

6.38 Sexual Misconduct

A. Purpose

The purpose of this policy is to establish procedures that will ensure the University is in compliance with federal laws and regulations. The University is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with [Title IX of the Higher Education Amendments of 1972](#), which prohibits discrimination on the basis of sex in education programs or activities; [Title VII of the Civil Rights Act of 1964](#), which prohibits sex discrimination in employment; and the [Campus Sexual Violence Elimination Act \(SaVE Act\)](#), the [Violence Against Women Act \(VAWA\)](#), and the [Clery Act](#). Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered sexual misconduct under this Policy.

B. Persons Affected

This Policy applies to all University administrators, faculty, staff, students, and third parties within the University's control, including visitors and applicants for admission or employment. It applies to conduct that occurs on University owned or controlled premises, in an education program or activity including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects a person's education or employment with the University or potentially poses a risk of harm to members of the University community. It applies regardless of the gender, gender identity, or sexual orientation of the Parties.

C. Definitions

1. **Coercion:** The use of pressure to compel another individual to initiate or continue sexual activity against an individual's will.
 - a. **Behaviors.** Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail, that causes the person to engage in unwelcome sexual activity.
 - b. **Words or conduct.** A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity.
 - c. **Examples.** Examples of coercion include but are not limited to threats to do any of the following:
 - i. "out" someone based on sexual orientation, gender identity, or gender expression;
 - ii. harm oneself if the other Party does not engage in the sexual activity;
 - iii. disclose someone's highly personal images;

iv. disclose sensitive details about one's sexual preferences, habits, and/or experiences; or

v. expose someone's prior sexual activity to another person.

2. **Complainant:** The individual who is alleged to be the victim of any prohibited conduct under this Policy.

3. **Confidential Employee:** Includes:

a. counselors in the Student Counseling Center;

b. health care providers in the University health clinic;

c. clergypersons;

d. faculty members in the graduate program of psychology and counseling who supervise graduate students conducting practical counseling sessions as part of their degree program (who have reportable information shared by clients that they have knowledge of and that is gained in the scope of their supervisory duties); and

e. Employees who receive information regarding an incident of sexual misconduct under circumstances that render the Employee's communications confidential or privileged under other law (e.g., attorneys).

4. **Consent:** A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. (The legal definition of consent for the crime of sexual assault in Texas can be found in [Texas Penal Code, Section 22.011\(b\): Sexual Assault.](#))

5. **Dating relationship.** A relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

a. the length of the relationship;

b. the nature of the relationship; and

c. the frequency and type of interaction between the persons involved in the relationship.

NOTE: A casual acquaintanceship or ordinary fraternization in a business or social context does NOT constitute a dating relationship.

6. **Dating violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes but is not limited to sexual or physical abuse or the threat of such abuse. It does NOT include acts covered under the definition of domestic violence.

7. **Domestic violence:** Includes felony or misdemeanor crimes of violence committed by one of the following:

a. a current or former spouse or intimate partner of the victim;

b. a person with whom the victim shares a child in common;

c. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

d. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas; or

- e. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

The legal definition of domestic violence can be found in [Texas Family Code, Section 71.0021: Dating Violence](#).

8. **Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment. "Document filed by a Complainant" means a document or electronic submission (such as by email or through the [online Title IX reporting form](#)) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University. Filing a Formal Complaint will trigger the Grievance Process.
9. **Grievance Process:** The process by which the University handles Formal Complaints.
10. **Hostile environment:** Exists when sexual misconduct is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from an education program, activity, or an Employee's terms and conditions of employment.
11. **Incapacitation:** The inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.
12. **Intimidation:** Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct but WITHOUT displaying a weapon or subjecting the victim to actual physical attack.
13. **Other inappropriate sexual conduct:** Conduct on the basis of sex that does not meet the definition of "sexual harassment" under this Policy.
 - a. **Verbal conduct** (including through electronic means) consisting of unwanted statements of a sexual nature intentionally stated to a person or group of people that are objectively offensive to a reasonable person AND so severe or pervasive that they created a hostile environment, as defined in this Policy. The verbal conduct (if all other elements are met) may include:
 - i. unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
 - ii. requests for sexual favors (including overt or subtle pressure);
 - iii. gratuitous comments about an individual's sexual activities;
 - iv. speculation about an individual's sexual experiences;
 - v. gratuitous comments, jokes, questions, anecdotes, or remarks of a sexual nature about clothing or bodies;
 - vi. persistent, unwanted sexual or romantic attention;
 - vii. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars, or other materials; or

viii. deliberate, repeated humiliation, or intimidation.

b. **Physical conduct**, which would include:

- i. sexual exploitation, as defined in this Policy;
- ii. unwelcome intentional touching of a sexual nature;
- iii. deliberate physical interference with or restriction of movement; or
- iv. sexual violence, as defined in this Policy.

14. **Participants:** Includes the University representative, Complainant, Respondent, and any witnesses.
15. **Parties:** The Complainant and the Respondent.
16. **Preponderance of the evidence:** Proof by information that, compared with the information opposing it, leads to the conclusion that the fact at issue is more probably true than not.
17. **Respondent:** The individual who has been reported to be the perpetrator of prohibited conduct under this policy. For University-affiliated K-12 schools (e.g., charter schools), a parent or legal guardian of a Respondent may act on behalf of the Respondent.
18. **Responsible Employee:** Has the duty to report incidents of, and information reasonably believed to be, sexual misconduct to the Title IX Coordinator.
 - a. All Employees are Responsible Employees except Confidential Employees or law enforcement officers when a victim uses a pseudonym form (see Subsection D.3.1.e.).
 - b. Responsible Employees include ALL administrators, faculty, staff, resident life directors and advisors, and graduate teaching assistants.
19. **Retaliation:** An adverse action taken (including but not limited to intimidation, threats, coercion, harassment, or discrimination) against a Complainant or witness by the University or one of its members in response to a good faith allegation of misconduct, good faith cooperation with a misconduct proceeding, participation in or refusal to participate in a Grievance Process, or engaging in other legally protected activities.
20. **Sex discrimination:** An individual is treated less favorably on the basis of that person's sex (including gender), which may include sexual orientation, gender identity or expression, pregnancy or a pregnancy-related condition, or a sex stereotype. Sexual harassment, as defined in this Policy, is a form of sex discrimination.
21. **Sexual assault:** An offense that falls within one of the following categories:
 - a. **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - b. **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - c. **Incest:** Sexual intercourse between persons who are related to each other within the degrees of consanguinity wherein marriage is prohibited by law.
 - d. **Statutory rape:** Sexual intercourse with a person who is under the statutory age of consent.

22. **Sexual exploitation:** An individual takes non-consensual or abusive sexual advantage of another for their own benefit or to benefit anyone other than the one being exploited. Examples include, but are not limited to:
- a. engaging in voyeurism;
 - b. forwarding pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students or groups;
 - c. the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and
 - d. any activity that goes beyond the boundaries of consent, such as recording sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.
23. **Sexual harassment:** Conduct on the basis of sex that satisfies one or more of the following:
- a. **Quid pro quo:** An Employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
 - b. **Denies equal access:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.
 - c. **Sexual assault, dating violence, domestic violence, or stalking,** as defined in this Policy.

Subsections 23.a. and c. in this definition are **NOT** evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access because such conduct is sufficiently serious to deprive a person of equal access and therefore meets the definition of sexual harassment.

24. **Sexual misconduct:** Encompasses sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, stalking, and other inappropriate sexual conduct.
25. **Sexual violence:** Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. The term includes but is not limited to rape, sexual assault, sexual battery, sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.
26. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. For the purposes of this definition:
- a. **Course of conduct** means two or more acts, including but not limited to, acts in which the stalker 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.
 - b. **Reasonable person** means a person under similar circumstances and with similar identity to the victim.
 - c. **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

The legal definition of stalking can be found in [Texas Penal Code, Title 9, Section 42.072: Stalking](#).

27. **Supportive measures:** May include, but are not limited to, housing reassignment, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, withdrawal from or retaking a class without penalty, campus escort services, mutual restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus, or other similar measures tailored to the individualized needs of the parties.

D. Policy

1. General Information Regarding Terms and Conditions

1. Consent.

a. Parameters.

- i. Consent to one act does **NOT** imply consent to another.
- ii. Consent to engage in sexual activity with one person does **NOT** imply consent to engage in sexual activity with another.

b. **Withdrawal.** Consent can be withdrawn at any time.

c. **Unwillingness.** Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

d. **Dating relationship.**

- i. A current or previous dating or sexual relationship, by itself, is **NOT** sufficient to constitute consent.
- ii. There must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

e. **Lack of validity.** Consent is **NOT** valid if it results from:

- i. the use of physical force;
- ii. a threat of physical force;
- iii. intimidation;
- iv. coercion;
- v. incapacitation; or
- vi. any other factor that would eliminate an individual's ability to exercise their own free will to choose whether or not to have sexual activity.

2. Dating violence.

a. **Factors:** The existence of a social relationship of a romantic or intimate nature shall be determined based on the consideration of the following factors:

- i. the length of the relationship;
- ii. the type of relationship; and

- iii. the frequency of interaction between the persons involved in the relationship.
- b. **Exclusions.** It does NOT include acts covered under the definition of domestic violence.
- c. **Legal definition.** Dating violence is defined by the [Texas Family Code, Title 4, Section 71.0021](#) as follows:

- i. **Intent to harm.** An act, other than a defensive measure to protect oneself, by an actor that:

- 1. is committed against a victim:

- A. with whom the actor has or has had a dating relationship; or

- B. because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

- 2. is intended to result in:

- A. physical harm;

- B. bodily injury;

- C. assault;

- D. sexual assault; or

- E. is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.

3. Family violence.

- a. **Legal definition.** Family violence is defined by the [Texas Family Code, Title 4, Section 71.004](#) as an act by a member of a family or household against another member of the family or household that is any of the following:

- i. intended to result in physical harm, bodily injury, assault, or sexual assault;

- ii. a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, or

- iii. abuse by a member of a family or household toward a child of the family or household.

- b. **Legal exclusions.** Family violence does NOT include the following:

- i. defensive measures to protect oneself; or

- ii. dating violence, as defined by [Texas Family Code, Title 4, Section 71.0021](#).

4. Incapacitation.

- a. **Intoxicants.**

- i. **Alcohol.** When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication.

- ii. **Drugs.** When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug.
- iii. **Determinants.** Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized determination.

b. Factors.

- i. **Questions.** After establishing that a person is incapacitated, the University asks two questions:
 - 1. Did the person initiating sexual activity know that the other Party was incapacitated?
 - 2. If not, should a sober, reasonable person in the same situation have known that the other Party was incapacitated?
- ii. **Answer is yes.** If the answer to either of these questions is "YES," consent was absent, and the conduct is likely a violation of this Policy.
- iii. **Knowledge of incapacity.** A Respondent will be found to have violated policy ONLY if the Respondent knew or should have known that the person was incapacitated.

5. Hostile environment.

- a. **Created.** A hostile environment can be created by anyone (e.g., administrators, faculty members, Employees, students, visitors) involved in an education program or activity or work environment.
- b. **Factors.** In determining whether sexual misconduct has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective.
 - i. **Qualifying factors.** The conduct must qualify with **both** of the following factors:
 - 1. **Unwelcome.** The conduct was unwelcome to the individual who was mistreated.
 - 2. **Reasonable person.** A reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.
 - ii. **Severity.** To ultimately determine whether a hostile environment exists for an individual or individuals, the University may consider a variety of factors related to the severity, persistence, or pervasiveness of the sexual misconduct including:
 - 1. the type, frequency, and duration of the conduct;
 - 2. the identity and relationships of the persons involved;
 - 3. the number of individuals involved;
 - 4. the location of the conduct and the context in which it occurred; and
 - 5. the degree to which the conduct affected an individual's education or employment.

c. Repetition.

- i. The more severe the sexual misconduct, the less need there is to show a repetitive series of incidents to find a hostile environment. A single instance of sexual assault may be sufficient to create a hostile environment.
- ii. A series of incidents may be sufficient even if the sexual misconduct is not particularly severe.

2. Reporting – General Guidelines

1. **Reporting vs. filing.** This Policy distinguishes between *reporting* sexual misconduct incidents on the one hand and *filing* Formal Complaints on the other. Reporting sexual misconduct incidents informs the University of the incident, which allows the University to provide supportive measures to the Complainant and does not necessarily result in the initiation of the Grievance Process.
2. **Who may report.** Any person may report sexual misconduct, retaliation, or other conduct prohibited under this Policy to the Title IX Coordinator. Any person may report an incident, whether or not the person reporting is the person alleged to be the victim of the incident, and it can be a verbal or written report to the Title IX Coordinator.
3. **Reporting encouraged.**
 - a. **Subject of violation.** The University encourages any person who believes that they have been subjected to sexual misconduct to immediately file a report or Formal Complaint with the Title IX Coordinator.
 - b. **Witness to violation.** Any student, Employee, and/or visitor who witnesses or is aware of a suspected incident of sexual misconduct is strongly encouraged to immediately report the incident to any of the offices listed below.
4. **Reporting required.**
 - a. **Responsible Employees.** Responsible Employees must promptly report all known information concerning the incident to the Title IX Office and must include whether a Complainant has expressed a desire for confidentiality in reporting the incident.
 - b. **Confidential Employees.** Confidential Employees who receive information regarding incidents of sexual harassment, sexual assault, dating violence, or stalking committed by or against a student or an Employee are required to report the **type of incident** to the Title IX Coordinator (or Deputy Coordinators).
 - i. Confidential Employees may NOT include any information that would violate a student's expectation of privacy.
 - ii. Confidential Employees' duty to report an incident under any other law also applies.
5. **Responsible offices.** Incidences of sexual misconduct should be reported to one of the following offices in person, by mail, by telephone, or by email. This report may be made at ANY TIME, including during non-business hours.

Internal reporting:

Blake Bumbard, Title IX Coordinator
Ornelas Activity Center, Room #160
3900 University Blvd, Tyler, TX 75799
Phone: (903) 565-5760

bbumbard@uttyler.edu
Online Title IX reporting form

External reporting:

For students:

Office for Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
Phone: (214) 661-9600
Fax: (214) 661-9587

Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
Phone: (800) 537-7697
Fax: (214) 767-0432

For Employees:

U.S. Equal Employment Opportunity Commission
Dallas District Office
207 S. Houston Street, 3rd Floor
Dallas, TX 75202
Phone: (800) 669-4000
Fax: (214) 253-2720

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street, Room 144-T
Austin, TX 78778-0001
(512) 463-2642

Confidential University resources:

Student Counseling Center
University Center
Phone: (903) 565-5746
24/7 Crisis Line: (903) 566-7254

Employee Assistance Program
(800) 346-3549

Confidential community resources:

East Texas Crisis Center
24/7 Hotline: (903) 595-5591 or (800) 333-0358

3. Reporting – Options

1. **Reporting.** Reporting sexual misconduct incidents informs the University of the incident, which allows the University to provide supportive measures to the Complainant. Reporting does NOT automatically

result in a Formal Complaint (which would initiate the Grievance Process).

2. **Formal Complaint.** If a Complainant wishes to initiate the Grievance Process, they should file a Formal Complaint, which may involve an investigation into the incident and a hearing to determine the responsibility of the Respondent.
3. **Law enforcement.**
 - a. **Non-emergency.** A non-emergency report may be filed with the UPD at (903) 566-7300.
 - b. **Emergency.** An emergency report may be filed with the City of Tyler Police Department at (903) 531-1090 or 911.
 - c. **Assistance with contact.** The Title IX Office can help individuals contact these law enforcement agencies.
 - d. **Protective orders.** Employees and students with protective or restraining orders relevant to a violation are encouraged to provide a copy to the UPD.
4. **Anonymity.** Reports may be made anonymously by telephone, in writing, or electronically with the Title IX Office. The decision to remain anonymous, however, may greatly limit the University's ability to stop the alleged conduct, collect evidence, or take action against Parties accused of sexual misconduct.
5. **Confidentiality.** The incident can be discussed in strict confidence by using the following resources:
 - a. **Students.** Students may discuss an incident with Confidential Employees or an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergy person) without concern that their identities will be reported to the Title IX Office.
 - b. **Employees:** Employees may seek assistance from the Employee Assistance Program or an off-campus resource (e.g., rape crisis center, doctor, psychologist, clergy person) without concern that their identities will be reported to the Title IX Office.
6. **Immunity.** In an effort to encourage reporting of sexual misconduct, the University may grant immunity from student and/or Employee disciplinary action to a person who acts in good faith in reporting an incident, filing a Formal Complaint, or participating in a Grievance Process (e.g., investigation, hearing, appeal). This immunity does **NOT** extend to the person's own violations of this Policy.

4. Reporting – Duty to Investigate

1. **Parties' request to not pursue.** The University has great respect for the privacy of the Parties identified in a Formal Complaint. Under state law, however, Responsible Employees who receive information of alleged sexual misconduct **MUST** share that information with the Title IX Coordinator. As such, the University may need to act to maintain campus safety and must determine whether to investigate further, regardless of the Complainant's request for confidentiality or request to not investigate a report received by the Title IX Coordinator.
2. **Factors in decision.** In making determinations regarding requests for confidentiality, Complainants' requests to not investigate, Complainants' requests to dismiss Formal Complaints, and/or requests to not disclose identifying information to Respondents, the Title IX Coordinator must deliberately weigh the rights, interests, and safety of the Complainant, the Respondent, and the campus community. Factors the University must consider when determining whether to investigate an alleged incident of sexual misconduct include but are not limited to:
 - a. the seriousness of the alleged incident;

- b. whether the University has received other reports of alleged sexual misconduct by the alleged Respondent;
 - c. whether the alleged incident poses a risk of harm to others; and
 - d. any other factors the University determines relevant.
3. **Notification of decision.** Under state law, if the Complainant requests in writing that the University not investigate a report, the University must inform the Complainant of the decision whether or not to investigate.

5. Resources – Sexual Violence Assistance

1. **Medical care.** Anyone who experiences sexual violence is encouraged to seek immediate medical care. If possible, this should be done immediately, as preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case.
2. **Law enforcement involvement optional.** Victims can undergo a medical exam to preserve physical evidence with or without law enforcement involvement.
3. **SAFE.** If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within five (5) days (120 hours) of the incident.

- a. **Hospitals.** To undergo a SAFE, go directly to the emergency department of the nearest hospital that provides SAFE services.

UT Health Tyler
1000 S. Beckham Ave. Tyler, TX 75701
[\(903\) 597-0351](tel:(903)597-0351)

Christus Trinity Mother Frances Health System
800 E. Dawson, Tyler, TX 75701
(844) 606-DOCS

- b. **Physical evidence.** With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE without contacting, or intending to contact, the UPD.
- c. **Cost.** The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to law enforcement, the Texas Department of Public Safety. This does NOT include fees related to medical treatment that are not a part of the SAFE.
- d. **More information.** For more information about the SAFE, see [Sexual Assault Forensic Exam](#).

6. Resources – Law Enforcement

1. **Report.** Anyone who experiences or witnesses sexual misconduct is encouraged to make a report to law enforcement.
 - a. **UPD.** A report may be filed with the UPD even if the assailant was **NOT** a University student or Employee.

- b. **Off campus.** If the incident occurred in the City of Tyler off campus, a report may be filed with the Tyler Police Department, even if time has passed since the incident occurred.
 - c. **Officer dispatched.** If a report is made to law enforcement, an officer will usually be dispatched to the location to take a written report. If the UPD is called, an officer will be sent to the scene to take a detailed statement. An officer or victim services coordinator may provide the victim with a ride to the hospital.
 - d. **Shared with Title IX Office.** Law enforcement may share the report with the Title IX Office.
 - e. **When not shared with Title IX.** Law enforcement will **NOT** share the report if a pseudonym form is used (under the [Texas Code of Criminal Procedure, Title 1, Chapter 58](#) for incidents of sexual assault, stalking, family violence, and human trafficking). In those instances, law enforcement will **ONLY** report the type of incident to the Title IX Coordinator but **NOT** any information identifying the reporting Party.
 - f. **Further action not automatic.** Reporting an incident to law enforcement does **NOT** mean the case will automatically go to criminal trial or go through a Grievance Process.
2. **Protective orders.** The UPD can assist with applying for any protective orders.
 3. **Investigative interviews.** A sexual assault victim will have an opportunity to have a crime victim liaison, counselor, advocate, or officer with specialized training be present with the victim during law enforcement investigative interviews.

7. Resources – Counseling and Other Services

1. **Services encouraged.** Anyone experiencing sexual misconduct is strongly encouraged to seek counseling or medical and psychological care even if there are no plans to request a SAFE or report the incident to UPD.
2. **Medications.** Medications may be prescribed to prevent sexually transmitted diseases and/or pregnancy, even if law enforcement is not contacted or if a SAFE is not performed.
3. **Psychological support.** Psychological support may be obtained from the Student Counseling Center (students), Employee Assistance (Employees), a referral through the Employee Assistance Program (Employees), or a care provider of choice.

For students:

Student Counseling Center
University Center
Phone: [\(903\) 565-5746](tel:(903)565-5746)
24/7 Crisis Line: [\(903\) 566-7254](tel:(903)566-7254)

For Employees:

Employee Assistance Program
Phone: [\(800\) 346-3549](tel:(800)346-3549)

8. Supportive Measures

1. **Offered to parties.** The University will offer reasonably available individualized services, without any fee or charge, to the Parties involved in a reported incident of sexual misconduct with or without the filing of a Formal Complaint, when applicable.

2. **Non-disciplinary.** Supportive measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other Party. (Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process unless an emergency removal is appropriate.)
3. **Examples.** Examples of supportive measures may include but are not limited to the following:
 - a. housing reassignment;
 - b. counseling;
 - c. extensions of deadlines or other course-related adjustments;
 - d. modifications of work or class schedules;
 - e. withdrawal from or retake of a class without penalty;
 - f. campus escort services;
 - g. mutual restrictions on contact between the Parties;
 - h. change in work or housing locations;
 - i. leaves of absences;
 - j. increased security and monitoring of certain areas of campus; or
 - k. other similar measures tailored to the individualized needs of the Parties.
4. **Confidentiality.** The University will maintain the confidentiality of supportive measures provided to the parties, to the extent that maintaining such confidentiality does not impair the ability of the university to provide the supportive measures.

9. Formal Complaints – Responsibilities

1. **Title IX Coordinator.** The Title IX Coordinator is responsible for the following:
 - a. **Implementation.** Implementing this Policy for reports or Formal Complaints alleging that University students or Employees engaged in sexual misconduct.
 - b. **Determination of next steps.** Determining what immediate and effective steps can be taken to end any sexual misconduct and protect both Parties. This includes providing supportive measures to both Parties during the Grievance Process.
 - c. **Advising about Formal Complaint.** Advising Complainants of their right to file a Formal Complaint.
 - d. **Determination of criminal conduct.** In cases involving potential criminal conduct, the Title IX Coordinator shall determine, in consultation with the UPD, if criminal authorities need to be notified.
 - e. **Advising about criminal complaint.** Advise the Complainant of their right to file a criminal complaint.
 - f. **Explain options.** Explain the options available under informal and formal processes to the Complainant.

2. UPD.

- a. **Advising about Formal Complaint.** In cases where an incident is reported to the UPD, the UPD must advise the alleged victims of their right to file a Formal Complaint.
- b. **Access to records.** The UPD shall provide University officials investigating sexual misconduct complaints access to any related University law enforcement records, as permitted by state and federal law, as long as it does not compromise any criminal investigation.

3. University.

- a. **Shared information.** In the course of the Grievance Process, the University may share information only as necessary with people who need to know in compliance with the law, including but not limited to:
 - i. investigators;
 - ii. witnesses;
 - iii. Complainant;
 - iv. Respondent;
 - v. Parties' advisors;
 - vi. hearing officer; and
 - vii. appellate officer (if applicable).
- b. **Retaliation.** The University will take all reasonable steps to ensure there is no retaliation against the Parties or any other participants in the investigation or in any other part of the Grievance Process.

10. Formal Complaints – Respondent Applicability

1. **Employees:** Formal Complaints (and, therefore, the resulting Grievance Processes) can be made ONLY against Employees and third parties (e.g., contracted workers, volunteers, visitors) where ALL the following conditions are met; in all other instances, allegations of sexual misconduct will be handled in accordance with HOP 6.07: Nondiscrimination.
 - a. **Respondent is Employee.** The Respondent is an Employee at the University at the time of the alleged conduct.
 - b. **Includes sexual harassment.** The alleged conduct includes sexual harassment under this Policy.
 - c. **Occurred in U.S.** The alleged conduct occurred against a person in the United States.
 - d. **Complainant in University program.** The Complainant was participating or attempting to participate in an education program or activity at the University. This element is met if the conduct occurred in any of the following:
 - i. on any University property;
 - ii. during any University activity;
 - iii. in a building owned or controlled by a student organization that is officially recognized by the University; or

iv. in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

2. **Students: sexual harassment allegation.** Formal Complaints made against a Respondent who is a student (including student Employees) at the University at the time of the alleged conduct and where the conduct alleged includes sexual harassment will follow the standard Grievance Process.
3. **Students: NO sexual harassment allegation.** An alternative Grievance Process will be followed in cases where the Respondent of the Formal Complaint is a student (including student Employees) at the University at the time of the alleged conduct and where the conduct alleged does **NOT** include sexual harassment (see Subsection D.23.).

11. Formal Complaints – Filing Process

1. **Statement.** The Complainant must sign and submit a written statement to the Title IX Coordinator that sets out the known details of the alleged conduct that is the subject of the Formal Complaint (requesting an investigation), including the following:
 - a. Complainant's name and contact information;
 - b. Respondent's name;
 - c. detailed description of the alleged conduct or event that is the basis of the alleged violation;
 - d. date(s) and location(s) of the alleged occurrence(s);
 - e. names of any witnesses to the alleged occurrence(s); and
 - f. the resolution sought.
2. **Additional information.** The Complainant may also submit any documents or information that is relevant to the Formal Complaint.
3. **Alternative.** Alternatively, the Title IX Coordinator may sign a Formal Complaint against a Respondent (requesting an investigation) and in doing so will initiate the Grievance Process.

12. Formal Complaints – Notification of Parties

After receiving a Formal Complaint, the Title IX Office will provide a written notice to the Parties of the Formal Complaint and available University resources and assistance. The written notice of the Formal Complaint will include all the following:

1. **Notice of Grievance Process.** A notice of the Grievance Process.
2. **Notice of allegations.** A notice of the allegations that potentially constitute prohibited conduct, including sufficient details about the alleged conduct, including the identity of the Parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by the University at the time of the Formal Complaint.
3. **Policy violations.** A statement of the potential Policy violations being investigated.
4. **Presumed innocence.** A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the Grievance Process.

5. **Advisors allowed.** Both Parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence.
6. **Review of evidence.** A statement that the Parties may review evidence gathered as part of any investigation.
7. **No false statements.** Provision of this Policy that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action.
8. **Other relevant information.** Any other relevant information for the written notice.

13. Formal Complaints – Dismissals

1. **Mandatory.** Under Title IX regulations, universities are required to distinguish between prohibited conduct that is "under Title IX" and prohibited conduct that is a violation of University Policy.
 - a. **Dismiss if not sexual harassment.** Under Title IX, the University must dismiss a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where sexual harassment is alleged and where:
 - i. the conduct alleged does not meet the definition of sexual harassment;
 - ii. the alleged conduct did not occur in the University's education program or activity;
or
 - iii. the alleged conduct did not occur against a person in the United States.
 - b. **University may still investigate.** A dismissal under this provision ONLY applies to allegations of sexual harassment under Title IX. In such an instance, the University may still investigate a Formal Complaint for allegations of sexual misconduct under this Policy. The University may also investigate allegations of prohibited conduct under this Policy, but it will not technically be "under Title IX."
2. **Discretionary.** The University may dismiss a Formal Complaint, at its discretion, under the Grievance Process for any of the following circumstances:
 - a. **Complainant request.** The Complainant requests in writing to dismiss a Formal Complaint (i.e., withdraws the Formal Complaint or any allegations therein).
 - b. **Respondent no longer Employee.** The Respondent was an Employee but is no longer employed by the University at the time the Formal Complaint is filed.
 - c. **No evidence gathered.** Any specific circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein.
 - d. **Not prohibited conduct.** The conduct alleged does not meet the definition of any prohibited conduct under this Policy.
3. **Written notice.** If the University dismisses a Formal Complaint, the University must provide both Parties with a written notice of the dismissal and the reason(s) for the dismissal.

14. Formal Complaints – Informal Resolution

1. **Optional.** After the Parties have been provided a copy of the written notice of a Formal Complaint, both Parties may, in writing, voluntarily agree to use the Informal Resolution option, if applicable, at any point prior to reaching a determination regarding responsibility, but the Parties are **NOT** required to do so.
2. **No Grievance Process.** The Informal Resolution entails the Parties forgoing the Grievance Process (including the investigation and hearing, depending on when the Parties agree to engage in an Informal Resolution). The Informal Resolution may include a mediation process, for example.
3. **Withdrawal.** At any point prior to agreeing to an Informal Resolution, each Party has a right to withdraw from the Informal Resolution process and resume the Grievance Process with respect to the Formal Complaint.
4. **Informal Resolution unavailability.**
 - a. **Sexual harassment.** The Informal Resolution process is **NOT** permitted in cases where sexual harassment is alleged in the Formal Complaint.
 - b. **Prior agreement reached.** Informal Resolution is **NOT** available where the Respondent has previously participated in the Informal Resolution process and where that process resulted in a mutual agreement.
5. **Informal Resolution timeframe.** Informal Resolutions of a Formal Complaint will be concluded within forty-five (45) days of notice to the University that both Parties wish to proceed with the Informal Resolution process. Such notice that the Parties wish to proceed with an Informal Resolution process will pause the counting of the time frame to conclude the Grievance Process should the Informal Resolution process fail, and the Parties continue with the Grievance Process.
6. **Informal Resolution documentation.**
 - a. **Retention.** Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years as required by law (see Subsection D.22. for additional information on Grievance Process documentation).
 - b. **No recordings.** No recording of the Informal Resolution process will be made.
 - c. **Statements.** All statements made during the Informal Resolution process may **NOT** be used for or against either Party (and the Hearing Officer and Appellate Officer may not consider any such statement made during Informal Resolution) should the Parties resume the Grievance Process.
 - d. **Compliance.** Failure to comply with an Informal Resolution agreement may result in disciplinary action.

15. Formal Complaints – Concurrent Criminal or Civil Proceedings



1. **Independent duty.** The University has an independent duty to respond to Formal Complaints of sexual misconduct.
2. **No duty to wait.** The University will **NOT** wait for the outcome of a concurrent criminal or civil justice before proceeding to take action on a Formal Complaint in a Grievance Process.
3. **Delay possible.** At the University's discretion, the University may delay the investigation or Grievance Process for a brief period due to concurrent criminal or civil proceedings on a case-by-case basis.

16. Grievance Process – Key Officials

1. **Title IX Coordinator.** The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX.
 - a. **Administrative response.** The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of sexual misconduct, retaliation, and other prohibited conduct.
 - b. **Point person.** The Title IX Coordinator is available to discuss the Grievance Process, coordinate supportive measures, explain University policies and procedures, and provide education on relevant issues.
 - c. **May delegate.** The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.
 - d. **Answer questions.** Any member of the University community may contact the Title IX Coordinator with questions.
2. **Investigator(s).** The University will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint.
 - a. **Neutral.** The investigators are neutral and impartial factfinders and gather evidence during the investigation.
 - b. **Investigation report.** The investigators are responsible for completing an investigation report at the conclusion of the investigation.
 - c. **Supervised by Deputy Coordinators.** The Title IX Deputy Coordinators may supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator, as necessary, to ensure compliance with Title IX.
 - d. **Hearing officer/panel.** The hearing officer/panel is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner.

17. Grievance Process – Investigation of Formal Complaint

1. **Respondent response.** After the University provides written notice of a Formal Complaint to the Parties, the Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator.
2. **Notification of Parties.** The University will provide written notice to a Party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Grievance Process.
3. **Evidence.** The Parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint.
4. **Advisors.** Parties may have an advisor of their choice attend any related interview, meeting, or proceeding in the Grievance Process. Advisors are **NOT** permitted to actively participate in meetings or proceedings in the Grievance Process, unless explicitly outlined in Subsection D.18.7.

5. **Witnesses.** The Parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint.
6. **Questions.** The Parties may submit to the investigator any questions they would like to be asked of any known potential witnesses or Parties.
7. **Witness interviews.** The investigators will interview relevant and available witnesses. Neither the Complainant nor the Respondent will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.
8. **Time frame.** The investigation of a Formal Complaint will be concluded within ninety (90) days of the filing of a Formal Complaint. The Parties should be provided with updates on the progress of the investigation, as needed.
9. **Access to evidence.**
 - a. **Access.** Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained as part of the investigation (whether relevant or not) to both Parties (and the Party's advisor, if any, upon a Party's signed information release for their advisor of choice).
 - b. **Response.** Both Parties will have ten (10) days to inspect, review, and respond to the evidence.
 - i. All responses to the evidence must be submitted by the Party in writing to the investigator.
 - ii. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the Party they are advising.
 - iii. The investigators will consider all timely responses submitted by the Parties.
10. **Standard of evidence.** All Grievance Processes will use the preponderance of the evidence standard.
11. **Respondent not responsible.** By law, it is presumed that the Respondent is **NOT** responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the Grievance Process.
12. **Confidential records.** The University cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party UNLESS the University obtains that Party's voluntary, written consent to do so.
13. **Investigation Report.**
 - a. **Content.** The completed investigation report will contain the following information:
 - i. an outline each of the allegations that potentially constitutes prohibited conduct under this Policy;
 - ii. the timeline (e.g., procedural steps) of the investigation; and
 - iii. a fair summary of relevant evidence, participant statements, and responses to questions.

- b. **Time frame.** The investigator will provide a completed investigation report concurrently to both Parties and each Party's advisor, if any, upon a Party's signed information release for their advisor of choice at least ten (10) days prior to the date of the scheduled hearing to review and provide a written response at the hearing.
- c. **Copies.** A copy of the completed investigation report will be issued to the Title IX Coordinator and to the hearing officer assigned for the hearing.

18. Grievance Process – Live Hearing

1. **Purpose.** Absent a Formal Complaint dismissal or the Parties' decision to reach an Informal Resolution agreement (if applicable), the University will provide a live hearing for all Formal Complaints. The University representative will present information regarding the case at the hearing and will have the ability to present information and witnesses, question witnesses, and provide opening and closing statements at the hearing.
2. **Written notice of hearing.** The University will provide at least ten (10) days written notice of the hearing to the Parties (and the Parties' advisors, if any, upon a Party's signed information release for their advisor of choice).
 - a. **Contents.** The notice will include the following:
 - i. date, time, and location of hearing;
 - ii. names of all participants of the hearing (including the hearing officer, and all Parties and participants in the investigation report);
 - iii. purpose of the hearing;
 - iv. a statement of the alleged conduct charges; and
 - v. a summary statement of the evidence gathered.
 - b. **Optional contents.** The hearing notice may also provide a deadline by which the University representative and the Parties have an opportunity to disclose:
 - i. the names of any witnesses they intend to call to testify at the hearing, if any; and
 - ii. a copy of any documents they intend to use as exhibits at the hearing that were not already included in the investigation report.
3. **Challenges to hearing officer.** Either Party may challenge the fairness, impartiality, or objectivity of a hearing officer.
 - a. **Time frame.** The challenge must be submitted in writing to the hearing officer through the office coordinating the hearing within four (4) days after notice of the identity of the hearing officer.
 - b. **Contents.** The challenge must state the reasons for the challenge.
 - c. **Recusal.** The hearing officer will be the sole judge of whether they can serve with fairness, impartiality, and objectivity. If the hearing officer recuses themselves, an alternative hearing officer will be assigned in accordance with the University's procedures.
4. **Hearing officer's duties.** The hearing officer will have the following hearing duties:

- a. rule on all procedural matters;
- b. rule on objections regarding exhibits and testimony of participants;
- c. question participants who testify; and
- d. is entitled to have the advice and assistance of legal counsel from the Office of General Counsel of the UT System.

5. **Access to evidence.** Each Party will have access to all the evidence from the investigation, including a copy of the completed investigation report.

6. **Hearing participation.**

- a. **Parties separate.** At the request of either Party, the University will provide the hearing to occur with the Parties located in separate rooms with technology enabling the hearing officer and the Parties to simultaneously see and hear the participants answering questions.
- b. **Participants' presence.** Participants may appear at the hearing virtually and are **NOT** required to be physically present at the location of the hearing.
- c. **Parties' statements.** Each Party may make opening and closing statements.
- d. **Privileged information excluded.**
 - i. No person will be required to disclose information protected under a legally recognized privilege.
 - ii. The hearing officer must **NOT** allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information unless the person holding the privilege has waived the privilege.
 - iii. This includes information protected by the attorney-client privilege.
- e. **Advisor of choice.**
 - i. Each Party may have an advisor of their choice at the hearing.
 - ii. If a Party does not have an advisor, the University will provide one.
 - iii. Advisors are **NOT** permitted to actively participate in the hearing, except for asking questions of the other Party and any other witnesses.
 - iv. Witnesses may also have an advisor of their choice at the hearing.

7. **Questioning of the participants.**

- a. **Hearing officer.** The hearing officer may, at their discretion, ask questions during the hearing of any Party or witness and may be the first person to ask questions of any Party or witness.
- b. **Advisors.**
 - i. Each Party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other Party and of any witnesses that participate in the hearing, including questions that challenge credibility.
 - ii. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing.

- c. **Procedure.** The University representative and the advisors may ask questions under the following procedure:
- i. The questioner will ask a question of the applicable Participant.
 - ii. Before the Participant answers a question, the hearing officer will rule as to whether the advisor's question is relevant to the alleged conduct charges.
 - iii. If the hearing officer rules that the question is not relevant, then the hearing officer must explain any decision to exclude a question as not relevant. If the hearing officer allows the question as relevant, the Participant will answer it.
- d. **No Parties.** The Parties will **NOT** be permitted to personally ask questions of the other Party or any witnesses that participate in the hearing.

8. Prior sexual history.

- a. **Information forbidden.** A Complainant's sexual predisposition or prior sexual behavior are **NOT** relevant to the hearing.
- b. **Exceptions.** Prior sexual history may be introduced where questions and evidence about a Complainant's prior sexual behavior are offered:
- i. to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant; or
 - ii. if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.

19. Grievance Process – Hearing Determination

1. **Written determination.** The hearing officer (or decision-maker, if the Respondent was a student at the University Academy at the time of the alleged conduct) will issue a written determination, which must include the following:
- a. **Allegations.** The allegations that potentially constitute prohibited conduct under this Policy.
 - b. **Grievance Process.** A description of all the procedural steps of the Grievance Process under this Policy (from receipt of a Formal Complaint to the determination regarding responsibility of the Respondent, including any notifications of the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held).
 - c. **Facts.** The findings of fact supporting the hearing officer's determination.
 - d. **Conclusion.** The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation.
 - e. **Sanctions.** The disciplinary sanctions, if applicable.
 - f. **Additional remedies.** Whether additional remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant.
 - g. **Appeal procedures.** The University's procedures and permissible bases for the Parties to appeal, if applicable.

2. **Copies of determination.** The hearing officer will send a copy of the written determination concurrently to:
 - a. the Parties;
 - b. the dean (for student Respondents);
 - c. the appropriate administrator (for Employee Respondents); and
 - d. the Title IX Coordinator.
3. **Recording.** The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the University. The recording or transcript, if applicable, will be available for the Parties to inspect and review upon request.
4. **Sanctions and remedies.** The following sanctions and remedies may be considered by the hearing officer in accordance with this Policy:
 - a. **Student Respondents:** Any combination of the following may be considered:
 - i. Educational training.
 - ii. No shared classes or extra-curricular activities.
 - iii. Disciplinary probation.
 - iv. Withholding of grades, official transcript, and/or degree.
 - v. Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University.
 - vi. Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities.
 - vii. Denial of degree.
 - viii. Suspension from the University for a specific period. Suspension is noted on the academic transcript with the term "Disciplinary Suspension." The notation can be removed upon the request of the student in accordance with the University's procedures when all conditions of the suspension are met.
 - ix. Expulsion (permanent separation from the University). Expulsion creates a permanent notation on the student's academic transcript.
 - x. Revocation of degree and withdrawal of diploma.
 - xi. Other sanction(s) or remedies as deemed appropriate under the circumstances.
 - b. **Employee Respondents:** Any combination of the following may be considered:
 - i. Employment probation.
 - ii. Job demotion or reassignment.
 - iii. Suspension with or without pay for a specific period of time.
 - iv. Dismissal or termination.
 - v. Ineligible for rehire.

vi. Other sanction(s) or remedies as deemed appropriate under the circumstances

20. Grievance Process – Appeals

1. **Bases for appeal.** Either Party may appeal in writing to a hearing officer's determination regarding a Respondent's responsibility under the Grievance Process or from the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint) within ten (10) days of notification of such a determination, on any of the following bases:
 - a. **Procedural issue.** A procedural irregularity affected the outcome of the matter.
 - b. **New evidence.** There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter.
 - c. **Bias.** The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the Parties (generally or specifically in this matter) that affected the outcome of the matter.
2. **Appellate officer.** The appellate officer must NOT be the same person as the Title IX Coordinator, investigator(s), or hearing officer in the Grievance Process.
3. **Notification.** Both Parties will be notified in writing when an appeal is filed, and the appeal procedures will apply equally for both Parties.
4. **Statement of support.** Any non-appealing Party or the University will have seven (7) days from the notification of an appeal to submit a written statement in support of the outcome.
5. **Decision.** The appellate officer will release a written decision within twenty-one (21) days from the date of the appeal to do one of the following:
 - a. **Affirm sanctions.** Affirm the hearing officer's determination regarding the Respondent's responsibility and **affirm** the disciplinary sanctions and remedies, if applicable.
 - b. **Amend sanctions.** Affirm the hearing officer's determination regarding the Respondent's responsibility and **amend** the disciplinary sanctions and remedies, if applicable.
 - c. **Affirm dismissal of Complaint.** Affirm the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint).
 - d. **Remand.** Remand the process back to the investigation or hearing stage for the investigator or hearing officer (or applicable equivalent) to remedy any procedural irregularity or consider any new evidence.
 - e. **Reverse determination.** Reverse the hearing officer's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable.
 - f. **Affirm administrative disposition.** Affirm or amend the sanctions and/or remedies outlined in the administrative disposition issued under Subsection D.23.

21. Grievance Process – Documentation

1. **Retention.** The University (through the appropriate office) will retain all the documentation included in the Grievance Process for seven (7) years, in accordance with state and federal records laws and University policy.

2. **Confidential.** All documentation of records is private and confidential to the extent possible under law.
3. **Student records.** Student records of the Grievance Process are disciplinary records under the Family Educational Rights and Privacy Act (FERPA).
4. **Employee records.** Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA) and are included in the Employee's official employment record.

22. Grievance Process – Time Frame

1. **Initial time frame.** The entire Grievance Process (including any appeal) will be completed in no more than one hundred fifty (150) calendar days from the filing of the Formal Complaint.
2. **Extension.** The circumstances may require a temporary delay in this time frame and the University may extend this time frame for good cause.
 - a. **Notice.** In such an instance, the University will provide written notice to the Parties of the delay or extension and the reason(s) for the action.
 - b. **Examples of good cause.** Good cause may include considerations such as:
 - i. the absence of a Party, a Party's advisor, or a witness;
 - ii. concurrent law enforcement activity; or
 - iii. the need for language assistance or accommodation for disabilities.
3. **Negotiation period not included.** The time frame in this section does **NOT** include the period the Parties attempted but failed to reach an agreement in the Informal Resolution Process, if applicable, and in such a case, the Grievance Process time frame will be extended by the period the Parties attempted to reach an Informal Resolution (outlined in Subsection D.14.).

23. Grievance Process – Alternative Grievance Process for Students

For Formal Complaints where the Respondent is a student at the time of the alleged conduct (including student Employees) and the alleged conduct does **NOT** include Sexual Harassment, the Grievance Process in Subsection D.18. will apply with the following exceptions:

1. **Investigation report.**
 - a. **Additional information.** Subsection D.17.13. applies EXCEPT that the completed investigation report will include the following:
 - i. a preliminary determination regarding the responsibility of the Respondent for each allegation;
 - ii. the findings of fact supporting the investigator's determination; and
 - iii. the rationale for the determination for each allegation.
 - b. **Student Conduct Office.** The completed investigation report and determination regarding responsibility will be referred to the Student Conduct Office. The Student Conduct Officer will conduct an independent review of the investigation report and will do one of the following:

- i. **Accept.** Accept the preliminary determination regarding responsibility of the Respondent, and either dismiss the case or proceed to adjudication (if applicable).
- ii. **Amend.** Amend the preliminary determination regarding responsibility of the Respondent and proceed to adjudication (if applicable).
- iii. **Remand.** Remand the process back to the investigation stage to address an investigation concern.

2. **Adjudication options.** Where responsibility finding(s) proceed to the adjudication stage, the Respondent and Complainant may elect one of the following options:

a. **Administrative disposition.** The administrative disposition will outline sanctions and/or remedies for the Grievance. The administrative disposition will be final and there will **NOT** be any subsequent adjudication proceedings regarding the allegations.

- i. **Full agreement.** Agree to the determination of responsibility for each of the applicable allegations, the sanctions, and remedies outlined in an administrative disposition, and waive the option of a hearing.
- ii. **Partial agreement.** Agree to the determination of responsibility for each of the applicable allegations, but one of the Parties chooses to appeal (in writing) the sanctions and/or remedies outlined in the administrative disposition and waive the option of a hearing. The finding of responsibility may **NOT** be appealed by either Party.

b. **Request live hearing.** Either Party can choose to have the determination regarding responsibility of the Respondent made by a hearing officer. The hearing process in Subsection D.19. will apply, with the following EXCEPTIONS:

i. **Advisors.** Each Party may have an advisor of their choice at the hearing. Upon request from either Party, the University will provide an advisor to that Party. Advisors are not permitted to actively participate in the hearing. In addition, witnesses may have an advisor of their choice at the hearing.

ii. **Questioning participants.**

- 1. The hearing officer may, at the hearing officer's discretion, ask questions during the hearing of any Party or witness and may be the first person to ask questions of any Party or witness.
- 2. Each Party may ask relevant questions of any witness at the hearing, except that cross-examination questions of the other Party must be submitted in writing to the hearing officer.
- 3. The hearing officer will then ask relevant cross-examination questions of the other Party and allow for relevant follow-up questions (if applicable).
- 4. Advisors are NOT permitted to ask any questions at the hearing.

24. Emergency Removal

1. **Conditions.** A Respondent may be removed from the University's education program or activity on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal

is justified because the Respondent poses an immediate threat to the physical health or safety of an individual arising from the allegations of sexual misconduct.

2. **Notification and challenge.** Under these circumstances, the Respondent will be notified in writing of the emergency removal from the University's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.

25. Employee Administrative Leave

An Employee Respondent may be placed on administrative leave, in accordance with the University's policy and procedures on Employee administrative leave, during the pendency of a Grievance Process, as outlined in this Policy.

26. Dissemination of Policy

1. **Availability.** This Policy will be made available to all University administrators, faculty, staff, and students [online](#), in University student catalog(s), and this Employee Handbook of Operating Procedures.
2. **Notices.**
 - a. **Frequency.** Periodic notices will be sent to University administrators, faculty, staff, and students about the University's Sexual Misconduct Policy, including but not limited to at the beginning of each Fall and Spring semester.
 - b. **Content.** The notice will include the following information:
 - i. prohibited conduct such as sexual misconduct and retaliation;
 - ii. the Formal Complaint procedure and the right to file;
 - iii. the Grievance Process;
 - iv. available resources, including support services and health and mental health services;
 - v. the Title IX Coordinator's contact information; and
 - vi. will refer individuals to designated offices or officials for additional information.

27. Educational Programs

1. **Ongoing training.** The University's commitment to raising awareness of the dangers of sexual misconduct includes providing ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel.
2. **Preventive education.** Preventive education and training programs will be provided to University administrators, faculty, staff, and students, and will include information about primary prevention, risk reduction, and bystander intervention.
3. **Training of Title IX personnel.** All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over Grievance Processes and appeals shall receive training each academic year about applicable prohibited conduct, Grievance Processes, due process, and University policies related to sexual misconduct. All training materials used to train Title IX-related personnel (e.g., Title IX

Coordinators, deputies, investigators, hearing officers, appellate officers) will be made available on the University's website.

4. **General policy statement.** The University's Title IX general policy statement will be made available to all students, faculty, and Employees online at [University's website](#), in required publications and in specified departments.

28. Additional Conduct Violations

1. Retaliation.

a. **Prohibited persons.** Retaliation is prohibited against the following:

- i. anyone filing a report of sexual misconduct or Formal Complaint;
- ii. the Parties or any other participants (including any witnesses or any Employee) in a Grievance Process relating to a Formal Complaint;
- iii. any person who refuses to participate in a Grievance Process; or
- iv. any person who, under this Policy, opposed any unlawful practice.

b. **Disciplinary action.** Any person who retaliates is subject to disciplinary action up to and including dismissal or separation from the University.

c. **Reporting.** If any participant in a Grievance Process believes they have been subject to Retaliation (as defined in this Policy), they should immediately report the alleged retaliatory conduct to the Title IX Coordinator.

2. False Complaints and false information.

a. **Disciplinary action.** Any person who, in bad faith, knowingly files a false Formal Complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University.

b. **No implication of false information.** A determination that a Respondent is not responsible for allegations of sexual misconduct does not imply that a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

3. Interference with Grievance Process.

a. **Disciplinary action.** Any person who interferes with the Grievance Process is subject to disciplinary action up to and including dismissal or separation from the University.

b. **Prohibited actions.** Interference with a Grievance Process may include, but is not limited to:

- i. attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- ii. removing, destroying, or altering documentation relevant to the Grievance Process;
or
- iii. knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

4. Failure to report for Responsible Employees.

- a. **Disciplinary action.** If a Responsible Employee knowingly fails to report all information concerning an incident the Employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or Employee at the time of the incident, the Responsible Employee is subject to disciplinary action, including termination.
- b. **State's definition.** For purposes of failure to report, the definition of sexual harassment, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as:
Unwelcome, sex-based verbal or physical conduct that:
 - i. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - ii. 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 institution.

5. Pending actions unrelated to Complaint.

- a. **No stop or delay.** The filing of a Formal Complaint under this Policy will NOT stop or delay any action unrelated to the Formal Complaint, including:
 - i. any evaluation or disciplinary action relating to a Complainant who is not performing up to acceptable standards or who has violated University rules or policies;
 - ii. any evaluation or grading of students participating in a class;
 - iii. the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or
 - iv. any job-related functions of a University Employee.
- b. **No limit to interim action.** Nothing in this section shall limit the University's ability to take interim action or execute an emergency removal.

E. Reference Documents and Authority

- United States Code, Title 20, Sections 1681–1688: Title IX of the Education Amendments of 1972
- United States Code, Title 20, Section 1092(f): Clery Act
- Amendment to United States Code, Title 20, Section 1092(f): Campus Sexual Violence Elimination Act (SaVE Act)
- United States Code, Title 42, Section 2000: Title VII of the Civil Rights Act of 1964
- United States Code, Title 34, Section 12291: Violence Against Women Act (VAWA)
- Code of Federal Regulations, Title 34, Part 106: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance
- Code of Federal Regulations, Title 29, Section 1604.11: Guidelines on Discrimination Because of Sex

- Code of Federal Regulations, Title 34, Part 668: Student Assistance General Provisions
- Code of Federal Regulations, Title 34, Part 99: Family Educational Rights and Privacy Act (FERPA)
- Texas Education Code, Chapter 51, Section 51.251-51.259: Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking
- Texas Education Code, Sections 51.281-51.291: Sexual Harassment, Sexual Assault, Dating Violence, and Stalking
- Texas Code of Criminal Procedure, Art. 56A.251: Request for Forensic Medical Examination
- Texas Code of Criminal Procedures, Art. 56A.351: Presence of Sexual Assault Program Advocate
- Texas Code of Criminal Procedure, Title 1, Chapter 58: Confidentiality of Identifying Information and Medical Records of Certain Crime Victims
- Texas Family Code, Title 4, Section 71.0021: Dating Violence
- Texas Penal Code, Title 5, Section 22.01: Assault
- Texas Penal Code, Title 5, Section 22.011(b): Sexual Assault
- Texas Penal Code, Title 5, Section 42.072: Stalking
- Regents' Rule 30105: Sexual Harassment, Sexual Misconduct, and Consensual Relationships
- Regents' Rule 31008: Termination of a Faculty Member
- UTS 184: Consensual Relationships
- HOP 6.07: Nondiscrimination
- Manual of Policies and Procedures for Student Affairs, Chapter 8: Student Conduct and Discipline

F. Review Responsibilities and Dates

The Policy Owner for this Policy is the Chief Human Resources Officer, and this Policy shall be reviewed every three (3) years or sooner, if necessary, by the Policy Owner or their designee.

AMENDED: 10/19/15

REVIEWED: 02/2024



Policy Management

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