernadette K. Buchanan**

*Associate Dean of Student Life and Learning*

*for Title IX and Compliance*

*Alumni Student Center, Suite 107*

1000 West Court Street

Seguin, TX 78155

830-372-8060

[bbuchanan@tlu.edu](mailto:bbuchanan@tlu.edu)

Duties and Responsibilities: Monitoring and oversight of overall implementation of Title IX Compliance at the University, including coordination of training, education, communications, and supervision of the grievance procedures for faculty, staff, students and other members of the University community. The Title IX Coordinator may also serve as the first point of contact for student complaints.

## **TITLE IX DEPUTY COORDINATORS**

### **Kyle Wych**

*Associate Dean of Student Life and Learning*

*Alumni Student Center, Suite 102*

1000 West Court Street

Seguin, TX 78155

830-372-8060

[kwych@tlu.edu](mailto:kwych@tlu.edu)

### **David Legore M.F.A.**

*Professor and Chair of Dramatic Media*

*C203 Weston Center*

1000 West Court Street

Seguin, TX 78155

830-372-6021

[dlegore@tlu.edu](mailto:dlegore@tlu.edu)

### **Toi Turner**

*Director of Human Resources*

O.G. Beck Administration Building  
1000 West Court Street, Suite 105A  
Seguin, TX 78155  
830-372-8019  
tturner@tlu.edu

**Michael Hunt**

*Head Coach for Men's & Women's Tennis*

Jones Complex  
1000 West Court Street  
Seguin, TX 78155  
830-372-8128  
mhunt@tlu.edu

Please contact any deputy coordinator if you have questions about Title IX or have a complaint concerning sexual harassment, sex discrimination, sexual assault or any conduct prohibited by this policy.

**Inquiries may be made externally to:**

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Office for Civil Rights,  
**Dallas Office**  
U.S. Department of Education  
1999 Bryan Street, Suite 1620  
Dallas, TX 75201-6810  
Telephone: (214) 661-9600

Facsimile: (214) 661-9587  
Email: [OCR.Dallas@ed.gov](mailto:OCR.Dallas@ed.gov)

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/><sup>2</sup>

## **Reporting Discrimination**

Reports of discrimination, harassment and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the University's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator or deputy/deputies
- 2) Report online, using the reporting form posted at [https://my.tlu.edu/ICS/Public/Free-form\\_Content.jnz](https://my.tlu.edu/ICS/Public/Free-form_Content.jnz) and/or
- 3) Report using the Campus Conduct Hotline toll free 866.943.5787

All reports are acted upon promptly while every effort is made by the TLU to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the university are designated as mandated reporters and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting is addressed more specifically below [www.tlu.edu/titleix](http://www.tlu.edu/titleix). Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Vice President of Finance, Andrew Nelson; [anelson@tlu.edu](mailto:anelson@tlu.edu).

## **Jurisdiction**

This policy applies to behaviors that take place on the campus, at University-sponsored events, and may also apply off-campus and to actions online when the Title IX Coordinator determines that the off-campus conduct affects a substantial University interest. A substantial University interest is defined to include:

- a) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b) Any situation where it appears that the responding party may present a danger or threat to the health or safety of self or others;
- c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or

d) Any situation that is detrimental to the educational interests of the University.

## **1. TLU Policy on Nondiscrimination**

The University adheres to all federal and state civil rights laws prohibiting discrimination in private institutions of higher education. TLU will not discriminate against any employee, applicant for employment, student or applicant for admission [on the basis of race, religion, hearing status, personal appearance, color, sex, pregnancy, political affiliation, source of income, place of business, residence, religion, creed, ethnicity, national origin (including ancestry), citizenship status, physical or mental disability, age, marital status, family responsibilities, sexual orientation, gender, gender identity, gender expression, veteran or military status (including special disabled veteran, Vietnam-era veteran, or recently separated veteran), predisposing genetic characteristics, domestic violence victim status] or any other protected category under applicable local, state or federal law, including protections for those opposing discrimination or participating in any resolution process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or opportunities of any member of the campus community, guest or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of the University policy on nondiscrimination. When brought to the attention of the University, any such discrimination will be appropriately addressed and remedied by the University according to the Equity Resolution Process described below. Non-members of the campus community who engage in discriminatory actions within University programs or on University property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with University programs as the result of their misconduct. All vendors serving the University through third-party contracts are subject by those contracts to the policies and procedures of their employers.

## **2. TLU Policy on Accommodation of Disabilities**

Texas Lutheran University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment

that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking or caring for oneself.

The Associate Dean of Student Life and Learning for Title IX and Compliance, Bernadette K. Buchanan PhD, has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any allegation of noncompliance. Her office is located in the Alumni Student Center suite 107 and she can be reached at [bbuchanan@tlu.edu](mailto:bbuchanan@tlu.edu).

#### **a. Students with Disabilities**

Texas Lutheran University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the University.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Marlene Moriarity PhD, Director of Counseling and Disability Services, [mmoriarity@tlu.edu](mailto:mmoriarity@tlu.edu) who coordinates services for students with disabilities. The Director of Counseling and Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

#### **b. Employees with Disabilities**

Pursuant to the ADA, TLU will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to Toi Turner, Director of Human Resources, and provide appropriate documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

### **3. TLU Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to a working environment and educational environment free of discriminatory harassment. University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under University policy.

#### **a. Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by University policy as well as the law. TLU condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by policy or law. Texas Lutheran University will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, TLU may also impose sanctions on the harasser through application of the Equity Resolution Process. Texas Lutheran University's harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent/pervasive, and objectively offensive such that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.<sup>3</sup>

The University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under University policy, but will be addressed through respectful confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Toi Turner, Director of Human Resources. Students should contact Associate Dean of Student Life and Learning for Title IX and Compliance, Bernadette K. Buchanan PhD for assistance.

#### **b. Sexual Harassment**

---

<sup>3</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at: <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Texas regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. TLU has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.<sup>4</sup>

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the Title IX Coordinator or a deputy. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- Severe, or
- Sufficiently severe or pervasive, and
- objectively offensive, such that it:
  - unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the University's educational, employment social and/or residential program.

*Quid Pro Quo* Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes

---

<sup>4</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, "Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX," which can be found at: <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf) and OCR's Questions and Answers on Title IX and Sexual Violence, which can be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or performance.

Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

## **POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a

violation of applicable sections of this policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are prohibited.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. Failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **c. Sexual Misconduct**

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Texas Lutheran University has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, TLU considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

#### **i. Sexual Harassment (as defined in section b above)**

#### **ii. Non-Consensual Sexual Intercourse**

Defined as:

- any sexual intercourse
- however slight
- with any object
- by a person upon another person

- that is without consent and/or by force<sup>5</sup>

Sexual intercourse includes:

- Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

### iii. **Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes:

- Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact in a sexual manner.

### iv. **Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.

---

<sup>5</sup> The use of force in non-consensual sexual intercourse and contact-based incidents is not “worse” than the subjective experience of violation of someone who is a victim of sexual intercourse or sexual contact without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive behavior.

- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

**v. Force and Consent**

**Force:** Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

**Consent:** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid,

there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In State of Texas, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

### **Civil Rights Offenses**

In addition to the forms of sexual misconduct, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party’s actual or perceived membership in a protected class.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

- Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
  - That is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment.
- Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
  - Examples:
    - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
    - An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
    - A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
    - Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.
- Stalking
  - Stalking 1:
    - A course of conduct
    - Directed at a specific person
    - On the basis of actual or perceived membership in a protected class
    - That is unwelcome, AND
    - Would cause a reasonable person to feel fear
  - Stalking 2:
    - Repetitive and Menacing

- Pursuit, following, harassing and/or interfering with the peace and/or safety of another]
- Examples of Stalking
  - A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together (Stalking 1).
  - A graduate student working as a on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together" (Stalking 2).
- Any other University policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's sex or gender.

Sanctions for the above-listed "Civil Rights Behaviors" behaviors range from reprimand through expulsion (students) or termination of employment.

### **Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing an allegation or for assisting in providing information relevant to a claim of harassment is a serious violation of University policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

### Examples of Retaliation:

- Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification
- A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

### **Remedial Action**

Upon notice of alleged discrimination, the University will implement initial remedial, responsive and/or protective actions upon notice of alleged harassment, retaliation and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

TLU will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The university will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the University's ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are fully described below.

### **Confidentiality and Reporting of Offenses Under This Policy**

All University employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials – thereby offering options and advice without any obligation to inform an outside agency or

campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the reporting options at Texas Lutheran University:

**a. Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors
- On-campus health service providers
- On-campus Victim Advocates / Local rape crisis counselors
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Campus Conduct Hotline

All of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours. University employees listed above will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

**b. Formal Reporting Options**

All Texas Lutheran University employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal University action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. Note that the University’s ability to remedy and respond to a reported incident may be limited if the

reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Human Resources, The Office of the Vice President for Academic Affairs, Office of Student Life and Learning, University Police, and the Student Concern Committee (STUCC) Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at [www.tlu.edu/titleix](http://www.tlu.edu/titleix) or the Campus Conduct reporting hotline at 866-943-5787. Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of University policy and can be subject to disciplinary action for failure to comply.

### **Federal Timely Warning Obligations**

Parties reporting sexual misconduct should be aware that under the Clery Act, University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **False Allegations**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

## **Amnesty for Reporting Party and Witnesses**

The University community encourages the reporting of misconduct and crimes by reporting parties and witnesses. Sometimes, reporting parties or witnesses are hesitant to report to University officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that reporting parties choose to report to university officials, and that witnesses come forward to share what they know. To encourage reporting, University pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident.

**Students:** Sometimes, students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct victim to the TLU Police). The University pursues a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the university will provide educational options, rather than punishment, to those who offer their assistance to others in need.

**Employees:** Sometimes, employees are also hesitant report harassment or discrimination they have experienced for fear that they may get themselves in trouble. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to University officials. The institution may, at its discretion, offer employee reporting parties amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to witnesses on a case-by-case basis.

### **[TLU Policy on Disclosure of Misconduct](#)** (Whistleblower Policy).

It is the policy of the university that employees shall, without fear of retaliation, be free to report conduct within the university that they reasonably believe may constitute misconduct. This includes, but is not limited to, the following: wire fraud, mail fraud, bank fraud, securities fraud or questionable accounting and internal controls, auditing matters, safety and security issues, illegal or unethical business practices.

A representative of the university shall not take an adverse employment action in retaliation against an employee who in good faith reports possible misconduct under this policy. However, employees who knowingly file false or misleading reports, or without a reasonable

belief as to truth or accuracy, will not be protected by this policy, and may be subject to discipline, including termination of employment.

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities - have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to TLU PD regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, TLU PD, City of Seguin police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

# **EQUITY RESOLUTION PROCESS FOR ALLEGATIONS OF HARASSMENT, SEXUAL MISCONDUCT, AND OTHER FORMS OF DISCRIMINATION**

Texas Lutheran University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Director of Human Resources, Title IX Coordinator, Deputy Title IX Coordinators, or a member of the administration, faculty, or other employee.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class involving students, staff or faculty members. These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g.: vandalism, physical abuse of another, etc.). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty and staff handbooks.

## **Overview**

Upon notice to the Title IX Coordinator or Director of Human Resources, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determines whether the nondiscrimination policy has been violated. If so, the University will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

## 1. Equity Resolution Process (ERP)

Allegations under the policy on nondiscrimination are resolved using the ERP. Members of the ERP pool consist of faculty, administrative staff, and hourly staff. Members of the ERP pool are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator or Director of Human Resources:

- To act as process advisors [or advocates] to those involved in the Equity Resolution Process
- To serve on hearing panels for allegations
- To serve on appeal panels for allegations

ERP pool members also recommend proactive policies, and serve in an educative role for the community. The Vice President of Academic Affairs, in consultation with the Title IX Coordinator or Director of Human Resources, appoints the ERP pool, which reports to the Title IX Coordinator or Director of Human Resources. ERP pool members receive annual training organized by the Title IX Coordinator or Director of Human Resources, including a review of University policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations; the University's Discrimination and Harassment Policies and Procedures (including Sexual Misconduct); confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All ERP pool members are required to attend this annual training to be eligible to serve.

The Equity Resolution Process pool includes:

- One representative from Human Resources or one from the Title IX Student Life, etc., who are *ex officio* members and who respectively Chair resolution panel hearings for allegations involving student and employee responding parties
- At least four members of the faculty
- At least 5 members of the administration/staff – three administrative staff and two hourly staff.

ERP pool members are usually appointed to three-year terms. Appointments to the pool should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving in the pool are encouraged to contact the Title IX Coordinator or Director of Human Resources. [No member of the pool may be a practicing attorney]. If the respondent is a student, please follow the student process outlined in the student handbook.

## **2. Reporting Misconduct**

Any member of the community, guest or visitor who believes that the policy on Equal Opportunity, Harassment, Sexual Misconduct and Nondiscrimination has been violated should contact the Title IX Coordinator or Director of Human Resources.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. Any member of the community, including visitors, may contact TLU Police Department to make a report. These individuals will in turn notify the Title IX Coordinator or Director of Human Resources. The University website also includes a reporting form at [www.tlu.edu/titleix](http://www.tlu.edu/titleix) which may serve to initiate the resolution process.

All employees receiving reports of a potential violation of University policy are expected to promptly contact the Title IX Coordinator or Director of Human Resources, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator or Director of Human Resources, but, subject to the University's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, the University will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

### 3. Preliminary Inquiry

Following receipt of notice or a report of misconduct, the Title IX Coordinator or Director of Human Resources<sup>6</sup> engages in a preliminary inquiry to determine if there is reasonable cause to believe the Equal Opportunity, Harassment, Sexual Misconduct and Nondiscrimination policy has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Title IX Coordinator or Director of Human Resources to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator or Director of Human Resources may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. As necessary, the University reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator or Director of Human Resources will direct a formal investigation to commence and the allegation will be resolved through one of three processes discussed briefly here and in greater detail below:

- Conflict Resolution – typically used for less serious offenses and only when both parties agree to conflict resolution
- Informal Resolution – a resolution without a hearing panel, or
- Formal Resolution – a resolution of contested allegations with a hearing panel.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the Title IX Coordinator or Director of Human Resources. Conflict Resolution may only occur if selected by all parties. The parties can elect for Informal Resolution, but Informal Resolution may also apply if the responding party accepts responsibility for all alleged violations of policy. If either party or both parties select Formal Resolution, or the Title IX Coordinator or Director of Human Resources determines that Formal Resolution is appropriate, the allegation will be addressed using the Formal Resolution option.

---

<sup>6</sup> If circumstances require, the President or Title IX Coordinator/Director of Human Resources may designate another person to oversee the process below, should an allegation be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

If conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation is commenced, the Title IX Coordinator or Director of Human Resources will provide written notification of the investigation to the parties at an appropriate time during the investigation.<sup>7</sup> The University aims to complete all investigations within a sixty (60) calendar day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or Director of Human Resources with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator or Director of Human Resources determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator or Director of Human Resources makes an extraordinary determination to re-open the investigation or to forward the matter for a hearing. This decision lies in the sole discretion of the Title IX Coordinator or Director of Human Resources.

#### **4. Interim Remedies/Actions**

The Title IX Coordinator or Director of Human Resources may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the reporting party and the community and to prevent further violations.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the services provided through the Employee Assistance Program
- Altering the housing situation of an the responding party (resident student or resident employee (or the reporting party, if desired))
- Altering work arrangements for employees
- Providing campus escorts

---

<sup>7</sup> Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence.

- Implementing contact limitations between the parties
- Offering adjustments to meeting professional deadlines, course schedules, etc.

The University may place an employee on administrative leave pending the completion of ERP investigation and procedures, particularly when in the judgment of the Title IX Coordinator or Director of Human Resources in consultation with the Vice President of Finance, indicate the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party whose behavior is in question. A violation of the directive under this policy will be grounds for termination.

During administrative leave, an employee may be denied access to University housing and/or the University campus/facilities/events. As determined by the Title IX Coordinator or Director of Human Resources in consultation with the Vice President of Finance, this restriction can include classes and/or all other University activities or privileges for which the employee might otherwise be eligible. In consultation with the Title IX Coordinator or Director of Human Resources, alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

## **5. Investigation**

Once the decision is made to commence a formal investigation, the Title IX Coordinator or Director of Human Resources appoints individuals from the Title IX Committee to conduct the investigation (typically using a team of two investigators), usually within two (2) days of determining that an investigation should proceed. For other non discrimination violations the Director of Human Resources will conduct the investigation. Investigations are completed expeditiously, normally within thirty (30) days, though some investigations take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

The University may undertake a short delay its investigation (several days to weeks, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The University will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. University action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have

been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigators will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with campus partners (e.g.: the Title IX Coordinator or Director of Human Resources), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the Title IX Coordinator or Director of Human Resources with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy.
  - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations [charges] on the basis of the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation [charges] on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of a ERP pool member or other advisor of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.

- Provide the parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation, and to the responding party, as appropriate;
- Once the report is complete, the report is shared with the parties for their review and comment. The investigators may incorporate feedback from the parties as appropriate;
- Make a recommendation to the Title IX Coordinator or Director of Human Resources a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not);
- Investigators, Director of Human Resources, and/or the Title IX Coordinator finalize and present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and responding party's decision on the finding, without undue delay.

At any point during the investigation, if it is determined there is no reasonable cause to believe that University policy has been violated, the Title IX Coordinator or Director of Human Resources has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the University's investigation and the Equity Resolution Process. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing (if a hearing is held). Failure of a witness to cooperate with and/or participate in the investigation or Equity Resolution Process constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the hearing and/or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or

other Equity Resolution Process proceedings.

## 6. Advisors

Each party is allowed to have an advisor of their choice present with them for all ERP meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. The Title IX Coordinator or Director of Human Resources will also offer to assign a trained ERP pool member to work as an advisor/advocate for any party. The parties may choose their advisor from the ERP pool, choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one. Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees

or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator or Director of Human Resources or designee will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The University understands that the parties may wish to share documentation related to the allegations with their advisors. Advisors are expected to maintain the privacy of the information shared with them. This information may not be shared with 3<sup>rd</sup> parties, disclosed publicly, or used for purposes not explicitly authorized by the responding party. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. The University will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **7. Conflict Resolution and Informal Resolution**

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with University policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

**a. Conflict Resolution**

Conflict Resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Title IX Coordinator or Director of Human Resources will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator or Director of Human Resources will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.

Conflict Resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Title IX Coordinator or Director of Human Resources believe that it could be beneficial. Mediation will not be used in cases of sexual violence. It is not necessary to pursue conflict resolution first in order to pursue Informal or Formal Resolution, and either party participating in Conflict Resolution can stop that process at any time and request a shift to either Informal or Formal Resolution.

**b. Informal Resolution: Resolution Without a Hearing Panel**

Informal Resolution or Resolution Without a Hearing Panel can be pursued for any behavior that falls within the policy on Equal Opportunity, Harassment, Sexual Misconduct, and Nondiscrimination, at any time during the process. This option may be used when:

- A responding party admits responsibility for all or part of the alleged policy violations at any point in the process;
- When the investigation reaches a finding that the parties accept;
- When both parties elect to resolve the allegation using the Informal Resolution process and the Title IX Coordinator or Director of Human Resources assents;
- When the Title IX Coordinator or Director of Human Resources implements the results of

an investigation for an at-will employee.

In Informal Resolution, the investigator has the authority to address all collateral misconduct, meaning that they hear all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, Sexual Misconduct, and Nondiscrimination. Accordingly, investigations should be conducted with as wide a scope as necessary.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The investigator(s) will not meet with character witnesses, but investigators will accept up to two (2) letters supporting the character of each of the parties.

The investigator(s) will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

Typically, at the close of an investigation which determines that a responding party is in violation of policy, the Title IX Coordinator or Director of Human Resources, the investigator(s) or both will meet with the responding party to explain the finding(s) of the investigation. Once informed, the responding party may choose to admit responsibility for all or part of the alleged policy violations. If the responding party admits responsibility, in whole or in part, the Title IX Coordinator or Director of Human Resources will render a determination that the individual is in violation of University policy for the admitted conduct, and will normally proceed to convene a formal hearing on any remaining disputed violations.

If the responding party admits to the violation(s), the Title IX Coordinator or Director of Human Resources, in consultation as appropriate, will determine a responsive action. If the responsive action is accepted by both the reporting party and responding party, the Title IX Coordinator or Director of Human Resources or designee will implement the finding and sanction, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct. No appeal is permitted.

If either party rejects the responsive action, a formal hearing will be held on the responsive action only, according to the Formal Resolution procedures below.

If alleged misconduct is resolved at this stage, the Title IX Coordinator or Director of Human Resources will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and any appeals options that are available.

At any point during the Informal Resolution process, including at its conclusion, either party may request that the matter be referred to the Formal Resolution Process for presentation before a hearing panel, except in cases where the responding party is an at-will employee.

In cases involving at-will employees, all findings and responsive actions will be determined by the [Human Administrator in collaboration with the Title IX Coordinator], based on the results of the investigation.

### **c. Formal Resolution: Resolution with a Hearing Panel**

For all contested allegations that are not resolved through either Conflict Resolution or Informal Resolution, the Title IX Coordinator or Director of Human Resources will initiate a formal hearing panel within ten (10) days of the conclusion of the investigation, barring unusual circumstances.

## **8. Formal Hearing Panel Procedures :**

If the respondent is a student. The student hearing panel procedures can be found in the student handbook. <http://www.tlu.edu/student-life/message-from-the-dean/> Below the are the hearing procedures for faculty and staff.

### **a. Hearing Panels**

The Title IX Coordinator or Director of Human Resources will refer the investigation findings to the non-ERP pool members. The Title IX Coordinator or Director of Human Resources will empanel four members from the available pool to the hearing panel, one of them will serve as acting Chair and none of whom will have been previously involved with the allegation. An alternate will sit in throughout the process if needed or at the discretion of the Chair. Those who served as investigators will be witnesses in the hearing of the allegation and therefore may not serve as hearing panel members. Those who are serving the parties as advisors, if any, are not eligible to serve as panelists. The panel will meet at a time determined by the Title IX Coordinator or Director of Human Resources.

### **b. Notice of Hearing**

At least five (5) business days prior to the hearing, or as far in advance as is reasonably possible if an accelerated hearing is scheduled with the consent of the parties, Title IX Coordinator or Director of Human Resources will send a letter to the parties with the following information. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The letter will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result.
- The time, date and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. If any party does not appear at the scheduled hearing, the hearing will be held in their absence. For compelling reasons, the Acting-chair may reschedule the hearing.
- Notification that the parties may have the assistance of a panel member or other advisor of their choosing at the hearing (See Section 6: “Advisors” above).

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the sixty (60) day goal for resolution.

### **c. Hearing Procedures**

Hearing panels will usually be convened within ten (10) business days of the completion of the investigation, and will be conducted in private. The panel has the authority to hear all collateral misconduct, meaning that it hears all allegations of discrimination, harassment, sexual misconduct, and retaliation, but also may hear any additional alleged policy violations that have occurred in concert with the discrimination, harassment, sexual misconduct or retaliation, even though those collateral allegations may not specifically fall within the panel's jurisdiction. Accordingly, investigations should be conducted with as wide a scope as necessary.

Participants will include the Acting-Chair, the three (3) members of the panel, the investigator(s) who conducted the investigation, the reporting party, responding party, advisors to the parties and any called witnesses.

### **Pre-Hearing**

The Title IX Coordinator or Director of Human Resources will exchange the names of witnesses who will be participating in the hearing, all pertinent documentary evidence and the investigation report between the parties at least two (2) days prior to the hearing. Any witness scheduled to participate in the hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing. In addition, the parties may request the names of each of the hearing panel members at least two (2) days in advance of the hearing. All objections to any panelist must be raised in writing to the Title IX Coordinator or Director of Human Resources as soon as possible. Hearing panel members will only be unseated if the Title IX Coordinator or Director of Human Resources concludes that their bias precludes an impartial hearing of the allegation. The panelists will be given a list of the names of each parties and witnesses at least two (2) days in advance of the hearing. Any panelist or Acting-Chair who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties and all witnesses in advance of the hearing.

The Acting-Chair, in consultation with the parties and investigators, may decide in advance of the hearing that certain witnesses do not need to be physically present if their testimony can be adequately summarized by the investigator(s) in the investigation report or during the hearing. All parties will have ample opportunity to present facts and arguments in full and question all present witnesses during the hearing, though formal cross-examination is not used between the parties. If alternative attendance or questioning mechanisms are desired, such as the reporting party not wanting to be in the same room as the responding party for the hearing (screens, Skype, questions directed through the Acting-Chair, etc.), the parties should request

them from the Title IX Coordinator or Director of Human Resources at least two (2) days prior to the hearing. In the case of documented disabilities for which accommodations in the process are necessary, University will make reasonable accommodations for the parties when requested in advance.

### **Investigator Presents the Report**

Once the procedures are explained and the participants are introduced, the investigator will present the report of the investigation first, and be subject to questioning by the parties and the panel. The investigator(s) will be present during the entire hearing process, but will only be present during deliberations at the request of the Acting-Chair. The findings of the investigation are not binding on the panel, though any undisputed conclusions of the investigation report will not be revisited, except as necessary to determine responsive actions. Once the investigator(s) present their report and are questioned, the panel will permit the parties to provide relevant information in turn and permit questioning of and by the parties. The panel will then permit all present witnesses to provide relevant information and the panel and the parties will each be allowed to ask questions of the witnesses. Questions are usually directed to the parties and witnesses at the discretion of the Acting-Chair.

### **Evidence Presented at the Hearing**

Formal rules of evidence do not apply. Any evidence that the panel believes is relevant and credible may be considered, including history and pattern evidence. The Chair will address any evidentiary concerns prior to and/or during the hearing, may exclude irrelevant or immaterial evidence and may ask the panel to disregard evidence lacking in credibility or that is improperly prejudicial. The acting Chair will determine all questions of procedure and evidence. Anyone appearing at the hearing to provide information will respond to questions on his/her own behalf.

Unless the acting Chair determines it is appropriate, no one will present information or raise questions concerning: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of the reporting party. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the panel with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

There will be no observers in the hearing. The acting Chair may allow witnesses who have

relevant information to appear at a portion of the hearing in order to respond to specific questions from the panel or the parties involved, and then be excused. The panel does not hear from character witnesses, but will accept up to two (2) letters supporting the character of each of the parties.

In hearings involving more than one responding party or in which two (2) or more reporting parties have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Title IX Coordinator or Director of Human Resources may permit the hearing pertinent to each responding party to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each responding party.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accord with University policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

Hearings (except for deliberations) are recorded for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. Panel members, the parties, and appropriate administrative officers of the University will be allowed to listen to the recording in a location determined by the Title IX Coordinator or Director of Human Resources. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator or Director of Human Resources or designee.

### **Alternative Testimony Options**

For sexual misconduct reports, and other reports of a sensitive nature, the reporting party will be offered alternative testimony options, such as placing a privacy screen in the hearing room, or testifying outside the physical presence of the responding party, such as by Skype or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

#### **d. Deliberation and Decisions**

The three (3) members of the hearing panel and the non-voting acting Chair will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The panel will base its determination(s) on a preponderance

of the evidence (i.e., whether it is more likely than not that the responding party committed each alleged violation). If a responding party is found responsible by a majority of the panel, the panel will recommend appropriate responsive actions.

The acting Chair will prepare a written deliberation report and deliver it to the Title IX Coordinator or Director of Human Resources, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the hearing panel excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator or Director of Human Resources within two (2) days of the end of deliberations, unless the Title IX Coordinator or Director of Human Resources grants an extension.

The Title IX Coordinator or Director of Human Resources will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable responsive actions within three (3) days of the hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization and any appeals options that are available.

#### **e. Administrative Actions**

The hearing panel assigned to the resolution will recommend responsive actions to the Title IX Coordinator or Director of Human Resources or designee. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation

- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

## **ii. Responsive Actions**

Responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Notice to Vice President of the appropriate division*
- *Notice to Supervisor*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

## **f. Withdrawal or Resignation While Charges Pending**

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator or Director of Human Resources will reflect that status, and any University responses to future inquiries regarding employment references for that individual will indicate the former employee is ineligible for rehire.

## **g. Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator or Director of Human Resources within three (3) days of the delivery of the written finding of the hearing panel or Informal Resolution administrator. Any party may appeal the findings and/or sanctions only under the grounds described, below

A four-member appeals panel including an acting chair will be chosen from the ERP pool will be designated by the Title IX Coordinator or Director of Human Resources from those who have not been involved in the process previously. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the University has designated for this offense and the cumulative record of the responding party.

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Title IX Coordinator or Director of Human Resources will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. The appeal is only shared with the accuser when the offense constitutes a **crime of violence** or a non-forcible sex offense include arson, assault offenses, burglary, **criminal** homicide (manslaughter by negligence) If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

Where the appeals panel finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. An appeal is not an opportunity for appeals panelists to substitute their judgment for that of the original hearing panel merely because they disagree with its finding and/or sanctions.

- Appeals granted based on new evidence should normally be remanded to the original hearing panel or investigators for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or Director of Human Resources or, in limited circumstances, heard by the three-member appeals panel.
- Sanctions imposed as the result of the Formal or Informal Resolution processes are implemented immediately unless the Title IX Coordinator or Director of Human Resources stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Title IX Coordinator or Director of Human Resources will confer with the appeals panel, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from hearing of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- All parties will be informed in writing within three (3) days of the outcome of the Appeals Panel, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original hearing panel (as in cases of bias), the appeals panel may recommend a new hearing with a new hearing panel. The results of a remand to a hearing panel cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### **h. Long-Term Remedies/Actions**

Following the conclusion of the Equity Resolution Process and in addition to any sanctions implemented, the Title IX Coordinator or Director of Human Resources may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program

- Education to the community
- Permanently altering the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired))
- Permanently altering work arrangements for employees
- Providing campus escorts
- Climate surveys
- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator or Director of Human Resources, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

**i. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator or Director of Human Resources or designee. Failure to abide by these responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional responsive/corrective actions and/or termination from the University and may be noted in the employees file. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or Director of Human Resources.

**j. Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely in the database. A copy of all resolutions will be housed in the Human Resources office.

**k. Statement of the Rights of the Parties**

***Statement of the Reporting Party's rights:***

- The right to investigation and appropriate resolution of all credible allegations of sexual misconduct or discrimination made in good faith to University officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public, without their consent;
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence;
- The right not to be discouraged by University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;

- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
  - Change of an on-campus employee's housing to a different on-campus location;
  - Assistance from University support staff in completing the relocation;
  - Arranging to dissolve a housing contract and pro-rating a refund;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class sections;
  - Administrative leave;
  - Alternative course completion options.
  
- The right to have the University maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures;
  
- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
  
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
  
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
  
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) business days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
  
- The right not to have irrelevant prior sexual history admitted as evidence;
  
- The right to regular updates on the status of the investigation and/or resolution.

- The right to have reports heard by hearing and appeals officers who have received annual sexual misconduct training;
- The right to a panel that is not single-sex in its composition, if a panel is used;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews and/or hearings that are closed to the public;
- The right to petition that any University representative in the process be recused on the basis of demonstrated bias and/or conflict of interest;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
- The right to provide evidence by means other than being in the same room with the responding party;
- [The right to have the university compel the participation of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, [indirectly], of all present witnesses [including the responding party], and the right to challenge documentary evidence];
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to submit an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision by the University is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the finding and sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University;

***Statement of the Responding Party's rights:***

The rights of the responding party should also be prominently indicated. These should include, among others particular to your University:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct and/or discrimination made in good faith to University administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;
- The right to be treated with respect by University officials;
- The right to have University policies and procedures followed without material deviation;
- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation(s), the applicable policies and procedures and possible sanctions;
- The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation; (does not apply to at-will employees)
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, at least two (2) business days prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two (2) business days prior to the hearing, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;

- The right to have reports heard by hearing and appeals officers who have received annual training;
- The right to petition that any University representative be recused from the resolution process on the basis of demonstrated bias and/or conflict of interest;
- The right to a panel that is not single-sex in its composition, if a panel is used;
- The right to meetings, interviews and hearings that are closed to the public;
- [The right to have the University compel the participation of student, faculty and staff witnesses, and the opportunity to ask questions, [indirectly], of all present witnesses, and the right to challenge documentary evidence];
- The right to have an advisor of their choice to accompany and assist in the campus resolution process;
- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision of the University is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.

## **9. Disabilities Accommodation in the Equity Resolution Process**

Texas Lutheran University is committed to providing qualified employees or others with disabilities with reasonable accommodations and support needed to ensure equal access to the Equity Resolution Process at the University. Anyone needing such accommodations or support should contact the Director of Human Resources, who will review the request and, in

consultation with the person requesting the accommodation, and the Director of Human Resources, determine which accommodations are appropriate and necessary for full participation.

## **10. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator or Director of Human Resources. The University reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator or Director of Human Resources may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator or Director of Human Resources may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

This policy and procedure was implemented on December 22, 2016.