



**CIVIL RIGHTS  
EQUITY RESOLUTION POLICY  
AND PROCEDURES  
FOR ALL EMPLOYEES AND STUDENTS**

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL.  
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## I. CIVIL RIGHTS EQUITY RESOLUTION POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

### 1. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Civil Rights Process* means the resolution procedures detailed in *Section III* that apply only when the Title IX Process does not, as determined by the Title IX Coordinator.
- *Coercion*: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation.
- *Confidentiality* exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).<sup>1</sup>
- *Consent*: Knowing, and voluntary, and clear permission by word or action to engage in sexual activity.
- *Day* may refer to either a “calendar day” or a “business (or class) day” when the University is in normal operation. The policy will differentiate between the two by using “calendar” or “business (or class) day”. If neither is designated, “day” will default to “calendar day”.
- *Directly Related Evidence* is evidence connected to the complaint, but that is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- *Education program or activity* means locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the sexual

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<sup>1</sup> See Texas Education Code Chapter 51, Subchapter E-2, Section 51.252(c).

harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.

- *Employee* refers to an individual hired and regularly scheduled to work at the University for at least forty (40) hours per week (full-time); less than forty (40) hours per week (part-time); as needed with no guaranteed hours (part-time as needed or PTAN); or on a temporary or seasonal basis (temporary). Employees include faculty, administrators, and staff.
- *Final Determination*: A conclusion that the alleged conduct did or did not violate policy, based upon the preponderance of the evidence.
- *Finding*: A conclusion by that the conduct did or did not occur as alleged (as in a “finding of fact”), based upon the preponderance of the evidence.
- *Fondling*: The touching of the private body parts of another person (buttocks, groin, breasts, etc.), for the purpose of sexual gratification, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- *Force*: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).
- *Formal Complaint (or Formal Title IX Complaint)*: For use in the Title IX Process only, a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). As used in this paragraph, the phrase “document submitted or signed by the Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations.
- *Grievance Process Pool* includes any investigators, hearing Decision-makers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within the University’s Formal Grievance process.
- *Incapacitation*: The inability of an individual to give knowing/informed consent or make rational, reasonable decisions due to being disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs; or from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

- *Investigator* means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or Deputy Title IX Coordinators.<sup>2</sup>
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the University explicitly vested with the authority or responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Privacy* means that information related to a complaint will be shared with a limited number of University employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the University’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the University’s Student Records Policy. The privacy of employee records will be protected in accordance with the Employee Handbook.
- *Rape*: Penetration, no matter how slight, of a person’s vagina or anus with any body part or object; or oral penetration by a sex organ of another person, forcibly, and/or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University’s educational program.

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<sup>2</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the University on a Respondent who is found to have violated this policy.
- *Sexual Assault with an Object*: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence, and domestic violence. See Section 17(b) for greater detail.
- *Sodomy*: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- *Student* includes all persons taking courses at the University, both full-time and part-time, and pursuing undergraduate, graduate, or professional studies. Persons who are not officially enrolled for a particular term but who have a continuing relationship with TLU or who have been notified of their acceptance for admission are considered "students" as are persons who are living in the University's residence halls or apartments although not enrolled in this institution. TLU retains conduct jurisdiction over students who choose to take a leave of absence, withdraw, or who have graduated for any misconduct that occurred prior to the leave, withdrawal or graduation.
- *Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties and/or the University's educational environment, and/or to deter harassment, discrimination, and/or retaliation.
- *Title IX Coordinator* is the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks.
- *Title IX Process* means the Title IX Formal Resolution Process detailed and defined below.

- *Title IX Formal Resolution Process* is a method of formal resolution designated by the University to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- *Title IX Team* refers to the Title IX Coordinator, any Deputy Title IX Coordinators, the Director of Title IX Services, and any member of the Grievance Process Pool.
- *University* refers to Texas Lutheran University, its governing bodies, and administrators.

## **2. Rationale for Policy**

Texas Lutheran University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected category, and retaliation for engaging in a protected activity. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Texas Lutheran University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **3. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, and dating violence or domestic violence based on sex. When an alleged violation of this nondiscrimination policy is reported, the allegations are subject to resolution using the University's "Title IX Process" or "Civil Rights Process," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **4. Policy Coordinators**

The Title IX Coordinator, Title VI Coordinator, Title VII Coordinator, and ADA/504 Coordinators collectively oversee 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 Title IX, VI, VII, and ADA/504 Coordinators have the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and

implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The Vice President, Diversity, Equity, and Inclusion serves as the Title IX, Title VI, and Title VII Coordinator. The Director, Human Resources serves as the ADA/504 Coordinator for Employees. The Director, Counseling and Disability Services serves as the ADA/504 Coordinator for Students.

**5. Independence and Conflict-of-Interest**

The Title IX Coordinator oversees the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To file a complaint regarding a conflict of interest, bias, misconduct, or discrimination committed by the Title IX Coordinator, contact:

Dr. Debbie Cottrell  
President  
O.G. Beck Administration Building  
1000 West Court Street  
Seguin, TX 78155  
830-372-8001  
president@tlu.edu

To file a complaint regarding a conflict of interest, bias, misconduct, or discrimination committed by any of the Deputy Title IX Coordinators, contact:

Dr. David A. Ortiz  
Vice President, Diversity, Equity, and Inclusion and Title IX Coordinator  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-6349  
dortiz@tlu.edu

The Title VI and VII Coordinator acts with independence and authority free from bias and conflicts of interest.

To file a complaint regarding a conflict of interest, bias, misconduct, or discrimination committed by the Title VI or Title VII Coordinator, contact:

Dr. Debbie Cottrell  
President  
O.G. Beck Administration Building  
1000 West Court Street  
Seguin, TX 78155

830-372-8001  
president@tlu.edu

The ADA/504 Coordinators act with independence and authority free from bias and conflicts of interest.

To file a complaint regarding a conflict of interest, bias, misconduct, or discrimination committed by the ADA/504 Coordinator (Students), contact:

Dr. Gourjoine Wade  
Vice President, Student Affairs  
Alumni Student Center, Suite 102  
1000 West Court Street  
Seguin, TX 78155  
830-372-8060  
gwade@tlu.edu

To file a complaint regarding a conflict of interest, bias, misconduct, or discrimination committed by the ADA/504 Coordinator (Employees), contact:

Dr. David A. Ortiz  
Vice President, Diversity, Equity, and Inclusion and Title IX Coordinator  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-6349  
dortiz@tlu.edu

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding Title IX and/or sex and gender discrimination policy and procedures, may be made internally to:

Dr. David A. Ortiz  
Vice President, Diversity, Equity, and Inclusion and Title IX Coordinator  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-6349  
dortiz@tlu.edu

Kyle Wych  
Dean of Students and Deputy Title IX Coordinator for Students  
Alumni Student Center, Suite 102  
1000 West Court Street  
Seguin, TX 78155  
830-372-8060

kwyach@tlu.edu

David Legore  
Professor and Chair of Dramatic Media and Deputy Title IX Coordinator for Faculty Employees  
C203 Weston Center  
1000 West Court Street  
Seguin, TX 78155  
830-372-6021  
dlegore@tlu.edu

Toi Turner  
Director of Human Resources and Deputy Title IX Coordinator for Staff Employees and Third-Party Vendors  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-8019  
tturner@tlu.edu

Troy Patterson  
Head Coach, Women's Basketball and Deputy Title IX Coordinator for Athletics  
145A Jones Complex  
1000 West Court Street  
Seguin, TX 78155  
830-372-6318  
tpatterson@tlu.edu

Tim Westmoreland  
Director, Residence Life and Deputy Title IX Coordinator for Residence Life  
Alumni Student Center, Suite 107  
1000 West Court Street  
Seguin, TX 78155  
830-372-8066  
twestmoreland@tlu.edu

Michael Hunt  
Director, Title IX Services and Deputy Title IX Coordinator  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-6327  
mhunt@tlu.edu

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding Title VI or Title VII and/or civil rights discrimination policy and procedures, may be made internally to:

Dr. David A. Ortiz

Vice President, Diversity, Equity, and Inclusion and Title VI and Title VII Coordinator  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-6349  
dortiz@tlu.edu

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding ADA/504 and/or disability discrimination policy and procedures, may be made internally to:

Dr. Marlene Rendon  
Director of Counseling and Disability Services and ADA/504 Coordinator (Students)  
Alumni Student Center, Suite 107  
1000 West Court Street  
Seguin, TX 78155  
830-372-8009  
mrendon@tlu.edu

Toi Turner  
Director of Human Resources and ADA/504 Coordinator (Employees)  
O.G. Beck Administration Building, Suite 104  
1000 West Court Street  
Seguin, TX 78155  
830-372-8019  
tturner@tlu.edu

The University has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the administrators listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of the University.

- Dr. Debbie Cottrell, University President
- Dr. Sarah Ferguson, Vice President for Academic Affairs
- Dr. Gourjoine Wade, Vice President, Student Affairs
- Renee Rehfeld, Vice President for Development and Alumni Relations
- Edie Richardson, Vice President for Finance
- Bill Senter, Vice President for Administration
- Sarah Story, Vice President for Admissions, Marketing, and Communications
- Bill Miller, Director of Athletics

The University has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 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 (OCR), 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)  
Website: <http://www.ed.gov/ocr/complaintprocess.html>  
Equal Employment Opportunity Commission (EEOC)  
Website: <http://www.eeoc.gov/contact/>

Texas Workforce Commission (TWC)  
Telephone: (888) 452-4778 or (512) 463-2642  
Facsimile: (512) 463-2643  
Website: <https://www.twc.state.tx.us/>

Texas Higher Education Coordinating Board (THECB)  
1200 E. Anderson Lane, Austin, TX 78752  
Telephone: (512) 427-6101  
Facsimile: (512) 427-6127  
Website: <http://www.thecb.state.tx.us/>

## **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- a) Report **directly** to the ADA/504 Coordinators, Title IX Coordinator or Deputy Title IX Coordinators, or Title VI and Title VII Coordinators, either in-person, by telephone, or electronically (*electronic and voicemail options available 24-hours/day, 7-days/week*);
- b) Report **online**, using the **Discrimination, Harassment, and Retaliation Reporting Form** posted at <https://TIXreport.tlu.edu> (*online option available 24-hours/day, 7-days/week*);
- c) Report **by telephone**, using the toll-free **Campus Conduct Hotline** (866.943.5787) (*hotline option available 24-hours/day, 7-days/week*).

In addition to reporting in the Title IX Process (described below), a formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail; by using the contact information in the section immediately above; or as described in this section.

If a formal complaint is submitted in a form that does not contain the Complainant's physical or digital signature, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

### **8. Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide those supportive measures. The University will act to ensure as minimal an academic/occupational impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- *No Trespass Orders* or *No Contact Orders*
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of *No Contact Orders* will be referred to appropriate student or employee conduct processes for enforcement.

### **9. Emergency Removal**

The University can act to remove a student or employee Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Vice President, Student Affairs, Title IX Coordinator, and/or Director, Human Resources in conjunction with the University Risk Manager using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Vice President, Student Affairs, or Director, Human Resources prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Vice President, Student Affairs or Director, Human Resources determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Vice President, Student Affairs or Director, Human Resources for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Vice President, Student Affairs or Director, Human Resources has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As recommended by the Title IX Coordinator and determined by the Vice President, Student Affairs or Director, Human Resources, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

As recommended by the Title IX Coordinator and determined by the Vice President, Student Affairs,

alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

When the Respondent is an employee, existing provisions for interim action are applicable.

**10. Promptness**

All allegations are acted upon promptly by the University once it has received notice or a formal complaint. There are always exceptions and extenuating circumstances that can cause a resolution to take longer than anticipated, but the University will avoid all undue delays within its control.

The University will provide regular status updates to the parties throughout the investigation. If there is an unanticipated delay in resolution, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**11. Privacy and Confidentiality**

Every effort is made by the University to preserve the privacy of reports.<sup>3</sup> The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the University's Student Records Policy. The privacy of employee records will be protected in accordance with the Employee Handbook.

The University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant; any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conduct of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

In Texas, Chapter 51, Section 5.256, of the Education Code states that unless waived in writing by the alleged victim, the identity of the alleged victim of an incident is confidential and not subject to disclosure under Chapter 552 of the Government Code and may be disclosed only to (a) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings; (b) a law enforcement officer as necessary to conduct a criminal investigation of the report; (c) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or (d) potential witnesses to the incident as necessary to conduct an investigation of the report.

For allegations not involving sex/gender-based violence (in accordance with state law), the University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

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<sup>3</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings.

Only a small group of officials who “need to know” will typically be told about the complaint. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ rights and privacy.

All employees who are involved in the University’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law.

The University may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The University has designated individuals who have the ability to have privileged communications as Confidential Resources.

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

Confidentiality and mandated reporting are addressed more specifically below.

## **12. Jurisdiction of the University**

This policy applies to the education program and activities of the University<sup>4</sup>, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, and in buildings owned or controlled by the University’s recognized student organizations. The Respondent must be a member of the University community in order for its policies to apply. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the University’s educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program

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<sup>4</sup> Which includes the work environment of the University’s employees.

or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

- 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 in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and/or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will typically apply the policy and the procedures in place at the time of notice/complaint.

#### **14. Online Harassment and Misconduct**

The policies of the University are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities, or when they involve the use of University networks, technology, or equipment.

Although the University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing, or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the University only when such speech is made in an employee's official or work-related capacity.

#### **15. Policy on Nondiscrimination**

The University adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in institutions of higher education.

The University does 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 (including perceived disability),
- Age,
- Marital status,
- Family responsibilities,
- Sexual orientation,
- Gender,
- Gender identity,
- Gender expression,
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics,
- Domestic violence victim status,
- Height,
- Weight
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human/civil rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, or limit the educational, employment, or residential and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's 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 promptly and fairly addressed and remedied by the University according to the appropriate grievance 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.

**16. Policy on Disability Discrimination and Accommodation**

The University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations 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 University, regardless of whether they currently have a disability. 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.

Dr. Marlene Rendon, Director of Counseling and Disability Services, has been designated as the University’s student ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability. Toi Turner, Director of Human Resources, has been designated as the University’s employee ADA/504 Coordinator.

Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations in the University’s resolution process, see Section 42 of this document.

**a. Students with Disabilities**

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

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Counseling and Disability Services, 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 for the student’s particular needs and academic program(s) in accordance with the University’s applicable policies.

**b. Employees with Disabilities**

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

An employee with a disability is responsible for submitting a request for an accommodation to the Director, Human Resources and providing necessary documentation. The Director, 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 in accordance with the University's applicable policies.

## **17. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. The 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 the University's policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. The University does not tolerate discriminatory harassment of any employee, student, visitor, or third-party. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>5</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe **or** pervasive **and** objectively offensive, except for allegations of Title IX sexual harassment, in which the conduct must be severe **and** pervasive **and** objectively offensive.

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<sup>5</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 Recipients Investigative Guidance.](#)

When discriminatory harassment rises to the level of creating a hostile environment, the University may also impose sanctions on the Respondent through application of the appropriate grievance process below.

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 and not based on a protected status. Addressing such conduct may not result in the imposition of discipline under University policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms. For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Dean of Students.

### **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Texas regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

*Sexual harassment*, as an umbrella category, includes the offenses of sexual harassment, sexual assault, stalking, domestic violence, and dating violence, and is defined as:

Conduct on the basis of sex/gender or that is sexual in nature that satisfies one or more of the following:

- 1) *Quid Pro Quo*:
  - a. an employee of the University,
  - b. implicitly or explicitly conditions the provision of an aid, benefit, or service of the University,
  - c. on an individual's participation in unwelcome sexual conduct.
  
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the University's education program or activity.<sup>6</sup>

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<sup>6</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred, and any similar, previous patterns that may be evidenced.

- 3) Sexual assault, defined as:
  - a. Sex Offenses, Forcible:
    - i. Any sexual act, including rape, sodomy, sexual assault with an object, or fondling, directed against another person<sup>7</sup>,
    - ii. without the consent of the Complainant,
    - iii. including instances in which the Complainant is incapable of giving consent.
  - b. Sex Offenses, Non-forcible:
    - i. Incest:
      - a) Non-forcible sexual intercourse,
      - b) between persons who are related to each other,
      - c) within the degrees wherein marriage is prohibited by Texas state law.
    - ii. Statutory Rape:
      - a) Non-forcible sexual intercourse,
      - b) with a person who is under the statutory age of consent in Texas, which is 17 years old, although if the victim was at least 14 years old, it is not statutory rape if the other party was not more than three years older.
  
- 4) Dating Violence, defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.<sup>8</sup>
    - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - iii. Dating violence does not include acts covered under the definition of domestic violence.
  
- 5) Domestic Violence\* ("Family Violence" under Texas law), defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

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<sup>7</sup> This would include forcing or causing another person to touch you sexually without their consent.

<sup>8</sup> See Texas Family Code Title 4, Subtitle A, Chapter 71, Section 71.0021.

- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Texas<sup>9</sup>, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Texas.

\*To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking<sup>10</sup>, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**i. 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.

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<sup>9</sup> See Texas Family Code Title 4, Subtitle A, Chapter 71, Section 71.004.

<sup>10</sup> See Texas Penal Code, Section 42.072.

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. That 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.

The University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

## ii. Force, Coercion, Consent, and Incapacitation<sup>11</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

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<sup>11</sup> According to Section 1.07(11) of the Texas Penal Code, “consent” means assent in fact, whether express or apparent, which is applicable to criminal prosecutions for sex offenses in Texas. Section 22.011 of the Texas Penal Code states that sexual assault is without the consent of the other person if: (1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; (8) the actor is a public servant who coerces the other person to submit or participate; (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person’s emotional dependency on the actor; (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person’s emotional dependency on the clergyman in the clergyman’s professional character as spiritual adviser; (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code; or (12) the actor is a health care services provider who, in the course of performing an assisted reproduction procedure on the other person, uses human reproductive material from a donor knowing that the other person has not expressly consented to the use of material from that donor.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, 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.

**Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

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. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

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 intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>12</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**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 by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when 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, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **c. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, the University additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of

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<sup>12</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

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), including the making or posting of revenge pornography

- Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography;
- State-defined sexual harassment, defined as: unwelcome, sex or gender-based verbal or physical conduct that:
    - In the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment, or;
    - In the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

This definition of sexual harassment is different than the federal sexual harassment definition in Section 17(b) of this policy and is derived from Texas Education Code Section 51.251(5).

- Threatening or causing physical harm; extreme verbal, emotional, or psychological 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 and/or mentally
- That is not speech or conduct otherwise protected by the First Amendment.
- Stalking, defined as:
  - engaging in a course of conduct,
  - on the basis of a protected class<sup>13</sup>,
  - directed at a specific person, that
    - would cause a reasonable person to fear for the person's safety, or
    - the safety of others; or
    - Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Violation of any other University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

### **18. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator, Title VI or Title VII Coordinators, or ADA/504 Coordinators, or designees, and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The University and any member of the University community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege

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<sup>13</sup> Excluding sex or gender, which is covered under Sexual Harassment allegations (pg. 20).

secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in, in any manner, an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint within the Civil Rights Process could be considered retaliatory if those charges could be applicable under the Title IX Process, when the Civil Rights Process charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within the Title IX Process that is not provided by the Civil Rights Process. Therefore, the University vets all complaints carefully to ensure this does not happen, and to ensure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **19. Mandated Reporting**

All University employees (faculty, staff, and administrators) are required to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although 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 and are not required to report actual or suspected discrimination or harassment in a manner that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the University for a Complainant or third-party (including parents/guardians when appropriate):

### **a. Confidential Resources**

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

- On-campus licensed professional counselors and staff<sup>14</sup>

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<sup>14</sup> Texas Education Code Section 51.290 requires each postsecondary educational institution to designate one or more employees to act as responsible employees for purposes of Title IX and one or more employees as

- On-campus health service providers and staff
- On-campus Victim Advocates
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional)
- Off-campus (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

As mandated by Texas Education Code Section 51.252, employees who have confidential privileges as described above, and who receive reports within the scope of their confidential roles, must report incidents of sexual harassment, sexual assault, dating violence, or stalking to the Title IX Coordinator (or designee), but will only state the type of incident reported and may not include any information that would violate a student's expectation of privacy.

#### **b. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, an anonymous report may be given by a Mandated Reporter, without identification of the Complainant, except regarding allegations of sex/gender-based violence. The Mandated Reporter cannot remain anonymous.

Except in cases of sex/gender-based violence, if a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator or Title VI/Title VII Coordinator on that assessment without revealing personally identifiable information.

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persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking. Further, a postsecondary educational institution may designate one or more students enrolled at the institution as student advocates to whom other students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking.

An anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the University's ability to investigate, respond, and provide remedies, depending on what information is shared.

Except in cases of sex/gender-based violence, when a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled.<sup>15</sup>

### **c. Mandated Reporters and Formal Notice/Complaints**

All employees of the University (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator, or designee, all known details of a report made to them in the course of their employment.<sup>16</sup>

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Per Texas Senate Bill 212 (effective January 1, 2020)<sup>17</sup>, the only exceptions to the mandatory employee reporting requirement are as follows:

- An incident in which an employee, themselves, is the victim of sexual harassment, sexual assault, dating violence, or stalking, or;

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<sup>15</sup> Texas Penal Code Section 32.53 requires any person who believes that a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited to report the circumstances to appropriate authorities.

<sup>16</sup> Texas Education Code Chapter 51, Subchapter E-2, Section 51.252, requires all employees of a postsecondary education who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator. However, a person is not required to make a report concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking, or an incident in which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking awareness event sponsored by the postsecondary educational institution or by a student organization affiliated with the institution.

<sup>17</sup> Texas Education Code Chapter 51, Subchapter E-2, Section 51.252(c)

- An incident in which the employee received information due to a disclosure made at a public awareness event sponsored by the university or by a student organization affiliated with the university.

Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a non-student Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of University policy and Texas law and will be subject to disciplinary action, up to and including termination, as well as civil penalties, for failure to comply.

Finally, it is important to note that although a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, they are, of course, encouraged to do so.

## **20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they 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 to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to physical health and/or safety that requires the University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process,

acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

### **21. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant'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.

### **22. Failure to Report, False Allegations, and Evidence**

Failure to report and deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Texas Senate Bill 212 (effective January 1, 2020) also contains a civil immunity provision for any person who "in good faith" makes a report, assists in the investigation of a report, or otherwise participates in the institution's disciplinary process.<sup>18</sup>

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<sup>18</sup> Texas Education Code Chapter 51, Subchapter E-2, Section 51.254, states that a person acting in good faith who reports or assists in the investigation of a report of an incident of sexual harassment, sexual assault, dating violence, or stalking is immune from civil liability, and criminal liability for offenses punishable by fine only, that might otherwise be incurred or imposed as a result of those actions; and may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. However, this does not apply to a person who perpetrates or assists in the perpetration of the incident.

Per Texas Senate Bill 212, the penalty for a non-student University employee who “is required to make a report under Section 51.252 [of the Texas Education Code] and knowingly fails to make the report” or “with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false”, must be terminated from the University, and is also subject to a Class B misdemeanor (punishable by a maximum of 180 days in jail and/or a maximum fine of \$2000). The offense is escalated to a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4000) “if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report under Section 51.252.”<sup>19</sup>

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

### **23. Amnesty for Complainants and Witnesses**

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.<sup>20</sup>

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students and employees within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

### **24. Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

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<sup>19</sup> Texas Education Code Section 51.255(a)

<sup>20</sup> Texas Education Code Section 51.254

- c) VAWA-based crimes,<sup>21</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include student affairs/student conduct staff, campus law enforcement, local 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.

### **25. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders and is particularly time-sensitive. The University will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at a hospital, ideally within 120 hours of the incident (sooner is better).
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container available from the Guadalupe Valley Family Violence Shelter (GVFVS), the University Police Department, or the Guadalupe Regional Medical Center (GRMC).
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

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<sup>21</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

## II. CIVIL RIGHTS EQUITY RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (TITLE IX PROCESS)

### **1. Overview**

The University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator, Director of Human Resources, Deputy Title IX Coordinators, or any other Official with Authority by applying these procedures, known as the “Title IX Process.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If other policies are invoked, such as policies on protected class harassment or discrimination above, please see *Section III* for a description of the procedures applicable to the resolution of such offenses, known as the “Civil Rights Process.”

The Civil Rights Process can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within the Title IX Process, as determined by the Title IX Coordinator.

All employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

### **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator, or designee, initiates a prompt initial assessment to determine the next steps the University needs to take.

The Title IX Coordinator, or designee, will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) Informal Resolution (upon submission of a formal complaint); and/or
- 3) Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The University uses the Formal Grievance Process to determine whether or not the policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this policy, the Title IX Coordinator,<sup>22</sup> or designee, engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- Once notice is given, the Title IX Coordinator, or designee, seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator, or designee, assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator, or designee, reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator, or designee, works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator, or designee, works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator, or designee, works with the Complainant to identify their wishes, assesses their request(s), and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator, or designee, assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator, or designee, will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, and/or
      - a pattern of alleged misconduct, and/or
      - a culture/climate issue based on the nature of the complaint.
    - If alleged misconduct does not fall within the scope of Title IX, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter, accordingly, including referring the matter for resolution under the Civil Rights Process if applicable. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX which does not limit the University’s

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<sup>22</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

authority to address a complaint with an appropriate process and remedies.

**a. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and, if so, what approach may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose a transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs are typically conducted by Title IX Coordinator, Deputy Title IX Coordinators, Vice President, Student Affairs, Dean of Students, Associate Deans of Students, Director of Human Resources, clinical counselors, law enforcement officers, and student conduct officers. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the University's process for VRA can be found below in *Appendix E*.

**b. Dismissal (Mandatory and Discretionary)<sup>23</sup>**

The University must dismiss a formal complaint or any allegations therein if, at any time during

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<sup>23</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proven; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University<sup>24</sup>.

The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer *employed* by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith but are, on occasion, made for purposes of retaliation instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

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<sup>24</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

## **5. Advisors**

The parties may each have an Advisor<sup>25</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>26</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator, or designee, will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will have been trained by the University and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

### **b. Advisor's Role in Meetings and Interviews**

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 the parties 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 an attorney.

### **c. Advisors in Hearings/University-Appointed Advisors**

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<sup>25</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party per meeting, but a party may switch Advisors during the process.

<sup>26</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Under U.S. Department of Education regulations for Title IX, a form of indirect questioning is permitted during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor during a hearing. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

#### **d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University's policies and procedures.

#### **e. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>27</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **f. Sharing Information with the Advisor**

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<sup>27</sup> Subject to the state law provisions or University policy above.

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator, or designee, or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will not comply with that request. All communication to the involved parties will go directly to the student(s) and/or employee(s).

**g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may 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.

**h. Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but the University may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

**i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days 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 are expected to provide timely notice to the Title IX Coordinator, or designee, if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator, or designee, of the identity of their hearing Advisor at least two (2) business days before the hearing.

**j. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with University policy.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose as part of an Informal Resolution, discussed below. The University encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Resolution Process is the University's primary resolution approach unless Informal Resolution is elected by all parties and the University. Three options for Informal Resolution are detailed in Section 7, and the Formal Resolution Process is detailed in Section 8.

## **7. Informal Resolution Process**

The three options for Informal Resolution include:

- Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- Alternative Resolution. When the parties agree to resolve the matter through an alternative resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.
- Accepted Responsibility. When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator, or designee.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from

participating in such a process, including information regarding any records that will be maintained or shared by the University.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal resolution will not be used for any allegation involving a student Complainant and an employee Respondent.

**a. Supportive Resolution**

Supportive Resolution is an informal mechanism, in which the Complainant only wishes to receive supportive measures and does not wish to pursue a Formal Investigation or other Informal Resolution options to remedy the situation.

**b. Alternative Resolution Mechanism**

Alternative Resolution is an informal mechanism, including restorative practices, facilitated dialogue, etc. by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternative Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator, or designee, is authorized to negotiate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors.

The Title IX Coordinator, or designee, maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary

actions. Results of complaints resolved by Informal Resolution or Alternative Resolution are not appealable.

### **c. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **8. Formal Resolution Process**

The Formal Resolution Process relies on a pool of administrators including Deputy Title IX Coordinators and Hearing Panel members (“the Pool”) to carry out the process. The names and contact information of the Deputy Title IX Coordinators are announced in an annual distribution of this policy to all students, parents/guardians of students, and employees. Names and contact information of the Hearing Panel members are available upon request.

### **a. Pool Member Roles**

Members of the Pool consist of faculty, administrative staff, and hourly staff. Members of the 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 the parties
- To serve on hearing panels for allegations [*Hearing Panel Members only*]
- To serve on appeal panels for allegations [*Hearing Panel Members only*]
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution approaches (e.g., restorative practices, facilitated dialogue)

- To investigate allegations [*Deputy Title IX Coordinators only*]

#### **b. Pool Member Appointment**

The Title IX Coordinator, in consultation with the appropriate Vice President, appoints the Pool<sup>28</sup>, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

#### **c. Pool Member Training**

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the University's Discrimination and Harassment Policy and Procedures
- How to conduct trauma-informed investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct a trauma-informed investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

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<sup>28</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.

- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for all Pool members. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted at <http://www.tlu.edu/titleix>.

#### **d. Pool Membership**

The 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.

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### **9. Notice of Investigation and Allegations**

The Title IX Coordinator, or designee, will provide the written *Notice of Investigation and Allegations* (the “*NOIA*”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The *NOIA* is also copied to the Complainant, who is to be given advance notice of when the *NOIA* will be delivered to the Respondent.

The *NOIA* will include:

- A meaningful summary of all the allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the University’s policy on retaliation,
- Information about the privacy of the process,

- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's brochure with university and community support resources,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the *NOIA* may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed, or emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **10. Resolution Timeline**

The University will make a good faith effort to complete the resolution process as promptly as circumstances permit. The Title IX Coordinator, or designee, will provide case status updates and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **11. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator, or designee, appoints a team of two Investigators (typically) to conduct the investigation.

### **12. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) and Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator and/or Decision-maker will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the University President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained,

including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **13. Investigation Timeline**

Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **14. Delays in the Investigation Process and Interactions with Law Enforcement**

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to a request from law enforcement to temporarily delay the investigation; the need for language assistance; the absence of parties and/or witnesses; and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, University will implement supportive measures as deemed appropriate.

University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **15. Steps in the Investigation Process**

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

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

### Preliminary Investigation

- Determine the identity and contact information of the Complainant;
- Identify all policies implicated by the alleged misconduct;
- Assist the Title IX Coordinator, or designee, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Communicate with the Complainant to verify the report, explain available support services, and discuss options for resolution;
- Provide Complainant with the *Formal Complaint Form* to select desired support services, provide an incident narrative, and select a resolution option;

### Investigation

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
- Work with the Title IX Coordinator, or designee, as necessary, to prepare the initial *Notice of Investigation and Allegation (NOIA)*. The *NOIA* may be amended with any additional or dismissed allegations;
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party;
- Provide each interviewed party, including witnesses, an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible;
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular status updates to the parties throughout the investigation;
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding;
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical, or documentary evidence will be included;
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report;
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence

obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor);

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses;
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period;
- The Investigator(s) shares the report with the Title IX Coordinator, or designee, and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

#### **16. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

#### **17. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of audio and/or video recording. Texas has a "one-party consent" law that requires that only one party to the conversation consents to recording.

#### **18. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

### **19. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker—unless all parties and the Decision-maker agree to an expedited timeline.

The Director, Human Resources or Dean of Students will select the appropriate Decision-makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

### **20. Hearing Panel Composition**

The Director, Human Resources or Dean of Students will empanel four members from the available pool to the hearing panel. One of the members will serve as Chair and no members will have been previously involved with the allegation or investigation. An alternate will sit in throughout the process if needed or at the discretion of the Chair.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve on the Hearing Panel. Those who are serving as Advisors for any party may not serve on the Hearing Panel in that matter.

The Title IX Coordinator may not serve on the Hearing Panel or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time and venue determined by the Director, Human Resources or Dean of Students, or designee.

### **21. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they

evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process if a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **22. Notice of Hearing**

No less than ten (10) days prior to the hearing<sup>29</sup>, the Director, Human Resources or Dean of Students will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing 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.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Director, Human Resources or Dean of Students at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be

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<sup>29</sup> Unless an expedited hearing is agreed to by all parties.

raised with the Director, Human Resources or Dean of Students at least two (2) business days prior to the hearing.

- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Director, Human Resources or Dean of Students may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Director, Human Resources or Dean of Students if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter unless they have been provided already.<sup>30</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Director, Human Resources or Dean of Students to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) 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.

### **23. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Director, Human Resources or Dean of Students at least five (5) business days prior to the hearing.

The Director, Human Resources or Dean of Students can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Director, Human Resources or Dean of Students know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

### **24. Pre-Hearing Preparation**

The Director, Human Resources or Dean of Students, after any necessary consultation with the parties, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) days prior to the hearing.

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<sup>30</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Any witness scheduled to participate in the hearing must have been first interviewed or have proffered a written statement or answered written questions, by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Director, Human Resources or Dean of Students as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Director, Human Resources or Dean of Students concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Director, Human Resources or Dean of Students will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator, Director, Human Resources, or Dean of Students as soon as possible.

During the ten (10) day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **25. Pre-Hearing Meetings**

The Director, Human Resources or Dean of Students may convene pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing, or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will:

- Review the logistics for the hearing;

- Discuss the hearing format, including decorum of the parties; role of the advisors; and method of cross-examination questioning;
- Answer any process/procedures questions;
- Consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant;
- Consider arguments that evidence identified as directly related but not relevant by the Investigator(s) is, in fact, relevant;
- Invite, receive, and review cross-examination questions or topics in advance of the hearing;

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or designee, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded, without prior notice to the involved party.

## **26. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the hearing administrator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent)<sup>31</sup>, Advisors to the parties, any called witnesses, a representative of the Title IX Team, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

## **27. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator, or designee, may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so.

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<sup>31</sup> Subject to the University's Student Code of Conduct.

In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

**28. Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of any hearing panel members on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator, or designee, will review and decide the challenge.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing administrator appointed by the Director, Human Resources or Dean of Students.<sup>32</sup> The hearing administrator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants as appropriate, etc.

**29. Summary of the Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the hearing panel members and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the hearing panel members should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**30. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the hearing panel members and then by the parties through their Advisors (“cross-examination”).

All cross-examination questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question directly to the party, witness, or Investigator(s). The proceeding will pause to allow the Chair to determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if

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<sup>32</sup> If not conflicted out by previous involvement, the Title IX Coordinator, or designee, may serve as the hearing facilitator/case manager.

the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with the hearing administrator on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or hearing panel member at the hearing, the Chair may elect to address those issues, consult with the hearing administrator, and/or refer them to the Director, Human Resources or Dean of Students, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **31. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting or they attend but refuse to participate in questioning, *the hearing panel members may still consider any evidence, or any prior statement made by that party or witness at the hearing* (including those contained in the investigation report) in the ultimate determination of responsibility.

The hearing panel members may consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. The hearing panel members may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

The hearing panel members may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the hearing panel members may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **32. Recording Hearings**

Hearings (but not deliberations) are recorded by the University for the purpose of review in the event of an appeal. The parties may not record the proceedings, and no other unauthorized recordings are permitted.

The hearing panel members, the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording or review a transcript of the recording in a controlled environment determined by the Director, Human Resources or Dean of Students, upon request. No person will be given or be allowed to make a copy of the recording without consultation with the Title IX Coordinator.

### **33. Deliberation, Decision-making, and Standard of Proof**

The hearing panel members will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing administrator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the hearing administrator will provide hearing panel members the previously submitted party impact statements for consideration in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The hearing panel members may – at their discretion – consider the statements, but they are not binding.

The hearing panel members will review the statements and any pertinent conduct history provided by the hearing administrator and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will complete and sign the hearing panel's written deliberation document and deliver it to the hearing administrator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

The written deliberation document is typically three (3) to five (5) pages in length and must be submitted to the hearing administrator, within two (2) business days of the end of deliberations, unless the Director, Human Resources or Dean of Students, or designee, grants an extension. If an extension is granted, the Director, Human Resources or Dean of Students, or designee, will notify the parties.

### **34. Notice of Outcome/Determination Letter**

Using the deliberation document, the Director, Human Resources or Dean of Students, or designee, will work with the Chair to prepare a Notice of Outcome or determination letter. The determination letter may be reviewed by legal counsel. The Title IX Coordinator, or designee, will then share the

letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within three (3) business days of receiving the hearing panel's deliberation document.

The determination letter will be shared with the parties simultaneously. 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 or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The determination letter will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The determination letter will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The determination letter will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **35. Statement of the Rights of the Parties**

The Statement of the Rights of the Parties is fully detailed in *Appendix C*.

### **36. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- 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 Complainant and the community

- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to other actions taken, or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions<sup>33</sup> that may be imposed upon students or student organizations singly or in combination<sup>34</sup>:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation for one academic year. This sanction will be noted on the student's official transcript.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted on the student's official transcript, subject to the applicable expungement policies set out in Texas Education Code Section 51.9364 (d).
- *Withholding Diploma*: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

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<sup>33</sup> University policies on transcript notation will apply to these proceedings.

<sup>34</sup> Subject to University's Student Code of Conduct.

## **b. Employee Sanctions**

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

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

### **a. Students**

Should a student Respondent decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process will continue as required by Texas House Bill 449.

The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University until the resolution process is complete. Such exclusion applies to all campuses of University. The Registrar's office will be notified to place a registration hold on the student's account and the student will be referred to the Office of Dean of Students. The student may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to University unless and until all sanctions have been satisfied.

## **b. Employees**

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **38. Appeals**

Any party may file a request for appeal (“Request for Appeal”), and must be submitted online, as designated in the determination letter, within three (3) business days of the delivery of the determination letter.

A four-member appeal panel chosen from the Pool will be designated by the Director, Human Resources or Dean of Students, or designee, or a single Appeal Decision-maker will Chair the appeal. No appeal panelists or a single Appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. Out of the four-member appeal panel, a voting Chair will be designated.

The Request for Appeal will be forwarded for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Director, Human Resources or Dean of Students, or designee, will notify the other party(ies) and their Advisors, and the Title IX Coordinator (or designee).

The other party(ies) and their Advisors, the Title IX Coordinator (or designee), and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request for an appeal with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Director, Human Resources or Dean of Students, or designee, to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy and either denied or approved.

If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties, in collaboration with their advisors, if desired.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions (are by majority vote and) apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved or denied ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, 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.

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 institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

**b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then interim suspension procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the University may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Dean of Students, within two (2) business days of the notice of the sanctions. The request will be evaluated by the Vice President, Student Affairs, whose determination is final.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator or Dean of Students on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator, or Dean of Students, or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding or sanction, that decision is final. When 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.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal Chair/Decision-maker may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **39. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented,

the Title IX Coordinator, or designee, may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services (students)
- Referral to the Employee Assistance Program (non-student employees)
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided that privacy does not impair the University's ability to provide these services.

#### **40. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **41. Recordkeeping**

The University will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;

2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

#### **42. Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Counseling and Disability Services (students) or Director of Human Resources (employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, or designee, determine which accommodations are appropriate and necessary for full participation in the process.

#### **43. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Director, Human Resources and Dean of Students may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The University may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

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

This Policy and procedures are effective October 2021.

### **III. CIVIL RIGHTS EQUITY RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (CIVIL RIGHTS PROCESS)**

- The Civil Rights Process is applicable when the Title IX Coordinator determines the Title IX Process is inapplicable, or offenses subject to the Title IX Process have been dismissed.
- If the Title IX Process is applicable, the Title IX Process must be applied in lieu of the Civil Rights Process.
- The University can substitute any alternative process instead of the Civil Rights Process, if desired.
- VAWA Section 304 requirements apply to the Civil Rights Process or any alternative process for reports that fall under VAWA.
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, the 2001 Revised Guidance, etc.) may also be applicable to the Civil Rights Process.

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 Title IX Coordinator, Deputy Title IX Coordinators, Title VI Coordinator, Title VII Coordinator, ADA/504 Coordinators, or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected class status involving students, staff, faculty members, or third parties, with the exception of at-will employees.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). 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 employee handbooks.

#### **1. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of the University's nondiscrimination Policy, the Title IX Coordinator, or designee, engages in an initial assessment. The steps in an initial assessment can include:

- The Title IX Coordinator, or designee, reaches out to the Complainant to inform of University and community resources.
- The Title IX Coordinator, or designee, informs the Complainant of their right to have an Advisor.
- The Title IX Coordinator, or designee, informs the Complainant of the resolution options: Formal Resolution; Informal Resolution; or Supportive Response (only).
  - If Formal Resolution is preferred, the Title IX Coordinator, or designee, initiates the investigation process and determines whether the scope of the investigation will address:
    - Incident, and/or
    - A potential pattern of misconduct, and/or
    - A culture/climate issue.

- If an Informal Resolution option is preferred, the Title IX Coordinator, or designee, assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If a Supportive Response is preferred, the Title IX Coordinator, or designee, works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Formal Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
- In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:
  - Interim suspension of a Respondent who is a threat to health/safety;
  - Whether the Title IX Coordinator should pursue Formal Resolution absent a willing/able Complainant;
  - Whether to put the investigation on the footing of incident and/or pattern and/or climate;
  - To help identify potentially predatory conduct;
  - To help assess/identify grooming behaviors;
  - Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;
  - Whether to permit a voluntary withdrawal by the Respondent;
  - When to impose transcript notation or communicate with a transfer University about a Respondent;
  - Assessment of appropriate sanctions/remedies;
  - Whether a Clery Act Timely Warning/Trespass order is needed.

More about the University's process for VRA can be found in *Appendix D*.

Based on the initial assessment, the University will initiate one of these responses:

- Formal Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Decision-maker and the opportunity to appeal to an Appeal Panel.
- Informal Resolution – typically used for non-violent offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Supportive Response – measures to help restore the Complainant's education access, as described in the Policy.

If the Formal or Informal Resolution process is initiated, the Title IX Coordinator, or designee, will reach out to the Respondent to:

- Inform the Respondent of University and community resources;
- Inform the Respondent of their right to have an Advisor;
- Inform the Respondent of the Formal or Informal Resolution processes.

The investigation and the subsequent Formal Resolution determine whether the nondiscrimination policy has been violated. If so, the University will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator or Title VI/VII Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator or Title VI/VII Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator or Title VI/VII Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the discretion of the Title IX Coordinator or Title VI/VII Coordinator, but the request is usually only granted in extraordinary circumstances.

## **2. Resolution Process Pool**

The Resolution Process relies on a pool of administrators including Deputy Title IX Coordinators and Hearing Panel members (“the Pool”) to carry out the process. The names and contact information of the Deputy Title IX Coordinators are announced in an annual distribution of this policy to all students, parents/guardians of students, and employees. Names and contact information of the Hearing Panel members are available upon request.

- To act as process advisors [or advocates] to the parties
- To serve on hearing panels for allegations [*Hearing Panel Members only*]
- To serve on appeal panels for allegations [*Hearing Panel Members only*]
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution approaches (e.g., restorative practices, facilitated dialogue)
- To investigate allegations [*Deputy Title IX Coordinators only*]

The Title IX Coordinator, in consultation with the appropriate Vice President, appoints the Pool<sup>35</sup>, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

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<sup>35</sup> This does not preclude the University from having all members of the Pool go through an application and/or interview/selection process.

- The scope of the University's Discrimination and Harassment Policy and Procedures
- How to conduct trauma-informed investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct a trauma-informed investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Specific training is also provided for all Pool members. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted at <http://www.tlu.edu/titleix>.

The 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.

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### **3. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. The University is obligated to ensure that any process is not abused for retaliatory purposes.

The University permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator, or designee. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

#### **4. Advisors**

The parties may each have an Advisor<sup>36</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>37</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

##### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the University community.

The Title IX Coordinator, or designee, will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will have been trained by the University and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

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<sup>36</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party per meeting, but a party may switch Advisors during the process.

<sup>37</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Parties also have the right to choose not to have an Advisor.

**b. Advisor’s Role in Meetings and Interviews**

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 the parties 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 an attorney.

**c. Advisors in Hearings**

Unlike their roles in the Title IX Process, Advisors in the Civil Rights Process are not permitted to conduct questioning on behalf of their advisee. The Advisor’s role in the hearing process remains that of support only. Advisors are not permitted to directly address the Hearing Panel or participants but may confer with their advisees or pass written notes to them.

**d. Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and University’s policies and procedures.

**e. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or from the University pool. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee<sup>38</sup> during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s).

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented.

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<sup>38</sup> Subject to the state law provisions or University policy above.

Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**f. Sharing Information with the Advisor**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the University to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator, or designee, or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will not comply with that request. All communication to the involved parties will go directly to the student(s) and/or employee(s).

**g. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may 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.

**h. Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but the University may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

**i. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days 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 are expected to provide timely notice to the Title IX Coordinator, or designee, if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be

secured. Parties are expected to inform the Title IX Coordinator, or designee, of the identity of their hearing Advisor at least two (2) business days before the hearing.

**j. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim’s Bar Association.]
- The Time’s Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]

**5. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with University Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

**a. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution, when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator, or designee, can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Formal Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Formal Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Formal Resolution may be pursued.

**i. Alternative Resolution**

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for non-violent, yet inappropriate, behaviors and is encouraged as an alternative to the Formal Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternative Resolution.

The Title IX Coordinator, or designee, determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternative Resolution meeting, a trained administrator facilitates a dialogue with the parties

to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept conditions and/or appropriate remedies.

The Title IX Coordinator, or designee, maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternative Resolution is not typically 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 Resolution process is completed should the parties and the Title IX Coordinator, or designee, believe it could be beneficial. *The results of Alternative Resolution are not appealable.*

## **ii. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator, or designee, makes a determination that the individual is in violation of University Policy.

The Title IX Coordinator, or designee, then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator, or designee, has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator, or designee, has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

## **b. Formal Resolution**

Formal Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy at any time during the process. Formal Resolution starts with a thorough, reliable, and impartial investigation.

If Formal Resolution is initiated, the Title IX Coordinator, or designee, will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given, at least 48 hours, in advance of an interview. Advance notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, 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 or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

Once the decision is made to commence an investigation, the Title IX Coordinator, or designee, appoints Investigator(s) to conduct the investigation. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the University President.

Investigations are completed expeditiously, 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 will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The University may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the University's resolution process are being investigated by law enforcement. The University will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

## **6. Investigation**

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

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

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

#### Preliminary Investigation

- Determine the identity and contact information of the Complainant;
- Identify all policies implicated by the alleged misconduct;
- Assist the Title IX Coordinator, or designee, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Communicate with the Complainant to verify the report, explain available support services, and discuss options for resolution;
- Provide Complainant with the *Formal Complaint Form* to select desired support services, provide an incident narrative, and select a resolution option;

#### Investigation

- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties;
- Work with the Title IX Coordinator, or designee, as necessary, to prepare the initial *Notice of Investigation and Allegation (NOIA)*. The *NOIA* may be amended with any additional or dismissed allegations;
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party;
- Provide each interviewed party, including witnesses, an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings;
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation

- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, and credibility assessments
- Provide each party with a full and fair opportunity to respond to the report in writing within ten (10) days, unless all parties agree to a shorter time frame
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- Based upon the parties' responses, the Title IX Coordinator, or designee, may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed
- The Investigator(s) shares the report with the Title IX Coordinator, or designee, and/or legal counsel for their review and feedback
- Provide the final report to the Title IX Coordinator that gathers, assesses, and synthesizes the evidence without making a finding, conclusion, determination, or recommendation.

## **7. Determination**

### **a. Administrative Resolution**

After receiving the Investigator's report and Notice of Hearing, a Decision-maker reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence. The Decision-maker may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

The Title IX Coordinator, or designee, then timely provides the parties with a written determination letter to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties

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

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

#### **i. Formal Hearing Panel Procedures**

The Dean of Students or Director, Human Resources, or designees, will refer the investigation findings to the pool members. The Dean of Students or Director, Human Resources, or designees, will empanel four members from the available pool to the hearing panel, one of whom will serve as 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 Dean of Students or Director, Human Resources, or designees.

#### **a) 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), the Dean of Students or Director, Human Resources, or designees, 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 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.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) 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.

#### **b) Hearing Panels**

Hearing panels will usually be convened within ten (10) 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 Chair, the three (3) members of the panel, the Investigator(s) who conducted the investigation, the Complainant, the Respondent, Advisors to the parties and any called witnesses.

### **c) Pre-Hearing**

The Dean of Students or Director, Human Resources, or designees, 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 three business (3) 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 three business (3) days in advance of the hearing. All objections to any panelist must be raised in writing to the Dean of Students or Director, Human Resources, or designees, as soon as possible. Hearing panel members will only be unseated if the Dean of Students or Director, Human Resources, or designees, 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 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 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 Chair, etc.), the parties should request them from the Dean of Students or Director, Human Resources, or designees, 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.

### **d) Summary of the Investigation Report**

Once the procedures are explained and the participants are introduced, the Investigator(s) will present the summary of the Investigation report 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 Chair. 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. 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 Chair.

#### **e) 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 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 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 Complainant (though there may be a limited exception made in regard to the sexual history between the parties); (3) or the character of the complainant. While previous conduct violations by the respondent 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 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 Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the standard procedure will be to hear the allegations jointly; however, the Dean of Students or Director, Human Resources, or designees, may permit the hearing pertinent to each Respondent to be conducted separately. In joint hearings, separate determinations of responsibility will be made for each Respondent.

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 Dean of Students or Director, Human Resources, or designees. No person will be given or be allowed to make a copy of the recording without permission of the Dean of Students or Director, Human Resources, or designees.

#### **f) Alternative Testimony Options**

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

#### **g) Deliberation and Decisions**

The three (3) members of the hearing panel and the non-voting Chair will deliberate in closed session to determine whether the Respondent 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 respondent committed each alleged violation). If a Respondent is found responsible by a majority of the panel, the panel will recommend appropriate responsive actions.

The Chair will prepare a written deliberation report and deliver it to the Dean of Students or Director, Human Resources, or designees, 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 must be submitted to the Dean of Students or Director, Human Resources, or designees, within two business (2) days of the end of deliberations, unless the Dean of Students or Director, Human Resources, or designees, grants an extension.

The Dean of Students or Director, Human Resources, or designees, will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable responsive actions within three business (3) days of the hearing, without significant time delay between notifications to the parties. 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.

## **8. Additional Details of the Investigation Process**

### **a. Witness responsibilities**

Witnesses (as distinguished from the parties) who are faculty or staff of the University are expected to cooperate with and participate in the University's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

Witnesses (as distinguished from the parties) who are students at the University are expected to participate in the University's investigation and resolution process. Student witnesses must, *at a minimum*, meet with Investigators or appear for a hearing, if scheduled. Failure of a student witness to meet with Investigators or appear at a scheduled hearing constitutes a violation of Policy and may be subject to discipline.

### **b. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) and/or Decision-maker determine that timeliness, efficiency, or other causes dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. When remote technologies are used, the University makes reasonable efforts to ensure privacy and ensures that any technology does not work to the detriment of any party or subject them to unfairness.

### **c. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process including investigative interviews. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of the audio and/or video recording. Texas has a "one-party consent" law that requires that only one party to the conversation consents to the recording.

### **d. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation in (e) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **e. Sexual history/patterns**

Unless the Decision-maker determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties).

#### **f. Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Decision-maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s) if the University uses a progressive discipline system.

#### **g. Character witnesses**

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **h. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Decision-maker, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Dean of Students or Director, Human Resources, or designees, informs the parties of the determination within three business days of the date on the resolution letter, ideally simultaneously, but without significant time delay between notifications. Notifications are 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 or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which the University is permitted to share pursuant to state or federal law, and the rationale supporting the findings to the extent the University is permitted to share under state or federal law.

The notice will detail when the determination is considered final (see Section 11 below) and will detail any changes that are made prior to finalization.

The Complainant may only appeal a determination based upon an allegation involving violence, including sexual violence. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

### **9. Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- 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 Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to other actions taken, or sanctions imposed by external authorities.

#### **a. Student Sanctions**

The following are the usual sanctions<sup>39</sup> that may be imposed upon students or student organizations singly or in combination<sup>40</sup>:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation for one academic year. This sanction will be noted on the student's official transcript.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend University-sponsored events. This sanction will be noted on the student's official transcript, subject to the applicable expungement policies

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<sup>39</sup> University policies on transcript notation will apply to these proceedings.

<sup>40</sup> Subject to University's Student Code of Conduct.

set out in Texas Education Code Section 51.9364 (d).

- *Withholding Diploma*: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including University registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

#### **b. Employee Sanctions**

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

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Loss of Oversight or Supervisory Responsibility*
- *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.

### **10. Withdrawal or Resignation While Charges are Pending**

#### **a. Students**

Should a student Respondent decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process will continue as required by Texas Education Code, Section 51.9364.

The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University until the resolution process is complete. Such exclusion applies to all campuses of University. The Registrar's office will be notified to place a registration hold on the student's account and the student will be referred to the Office of Dean of Students. The student may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to University unless and until all sanctions have been satisfied.

#### **b. Employees**

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **11. Appeals**

Any party may file a request for appeal ("Request for Appeal"), and must be submitted online, as designated in the determination letter, within three (3) business days of the delivery of the determination letter.

A four-member appeal panel chosen from the Pool will be designated by the Director, Human Resources or Dean of Students, or designee, or a single Appeal Decision-maker will Chair the appeal. No appeal panelists or a single Appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. Out of the four-member appeal panel, a voting Chair will be designated.

The Request for Appeal will be forwarded for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **a. Grounds for Appeal**

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
- The imposed sanctions fall outside the range of sanctions the University has designated for this offense and the cumulative record of the Respondent.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Director, Human Resources or Dean of Students, or designee, will notify the other party(ies) and their Advisors, and the Title IX Coordinator (or designee).

The other party(ies) and their Advisors, the Title IX Coordinator (or designee), and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request for an appeal with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Director, Human Resources or Dean of Students, or designee, to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy and either denied or approved.

If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in three (3) business days, which will be circulated for review and comment by all parties, in collaboration with their advisors, if desired.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions (are by majority vote and) apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved or denied ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or

reconsideration, 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.

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 institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then interim suspension procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the University may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Dean of Students, within two (2) business days of the notice of the sanctions. The request will be evaluated by the Vice President, Student Affairs, whose determination is final.

### **c. Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator, Dean of Students, or Director, Human Resources on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator, Dean of Students, or Director, Human Resources, or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding, or sanction, that decision is final. When 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.
- In rare cases where a procedural or substantive error cannot be cured by the original

Decision-maker(s) (as in cases of bias), the appeal Chair/Decision-maker may order a new hearing with a new Decision-maker(s).

- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

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

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator, or designee, may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services (students)
- Referral to the Employee Assistance Program (non-student employees)
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, or designee, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided that privacy does not impair the University's ability to provide these services.

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

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal,

neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **14. Recordkeeping**

The University will maintain for a period of at least seven years records of:

1. Each sex and gender discrimination investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

#### **15. Statement of the Rights of the Parties**

The Statement of the Rights of the Parties is fully detailed in *Appendix C*.

#### **16. Disabilities Accommodation in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Director of Counseling and Disability Services (students) or Director of Human Resources (employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, or designee, determine which accommodations are appropriate and necessary for full participation in the process.

## **17. Revision**

These policies and procedures will be reviewed and updated annually by Title IX Coordinator, Title VI and Title VII Coordinators, ADA/504 Coordinators, or designees. 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, Title VI and Title VII Coordinators, ADA/504 Coordinators, or designees, may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator, Title VI and Title VII Coordinators, ADA/504 Coordinators, or designees, may also vary procedures materially with notice (on the University website, with the appropriate effective date 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 the most recent government regulations.

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

These policies and procedures were implemented in October 2021.

## **APPENDIX A: POLICY EXAMPLES**

Some examples of possible sexual harassment include:

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual 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 graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their sexual identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raises questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

Some examples of possible stalking include:

- Students A and B were “friends with benefits.” Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an 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 it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor’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 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. If I can’t have you, no one will.”

Some examples of possible sexual assault include:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill’s incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have

intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other's clothes, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean.

Some examples of possible retaliation include:

- Student-athlete A alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes their approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B: FRAMEWORK FOR INFORMAL RESOLUTION (IR)**

The University's process for Informal Resolution may include:

1. A response based on supportive measures; and/or
2. A response based on a Respondent accepting responsibility; and/or
3. A response based on alternative resolution, which could include various approaches and/or facilitation of dialogue.

Alternative resolution approaches such as mediation, restorative practices, and transformative justice are likely to be used more and more often by colleges and universities. The University does not endorse these approaches as better or worse than other formal or informal approaches. The University believes that if they are to be used in, and are effective for, sex offenses, they need to be designed and executed carefully and thoughtfully and be facilitated by well-trained personnel who take the necessary time to prepare and lay a foundation for success. Although no approach is a panacea, the framework below can help to lay that foundation, regardless of which approach(es) are used.

Here are the principles to be considered in supporting various approaches to informal resolution:

- Informal Resolution can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by Informal Resolution.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Director, Human Resources or Dean of Students, and in line with the requirements for Informal Resolution laid out in the Title IX regulations.
- Any party can end Informal Resolution early-, mid-, or late-process for any reason or no reason.
- Informal Resolution can be attempted before and in lieu of formal resolution (although a formal complaint must be filed if you are within Section 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- Informal Resolution could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternate Resolution approaches to Informal Resolution must be facilitated by the University or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the informal resolution process may be deemed to have failed.
- Technology-facilitated Informal Resolution can be made available, should the parties not be able or willing to meet in person.
- If Informal Resolution fails, a formal resolution can take place thereafter. No evidence elicited within the "safe space" of the Informal Resolution facilitation is later admissible in the formal resolution unless all parties consent.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a restorative circle approach with many constituents, in order to ensure confidentiality.

- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the Title IX Coordinator before determining that an incident is amenable/appropriate for resolution by Informal Resolution.
- Informal Resolution can result in an accord or agreement between the parties (Complainant, Respondent, University), which is summarized in writing by and enforced by the University. These can be part of the accord/agreement.
- Informal Resolution can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties that are enforceable by the University. These can be part of the accord/agreement.
- As a secondary goal, Informal Resolution can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by the University as part of the accord/agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from Informal Resolution, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the Title IX Coordinator.
- Institutions must develop clear rules for managing and facilitating alternative resolution approaches, to ensure they are civil, age-appropriate, culturally-competent, reflective of power imbalances, and maximize the potential for the resolution process to result in catharsis, restoration, remedy, etc., for the harmed party(ies).

### **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, and/or retaliation made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by the University regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public by the University without consent provided, except to the extent permitted by law.
- 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 harassment, discrimination, and/or retaliation 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(s) to be assisted by the University in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to a University-implemented no-contact order [or a no-trespass order against a non-affiliated third party] when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such

changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:

- Relocating an on-campus student's housing to a different on-campus location
  - Assistance from University staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University's ability to provide the supportive measures.
  - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
  - The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
  - The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
  - The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the decision-maker.
  - The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  - The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  - The right to receive a copy all relevant and directly related evidence obtained by the investigation, subject to the privacy limitations imposed by state and federal law, and a ten (10) day period to review and comment on the evidence.
  - The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) days to review and comment on the report prior to the hearing.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single-gender 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 disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to have the University compel the participation of faculty and staff witnesses.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written determination letter of the finding(s) and sanction(s) of the resolution process (if any) and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX D: UNETHICAL RELATIONSHIPS POLICY**

### **EXPECTATIONS REGARDING UNETHICAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. 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. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are prohibited. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of their supervisor and/or the Director, Human Resources. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to adoption of this policy, the duty to notify the appropriate supervisor still pertains.

This type of relationship includes Resident Advisors (RAs) and students over whom the RA has direct responsibility. While no relationships are specifically prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee. The Title IX Coordinator will determine whether to refer violations of this provision to the Director, Residence Life for resolution, or to pursue resolution under this Policy, based on the circumstances of the allegation.

## **APPENDIX E: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A *Violence Risk Assessment (VRA)* is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

2. an appraisal of *risk factors* that escalate the potential for violence;
3. a determination of *stabilizing influences* that reduce the risk of violence;
4. a contextual *analysis of violence risk* by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
5. the application of *intervention and management* approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment. Trained individuals will perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric,<sup>41</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>42</sup> The Extremist Risk Intervention

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<sup>41</sup> [www.nabita.org/tools](http://www.nabita.org/tools)

<sup>42</sup> [www.nabita.org/resources/assessment-tools/sivra-35/](http://www.nabita.org/resources/assessment-tools/sivra-35/)

Scale (ERIS),<sup>43</sup> Looking Glass,<sup>44</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>45</sup> Historical Clinical Risk Management (HCR-20),<sup>46</sup> and MOSAIC.<sup>47</sup>

The VRA is conducted independently from the Title IX process, informed by it but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The threat team members conduct a VRA process and make a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

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<sup>43</sup> [www.nabita.org/resources/assessment-tools/eris/](http://www.nabita.org/resources/assessment-tools/eris/)

<sup>44</sup> [www.nabita.org/looking-glass](http://www.nabita.org/looking-glass)

<sup>45</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>46</sup> [hcr-20.com](http://hcr-20.com)

<sup>47</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)