1. Title

Sexual Misconduct Policy

For Immediate Reporting:

[INSERT TITLE IX OFFICE CONTACT INFORMATION and LINK TO WEBSITE]

Also, please see Section 3.1 below for detailed information.

2. Policy

Sec. 1 General Policy Statement.

1.1 Purpose. [Name of Institution] (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 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act), Violence Against Women Act (VAWA), and Clery Act.

1.2 Policy. Sexual Misconduct, Retaliation, and other Prohibited Conduct under this Policy will be subject to disciplinary action. The University will take appropriate action when any individuals or organizations within its control violate this Policy, including but not limited to, dismissal or separation from the University. The University encourages individuals to promptly report incidents that could constitute violations of this Policy to the Title IX Coordinator (as outlined in Section 3.1 of this Policy).

1.3 Free Speech. 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.

Sec. 2 Applicability and Scope.

2.1 Applicability. 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 also applies regardless of the gender, gender identity, or sexual orientation of the parties.

2.2 Prohibited Conduct. Prohibited Conduct under this policy includes:

(a) Sexual Misconduct: Sex Discrimination; Sexual Harassment; Sexual Assault; Domestic Violence; Dating Violence; Stalking; Sexual Exploitation; and Other Inappropriate Sexual Conduct; and

(b) Non-Sexual Misconduct: Retaliation; Failure to Report for a Responsible Employee; Interference with the Grievance Process; and False Information and False Complaints.

Violations of Prohibited Conduct under this Policy will be investigated and adjudicated in accordance with this Policy. The definitions of Prohibited Conduct are in the Definitions of Conduct Violations, Section 8 of this Policy.

Sec. 3 Reporting Incidents.

3.1 Reporting to the University's Title IX Coordinator.

Any person may report Sexual Misconduct or Non-Sexual Misconduct, to the Title IX Coordinator. Individuals are strongly encouraged to report as soon as such conduct is known. 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:

[Insert Names Titles of the Title IX Coordinator; contact information must include office physical address(s), email address(s), phone number(s), website, and links to online reporting forms]

A. Parties' Rights Regarding Confidentiality. The University has great respect for the privacy and confidentiality of the parties identified in a report or Complaint. In the course of a Grievance Process or coordination of any services outlined in this Policy, the University may only share information as necessary with people who need to know, in accordance with the federal and state laws. For example, in the Grievance Process, permissible information sharing may include but is not limited to sharing the identity of the Complainant and Respondent and other relevant information with the investigators, the parties, witnesses, parties' advisors, decision-makers, or other relevant individuals—if applicable. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the Grievance Process.

In addition, Responsible Employees who receive information of alleged Sexual Misconduct must promptly report that information to the Title IX Coordinator, and therefore, cannot withhold a party's identity (if known), as outlined in Section 3.3 of this Policy.

Individuals may discuss an incident in strict confidence by using the Confidential Support and Resources, as outlined in Section 4.2 of this Policy.

B. Complainant's Right to Request Not to Investigate. Under state law, Complainant's have the right to submit a written request to the University to not investigate a matter. The University's ability to respond and remedy the matter may be limited if the Complainant doesn't want the University to proceed with an investigation.

Once a written request has been submitted, the University must inform the Complainant of the University's decision whether to investigate. Complainants may submit such written requests to the Title IX Coordinator (or designee).

In the situations where the University can honor the Complainant's request to not investigate allegations of Sexual Misconduct, the Complainant may still pursue other options, such as the University's Informal Resolution (IR) Process (if available), Supportive Measures, campus resources, and/or community-based services as well, but the University will not take any formal action regarding the Formal Grievance Process at that time.

C. University's Commitment to Safety. Depending on the facts and circumstances, the University may be obligated to investigate further, regardless of a Complainant's request not to investigate a matter.

In making determinations regarding requests for confidentiality, Complainants' requests to not investigate, and/or requests to not disclose identifying information to Respondents, the Title IX Coordinator (or designee) 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 allegations of misconduct include, but are not limited to:

- The Complainant's request to the University to not investigate the alleged conduct;
- The Complainant's reasonable safety concerns for initiating a Formal Complaint and Formal Grievance Process;
- The extent to which the alleged conduct poses a risk of harm to the Complainant and/or the campus community;
- The seriousness and severity of the alleged conduct;
- The age and relationship of the parties;
- The scope of the alleged conduct by the Respondent, including other reports of alleged Sexual Misconduct received by the University, pattern-based allegations, alleged ongoing misconduct, or alleged conduct that impacted multiple individuals;
- The availability of relevant evidence to assist a decision-maker in determining whether alleged conduct occurred;
- The status of the Complainant and/or Respondent within the University and/or whether either party is still a member of the campus community;
- Whether the University could reasonably prevent the conduct's recurrence without initiating a Formal Compliant and Formal Grievance Process; and
- Any other factors the University determines relevant, depending on the facts and circumstances known at that time.

Examples of risks of harm, seriousness and /or severity of allegations include, but are not limited to evidence of: (a) pattern-based behavior, (b) predatory behavior, (c) threats of force/violence, (d) use of force/violence, (e) use of weapons, and/or (f) abuse of minors.

In addition, the University will also consider whether a Complainant has interest or intention to participate in the Grievance Process, the effect that non-participation may have on the availability of sufficient evidence, and University's ability to pursue the Formal Grievance Process fairly and effectively under these circumstances.

If relevant factors present an imminent and serious threat to the health or safety of the Complainant or the campus community, or the alleged conduct prevents the University from ensuring equal access to the University's education program or activity, then the Title IX Coordinator may initiate a Formal Complaint (as outlined in Section 5.1(C) in the Policy). Under these circumstances, the Complainant must be notified prior to the Title IX Coordinator initiating the Grievance Process to address the Complainant's reasonable safety concerns, if any, and offer the Complainant with Supportive Measures.

D. Documentation and Record Retention of Reports. Any Reports received by the Title IX Coordinator will be documented and kept for seven years as required by law. The documentation and case management of reports will follow the Documentation provisions under Section 6.5 of this Policy.

3.2 Anonymous Reporting.

Individuals may make an anonymous report by telephone, in writing or electronically [**INSERT LINK TO WEBSITE REPORTING SYSTEM**] with the Title IX Office. **A person's 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 violating this Policy.**

Anonymous reporting is not an option for fulfilling Responsible Employee Reporting Obligations, as outlined in Section 3.3 of this Policy.

3.3 Responsible Employee Reporting Obligations.

Reporting Sexual Misconduct. Responsible Employees are required to report known incidents and information of Sexual Misconduct promptly to the Title IX Coordinator, and must include whether a Complainant has expressed a desire for confidentiality in reporting the incident. All employees are Responsible Employees except Confidential Employees or police officers when a victim uses a pseudonym form (as outlined in Section 4.1(B) of this Policy).

For additional information, see Failure to Report for a Responsible Employee in Section 8 of this Policy.

3.4 Reporting to Law Enforcement.

Individuals may also file a police report with The University of Texas at [institution] Police Department at [insert phone] (non-emergency) or [insert phone] (emergency) or to the City of [insert] Police Department [phone] (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Office can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

Reporting to law enforcement and initiating criminal charges is a separate process from submitting a report or filing a Formal Complaint with the University's Title IX Office. Further, criminal investigations and proceedings are a separate process from the University's Grievance Process under this Policy.

3.5 Reporting to Outside Agencies.

You may also contact the following external agencies:

For students:

Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Toll-free Hotline: (800) 421-3481
TDD: (877) 521-2172
FAX: (202) 453-6012
Email: OCR@ed.gov
Website: http://www.ed.gov/ocr

Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
Toll-free Hotline: (800) 368-1019
TDD: (800) 537-7697
Email: OCRmail@hhs.gov
Website: http://www.hhs.gov/ocr

For employees:

U.S. Equal Employment Opportunity Commission
Dallas District Office
207 S. Houston Street, 3rd Floor
Dallas, TX 75202
Phone: (972) 918-3580
TTY: (800) 669-6820
FAX: (214) 253-2720
Web:
https://www.eeoc.gov/field-office/dallas/location

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street
Room 144-T
Austin, TX 78778-0001
Phone: (800) 628-5115
Web:
https://www.twc.texas.gov/programs/civil-rights

3.6 Immunity. To encourage reporting of Sexual Misconduct and participation in the Grievance Process, the University will grant immunity for minor policy violations, such as underage possession or consumption of alcohol or use of illicit drugs when related to the alleged Prohibited Conduct under this Policy.

Immunity from student and/or employee disciplinary action will be available to a person who acts in good faith in reporting an incident, filing a Formal Complaint, or participating in the Grievance Process. This immunity does not extend to the person's own violations of this Policy.

Sec. 4 Resources and Supportive Measures.

4.1 Immediate Assistance.

[**List on and off University resources for health care, police, and counseling**]

A. Healthcare. Individuals who experience sexual violence are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. 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 5 days (120 hours) of the incident. 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 even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of [insert hospital with SAFE capabilities] or the nearest hospital that provides SAFE services.

For more information about the SAFE, see Attorney General of Texas Sexual Assault Exams website. The reasonable costs associated with the forensic portion of a SAFE, the evidence collection kit, and other prescribed medical care related to the sexual assault and provided to the victim during the 30-day period following the SAFE should be covered for the victim by the health care provider or reimbursed to the victim, according to the Code of Criminal Procedure.[1]

B. Police Assistance. Individuals who have experienced or witnessed sexual misconduct are encouraged to make a report to the police. The police may, in turn, share the report with the Title IX Office, with the exception of when a pseudonym form is used under the Code of Criminal Procedure for incidents of sexual assault, stalking, family violence, and human trafficking. In those instances, where a pseudonym form is used, the police will report the incident to the Title IX Coordinator but will redact the name and any identifying information about the victim.

A police department's geographic jurisdiction depends on where the incident occurred. Thus, if the incident occurred on the University campus, the individual may file a report with the [insert campus police name] by calling [number] or in person at [insert institution PD name] headquarters at [insert address], even if time has passed since the incident occurred.

[Institution PD name] can also assist with applying for any protective orders. Reporting an incident to law enforcement does not mean the case will automatically go to criminal trial or go through a Grievance Process. If the University police are called, a police officer will be sent to the scene to take a detailed statement. A police officer or victim services coordinator may also provide the individual with a ride to the hospital. A report may also be filed with the University police even if the assailant was not a University student or employee. If the incident occurred in the City of [insert City name], but off campus, a report may be filed with the [City] Police Department, even if time has passed since the incident occurred. If a report is made to the police, a police officer will usually be dispatched to the location to take a written report. A sexual assault victim will also have an opportunity to have a crime victim liaison, counselor, advocate, or police officer with specialized training be present with the victim during police investigative interviews.

C. Counseling and Other Services. Individuals who experience Sexual Misconduct are strongly encouraged to seek counseling or medical and psychological care even if the person does not plan to request a SAFE or report the incident to the police. Individuals may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other

[1] Tex. Code Crim. Proc. art. 56A.304; Tex. Code Crim. Proc. art. 56A.305

individuals affected by an incident are encouraged to seek counseling or psychological care.
Individuals may receive medical care at the University Health Services (for students only), at a local emergency room, or by a private physician. Individuals may also be provided with psychological support by the University Counseling and Psychological Services (students), Employee Assistance (employees), a referral through the Employee Assistance Program, or a care provider of his or her choice.

Students desiring counseling should contact:
[insert office and contact information]

Faculty and staff should contact:
[insert office and contact information]

4.2 Confidential Support and Resources.

Students may discuss an incident with Confidential Employees or an off-campus resource (e.g. rape crisis center, doctor, psychologist, clergyperson, etc.) without concern that the person's identity will be reported to the Title IX Coordinator.

Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the person's identity will be reported to the Title IX Coordinator.

The University and community resources that provide confidential services are: [insert resources]

4.3 Supportive Measures.

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.

A. Examples. 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 retake of a class without penalty, campus escort services, mutual restrictions on contact between the parties, change in work or housing locations, leaves of absences (e.g. academic withdrawal), increased security and monitoring of certain areas of campus, or other similar measures tailored to the individualized needs of the parties for a reasonably appropriate or relevant timeframe.

B. Scope. Supportive Measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other party. Supportive Measures can be utilized and modified throughout the Grievance Process (if applicable) and continue after the conclusion of the Grievance Process, depending on the circumstances.

Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an emergency removal (as outlined in Section 5.7(A)) is appropriate.

C. 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. The coordination of Supportive Measures will follow the Confidentiality provisions under Section 3.1(A) of this Policy.

4.4 Pregnancy and Related Conditions.

The University will provide specific support and coordination to pregnant students and employees to prevent sex- or pregnancy-based discrimination and ensure equal access to the University's education program or activities and work environments (in accordance with the University's Student Pregnancy and Parenting Nondiscrimination Policy and Employee Pregnancy and Parenting Policy).

To request more information on available services, contact [insert office name(s), phone number(s), email(s), website(s), or any other contact information for students and employees].

[Insert website or link to the University's Student Pregnancy and Parenting Nondiscrimination Policy and Employee Pregnancy and Parenting Policy]

Sec. 5 Filing a Formal Compliant and Initiating the Grievance Process.

5.1 Filing a Formal Complaint.

To file a Formal Complaint and thereby initiate the Grievance Process, the Complainant must submit the complaint in writing to the Title IX Coordinator, and in doing so, cannot remain anonymous in the Formal Complaint.

A. Formal Complaint Details. The Formal Complaint should include all known details of the alleged conduct that is the subject of the complaint, including the following:

- Complainant's name and contact information;
- Respondent's name;
- Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
- Date(s), times(s), and location(s) of the alleged occurrence(s);
- Names of any witnesses to the alleged occurrence(s); and
- The resolution the Complainant is seeking (if any).

B. Additional Documents. The Complainant may submit any relevant documents or information to the Formal Complaint at the time the Formal Complaint is filed or in the course of the investigation.

C. Eligibility for Filing a Formal Complaint. In addition to the Complainant, the University's Title IX Coordinator also has authority to file a Formal Complaint, and thereby initiate the Formal Grievance Process.

When the Title IX Coordinator files a Formal Complaint and initiates a Formal Grievance Process, the Title IX Coordinator will not replace the Complainant in the Formal Complaint filed. Instead, the Complainant (as defined in this Policy) will remain the Complainant in the Formal Complaint and Grievance Process and be given all of the same rights and options as a Complainant that filed the Formal Compliant themselves.

5.2 Consolidation of Formal Complaint Allegations.

The University may consolidate Formal Complaints for the following reasons:

- When the Formal Complaint is against more than one Respondent;
- When the Formal Complaint is by more than one Complainant against one or more Respondents; or
- When the alleged conduct arises out of the same facts or circumstances.

When one or more consolidated Formal Complaints involve Sexual Misconduct, then the University will apply the same Grievance Process for all of the consolidated Formal Complaints.

5.3 Concurrent Criminal or Civil Proceedings.

The University will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceedings to take action on a Formal Complaint in a University Grievance Process. The University has an independent duty to respond to Formal Complaints of Sexual Misconduct and other Prohibited Conduct under this Policy. On a case-by-case basis, however, the University may reasonably delay the Grievance Process for a brief period due to concurrent criminal or civil proceedings.

5.4 Written Notice of the Formal Complaint and Allegations, and Notification of University Offices Offering Assistance.

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 the following:

- A notice of the Grievance Process and resolution options, as outlined in this Policy;
- The Formal Complaint allegations that potentially constitute Prohibited Conduct under this Policy, 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;
- List the potential policy violations being investigated, or otherwise applicable under the Grievance Process;

- 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;

- 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;

- The parties may review evidence gathered as part of any investigation;

- Knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action; and

- Any other relevant information for the written notice.

5.5 Written Notice of Events.

The University will provide written notice to a party or witness whose participation is invited or expected, which will include the date, time, location, participants, and purpose of any meetings, investigative interviews, or other proceedings in the Grievance Process.

5.6 Advisor of Choice.

The parties and witnesses may have an advisor of their choice at any meetings, investigative interviews, or other proceedings in the Grievance Process. Advisors are not permitted to actively participate in the Grievance Process, except for asking relevant questions of the parties and witnesses at a Live Hearing under Section 6.1(C).

If a Complainant or Respondent does not have an advisor for the hearing, the University will provide one for that party without charge for the purpose of questioning participants at a hearing under Section 6.1(C).

5.7 Interim Measures.

Once a Formal Complaint is filed, the University may determine if and what interim measures are necessary, depending on the facts and circumstances of a matter applicable to this Policy. The Title IX Coordinator (or University official/designee) will approve all interim measures under this Policy. Interim measures may be kept in place through the conclusion of a Grievance Process. An interim measure, for the purpose of this Policy, is either (a) Emergency Removal for Students, or (b) Administrative Leave or Alternative Work Assignment for Employees.

A. Emergency Removal for Students. A student 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.

   An emergency removal may include, but is not limited to, temporarily suspending the right of the Respondent to: (a) access specific campus areas or buildings; (b) access specific programs (e.g. athletics/intramural activities, student organizations, departments); (c) be on campus entirely and accessing classes in person; among others.

At the discretion of the University, the Respondent may be permitted to pursue alternative coursework options to ensure as minimal academic impact as possible.

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. [The University may determine the specific process for challenging a decision for emergency removal. Insert such procedures here, if applicable.]

B. Administrative Leave or Alternative Work Assignment for Employees. An employee Respondent may be placed on administrative leave e.g. investigative leave) or an alternative work assignment, in accordance with the University's policy and procedures, during the pendency of the Grievance Process, as outlined in this Policy.

5.8 No Effect on Pending Personnel or Academic Actions Unrelated to the Formal Complaint.

The filing of a Formal Complaint under this Policy will not stop or delay any action unrelated to the Formal Complaint, including: (a) 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; (b) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (c) any job-related functions of a University employee. Nothing in this section shall limit the University's ability to take interim action or execute an emergency removal.

5.9 Standard of Evidence and Presumption of Not Responsible.

All Formal Grievance Processes will use the preponderance of the evidence standard, which means (for the purposes of this Policy) the greater weight of the credible evidence. This standard is satisfied when the action is deemed more likely to have occurred than not.

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 Formal Grievance Process.

5.10 Resolution Options of the Grievance Process.

A. Formal Grievance Process, as outlined in Section 6.1 of this Policy.

B. Alternative Formal Grievance Process for Students, as outlined in 6.2 of this Policy.

C. Informal Resolution (IR), as outlined in Section 6.3 of this Policy.

D. Formal Complaint Dismissal, as outlined in Section 6.4 of this Policy.

5.11 Key Roles in the Grievance Process.

A. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Misconduct,

Retaliation, and other Prohibited Conduct under this Policy. 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. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

Any member of the University community may contact the Title IX Coordinator with questions.

B. Investigator(s). The University will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint. The investigators are neutral and impartial,, and seek to gather relevant evidence and interview relevant witnesses for the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Deputy Title IX 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.

C. Informal Resolution Facilitator(s). An informal resolution facilitator is responsible for assisting the parties with navigating the Informal Resolution (IR) process. The facilitators are neutral and impartial, and seek to facilitate a mutually agreeable outcome with the parties that appropriately resolves an alleged policy violation. The Deputy Title IX Coordinators may supervise and advise the informal resolution facilitators when conducting the IR process and update the Title IX Coordinator as necessary to ensure compliance with Title IX.

D. Hearing Officer or Hearing Panel. [University discretion may apply for hearing panel.] The hearing officer is responsible for conducting the live 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, based on the preponderance of the credible evidence, and in an impartial, neutral, and objective manner. For cases involving a faculty Respondent, the Hearing Officer shall be a faculty member holding a tenure status at least equal to that of the faculty Respondent.

E. University Representative at the Hearing. The University representative is responsible for presenting relevant evidence regarding the Formal Complaint at a live hearing. The University representative can present information and witnesses, question witnesses, and provide opening and closing statements at the hearing. The University representative is neutral, impartial, and independent of the investigation and adjudication of the Formal Complaint.

F. Appellate Officer. An appellate officer may be responsible for an appeal of (a) a Formal Complaint Dismissal; (b) a determination regarding a Respondent's responsibility following a Live Hearing; or (c) sanctions only within a Student's Administrative Disposition. An appellate officer must not have taken part in any other part of the Grievance Process for the same matter, and must render a final decision on the appeal in an impartial, neutral, and objective manner.

Sec. 6 The Grievance Process.

6.1 Formal Grievance Process.

A. Application. The Formal Grievance Process will apply in the following ways:

1. Students. The Formal Grievance Process applies in instances where the Respondent is a student (including student employees[2]) at the University at the time of the alleged conduct and where the alleged conduct includes Sexual Harassment (as a possible policy violation under this Policy).

2. Employees. The Formal Grievance Process only applies for employees where all of the following conditions are met:

   a. The Respondent is an employee at the University at the time of the alleged conduct;

   b. The conduct alleged includes Sexual Harassment (as a possible policy violation under this Policy);

   c. The alleged conduct occurred against a person in the United States; and

   d. Where 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: on any University property; during any University activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

      In all other circumstances, allegations of Sexual Misconduct (or other allegations of Prohibited Conduct in this Policy, including Failure to Report for Responsible Employees) will be handled in accordance with the [insert here EMPLOYEE HANDBOOK/POLICY].

      In circumstances where an employee is alleged of Sexual Harassment and another policy violation of any kind, the University has discretion as to whether the Non-Sexual Harassment allegations will be subject to the Formal Grievance Process (outlined in this Policy) or another institutional grievance process.

3. Other Affiliations. For Formal Complaints against third parties, such as contracted workers, volunteers, or visitors, the University will apply the analysis in Section 6.1(A)(2) with regard to employees and may apply other institutional policies to those Respondents if the Formal Grievance Process (outlined in this Policy) does not apply.

B. Investigation of the Formal Complaint – Gathering of Evidence. After a written notice of the Formal Complaint and allegations has been provided to the parties, the investigation will include the following:

1. Complainant Intake. The investigator(s) will attempt to interview the Complainant to gather relevant evidence regarding the Formal Complaint allegations.

2. Respondent's Opportunity to Respond. The Respondent will be provided a reasonable time to respond to the Formal Complaint allegations.

[2] Student Employees: Respondents who are both students and employees are treated as students under this Policy.

3. Identify Witnesses. The parties may identify relevant witnesses to the Formal Compliant allegations and who can provide relevant evidence for the investigation.

4. Party and Witness Interviews. The investigator(s) will attempt to 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.

5. Asking Questions. The parties may submit relevant questions to the investigator(s) that they would like asked of the other party or any known potential witnesses.

6. Evidence and Deadlines. The parties may present any information, statements, and evidence that is relevant to the Formal Complaint allegations. The parties will be notified of deadlines to submit evidence in a reasonable timeframe.

    a. Relevant Evidence. Evidence is relevant when it is:

        - Directly related to the alleged conduct at issue in the Formal Complaint and within the scope of the investigation as part of the Formal Grievance Process under this Policy; and

        - May aid in showing whether or not the alleged conduct occurred.

    b. Privileged Information and Records Excluded. No person will be required to disclose information protected by a legally recognized privilege. The hearing officer must not allow evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has voluntarily waived the privilege. This includes information protected by the attorney-client privilege and records made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of the person's treatment.

    c. Prior Sexual History Excluded. A Complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or 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.

7. Access to Evidence. Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained (whether relevant or not) as part of the investigation to both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice). Both parties will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.

8. Completed Investigation Report. The completed investigation report will: (a) outline each of the allegations that potentially constitutes Prohibited Conduct under this Policy, (b) provide the timeline (e.g. procedural steps) of the investigation, and (c) fairly summarize relevant evidence, participant statements, and responses to questions. 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 10 days prior to the date of the scheduled hearing to review and provide a written response at the hearing. A copy of the completed investigation report will be issued to the Title IX Coordinator, and the Hearing Officer, and the University Representative assigned for the hearing.

C. Live Hearing – Determination of Responsibility. Absent a Formal Complaint dismissal or the parties' decision to reach an Informal Resolution (IR) agreement (if applicable), the University will provide a live hearing for all Formal Complaints subject to the Formal Grievance Process in this Policy.

1. Written Notice of the Hearing. The University will provide at least 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), including the date, time, location, names of all known participants of the hearing (including the Hearing Officer, the University Representative, all parties and relevant witnesses), purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the relevant evidence gathered. The hearing notice may also provide a deadline by which the University representative and the parties have an opportunity to disclose (1) the names of any witnesses they intend to call to testify at the hearing, if any, and (2) a copy of any documents they intend to use as exhibits at the hearing, not already included in the investigation report, if any.

2. Challenges to the Hearing Officer. Either party may challenge the fairness, impartiality or objectivity of a Hearing Officer. The challenge must be submitted in writing to the Hearing Officer through the office coordinating the hearing within 4 days after notice of the identity of the Hearing Officer and must state the reasons for the challenge. The Hearing Officer will be the sole judge of whether he or she can serve with fairness, impartiality, and objectivity. If the Hearing Officer recuses themselves, an alternative hearing officer will be assigned in accordance with the institution's procedures.

3. Access to Evidence. Both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice) will have access to all evidence from the investigation, including a copy of the completed investigation report, as outlined in Section 6.1(B)(8) in this Policy.

4. Separate Rooms and Virtual Participation. 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. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing. The institution may choose to conduct a hearing virtually.

5. Decorum. (OPTIONAL SECTION) To promote civility, respect, and participation in hearings, the rules of decorum will be determined and conducted under the authority of

the Hearing Officer. The rules apply equally to all hearing participants and attendees. It is expected that all participants and attendees will act in a respectful manner at the hearing. Failure to comply with the rules of decorum may result in its own disciplinary action.

Prohibited conduct at the hearing, includes but is not limited to:

- Language or behavior that unreasonably interferes with one's participation in the hearing;
- Using gratuitous abusive language (e.g. name-calling, insults) toward individuals in the hearing;
- Using gratuitous profanity (e.g. swear words) in the hearing not relevant to the facts;
- Interrupting or talking over other participants in the hearing;
- Engaging in noisy outbursts or side conversation that unreasonably delays or interrupts the hearing (Note: Participants may request a break, as needed);
- Acting in a manner solely to harass, humiliate, or embarrass an individual in the hearing; or
- Physically invading an individual's personal space at the hearing.

6. Opening and Closing Statements. The University Representative and the parties may make opening and closing statements at the hearing. The Hearing Officer may impose time limits for opening and closing statements, which would apply equally to the University Representative and the parties.

7. Evidence and Exhibits. The investigation report and all exhibits are automatically part of the hearing record and may be considered by the Hearing Officer unless the Hearing Officer rules otherwise.

   The provisions in Section 6.1(B)(6) regarding Relevant Evidence, Privileged Information and Records Excluded, and Prior Sexual History Excluded apply for the hearing and the determination regarding responsibility of the Respondent's alleged conduct charges.

8. Procedure for Questioning Participants. The Hearing Officer may, at the hearing officer's discretion, ask relevant questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. Instead, the parties' advisors and the University Representative may ask relevant questions and follow-up questions of the parties and witnesses that participate in the hearing, including questions that challenge credibility. Each advisor can ask relevant questions directly, orally, and in real time at the hearing.
   All questions posed by anyone other than the Hearing Officer must be deemed relevant by the Hearing Officer before a party or witness answers.

- When the Hearing Officer deems a question as unclear, the Hearing Officer may ask the questioner to clarify or revise the question before ruling as to whether the question is relevant for answering.

- Irrelevant questions will be excluded, and the Hearing Officer will state the reason such question is irrelevant.

When a party or witness is absent from the hearing or does not respond to relevant questions during the hearing, the Hearing Officer must not draw an inference about whether the alleged conduct occurred based solely on the person's absence or non-response to such questions.

9. Hearing Officer Determination. The hearing officer will issue a written determination, which must include the following:

    - Outline each of the Formal Complaint allegations that potentially constitutes Prohibited Conduct under this Policy;

    - A description of all of the procedural steps of the Formal 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);

    - Evaluate the relevant evidence;

    - Assess credibility of the relevant evidence from the parties and witnesses (if in dispute to the Formal Complaint allegations);

    - Include the finding(s) or no findings(s) of policy violations for each applicable allegation and the related rationale for the determination as to whether the Respondent is responsible for each allegation, based on the preponderance of the credible evidence;

    - Regarding disciplinary sanctions:

        - For non-faculty Respondents: The hearing officer's determination will include disciplinary sanctions, if applicable;

        - For faculty Respondents: The hearing officer's determination will not include disciplinary sanctions, if applicable. The written determination and the hearing record will be forwarded to the Chief Academic Officer to determine the appropriate sanction, if applicable.

    - Whether additional remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and

    - The University's procedures and permissible bases for the parties to appeal, if applicable.

The hearing officer will send a copy of the written determination concurrently to the parties within 21 days from when the hearing concludes, in addition to the Dean (for student Respondents) or appropriate administrator (for employee Respondents), and the Title IX Coordinator.

10. Recordings. 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.

11. Accommodations. Participants at the hearing may request reasonable accommodations through the University's ADA Coordinator [or insert applicable designee] in advance of the hearing. Requests for reasonable accommodations at the hearing must be submitted no later than 7 days prior to the scheduled hearing date.

    For more information about reasonable accommodations, see the University's [Policy for Reasonable Accommodations].

D. Sanctions and Remedies. The following sanctions and remedies may be considered by the Hearing Officer in accordance with this Policy:

1. Possible Sanctions and Remedies for Student Respondents.

- Educational training;
- No shared classes or extra-curricular activities;
- Disciplinary probation;
- Withholding of grades, official transcript, and/or degree;
- Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
- Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities;
- Denial of degree;
- Suspension from the University for a specific period of time. 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;
- Expulsion (permanent separation from the University). Expulsion creates a permanent notation on the student's academic transcript;
- Revocation of degree and withdrawal of diploma; and/or
- Other sanction(s) or remedies as deemed appropriate under the circumstances.

2. Possible Sanctions and Remedies for Employee Respondents.

   Any of the following Sanctions or Remedies listed below may be imposed on a finding of a policy violation by an employee Respondent (faculty or non-faculty).

   - Employment probation;
   - Job demotion or reassignment;
   - Suspension with or without pay for a specific period of time;
   - Dismissal or termination;
   - Ineligible for rehire; and/or
   - Other sanction(s) or remedies as deemed appropriate under the circumstances.

   As described in Section 6.1 C. 9, for non-faculty employees, the hearing officer makes the sanction determination and includes it in the written determination.

   For faculty employees, the sanction determination is made as follows:

   a. The Chief Academic Officer (CAO) or other administrator designated by the president determines the appropriate sanction after the resolution of any appeal of the hearing officer's determination.

   b. If the CAO determines that the appropriate sanction is less than termination, the CAO will communicate the decision in writing to the faculty Respondent, and the CAO's decision is final.

   c. If the CAO determines that the appropriate sanction is termination, that determination will be treated as a recommendation to be forwarded to the President for action as described below. The determination also will be forwarded to the faculty Respondent.

      - Prior to acting on the CAO's termination recommendation, the President will give the faculty Respondent a reasonable amount of time, as determined by the President, to respond in writing to the President.

      - Board of Regents Review for Tenured and Term-Tenure Faculty During Appointment: If, after consideration of the CAO's recommendation and faculty Respondent's response, if any, the President agrees that termination is the appropriate sanction, the President will forward the President's recommendation to the Board of Regents. The Board of Regents, by a majority of the total membership, shall approve, reject, or amend the President's sanctioning decision, and any such decision by the Board of Regents is final.

      - President Review Final for Non-tenured Faculty During Term of Appointment: If, after consideration of the CAO's recommendation and faculty Respondent's response, if any, the President agrees that termination is the appropriate sanction,

the President will issue written notice of the termination decision to the non-tenured faculty member. The President's decision is final and not appealable to the Board of Regents or grievable under the institution's grievance policy.

- During the sanctioning process, the CAO, President, and Board of Regents will not reconsider the determination of responsibility made by the hearing officer but will only consider whether termination is the appropriate sanction.

E. Appeals. Either party may appeal in writing a Hearing Officer's determination regarding a Respondent's responsibility under the Grievance Process in this Policy within 10 days of notification of such a determination on the basis of:

- A procedural irregularity that affected the outcome of the matter;

- 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; or

- 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.

If an appeal hasn't been filed by the appeal deadline, then once the deadline expires, the determination regarding responsibility is final and it concludes the Formal Grievance Process for the matter.

Note on Administrative Dispositions: When a Respondent and/or Complainant appeal the sanctions and remedies outlined in a student's administrative disposition, a basis for appeal (noted below) is not required. However, the remaining Appeal steps still apply.

1. Basis for Appeal. For the appeal of a determination regarding responsibility to be considered, the basis for filing an appeal and supporting evidence (if applicable) must be included. A party may appeal the determination regarding responsibility on the following bases:

    - A procedural irregularity that affected the outcome of the matter;

    - There is new evidence that was not reasonably available at the time of the determination regarding responsibility was made that could affect the outcome of the matter; or

    - 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. Notice of Appeal Filed. The applicable parties will be notified in writing when an appeal is filed. The appeal procedures will apply equally for both parties.

3. Opportunity to Respond. When applicable, the non-appealing party and University will have 7 days from the notification of an appeal to submit a written statement responding to the appeal.

4. Final Determination Regarding Responsibility or Final Sanctions of Respondent. Before rendering a decision on a final determination (or on final sanctions and remedies for a student's administrative disposition), the Appellate Officer will consider all relevant evidence regarding the determination and its appeal. The Appellate Officer will release a written decision concurrently to the parties within 21 days from the date the appeal was filed, with one of the following final determinations:

   - Affirm the Hearing Officer's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;

   - Affirm the Hearing Officer's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;

   - Reverse the Hearing Officer's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or

   - Affirm or amend the sanctions and/or remedies outlined in the administrative disposition issued under Section 6.2(C) of this Policy.

   The final determination regarding the Respondent's responsibility (or final sanctions and remedies for the Respondent's administrative disposition) is final and it concludes the Formal Grievance Process for the matter.

6.2 Alternative Formal Grievance Process for Students.

A. Application. The Alternative Formal Grievance Process for Students applies where the Respondent is a student at the time of the alleged conduct and where the alleged conduct *does not* include Sexual Harassment (as a possible policy violation), but the alleged conduct includes one or more other forms of Prohibited Conduct (as possible policy violations under this Policy). Under these circumstances, the Formal Complaints will use the Formal Grievance Process in Section 6.1, with the following exceptions below.

B. Investigation Report & Preliminary Determination. Section 6.1(B)(8) applies except that the completed investigation report will also include: a preliminary determination of whether the Respondent violated each policy provision at issue and an accompanying rationale for that preliminary determination. The completed investigation report and determination regarding responsibility will be referred to the [Student Conduct Office (or equivalent)].

   The Student Conduct Officer will conduct an independent review of the investigation report, and will:

   - Accept the preliminary determination regarding responsibility of the Respondent, and either (a) dismiss the case (e.g. no finding(s) of policy violation(s)) or (b) proceed to adjudication (e.g. finding(s) of policy violation(s) (when applicable);

- Amend the preliminary determination regarding responsibility of the Respondent, and proceed to adjudication (e.g. finding(s) of policy violation(s) (if applicable); or

- Remand the process back to the investigation stage to address an investigation concern.

C. Adjudication. Where the findings of responsibility proceed to the adjudication stage, the applicable parties will receive an administrative disposition outlining the policy violations(s) and applicable adjudication options based on violation type: (a) Sexual Misconduct Violations, and (b) Non-Sexual Misconduct Violations.

The administrative disposition will:

- Outline each of the Formal Complaint allegations that potentially constitutes Prohibited Conduct under this Policy;

- Identify the policies and procedures that the University used for the Formal Grievance Process;

- Include the evaluation of the relevant evidence;

- Include the credibility assessment of the relevant evidence from the parties and witnesses (if in dispute to the Formal Complaint allegations);

- Include the finding(s) of policy violation(s) for each applicable allegation and the related rationale for the determination of each allegation based on the preponderance of credible evidence.

- Outline the disciplinary sanctions, and remedies (if applicable); and

- The applicable adjudication options based on violation type.

1. Sexual Misconduct Violations: When a finding of policy violations includes Sexual Misconduct violations that does not rise to the level of a type of Sexual Harassment under this Policy (such as Sex Discrimination, Other Inappropriate Sexual Conduct or Sexual Exploitation), the Respondent and Complainant may elect one of the following:

    a. Accepting the Administrative Disposition. Both parties agree to the Respondent's determination of responsibility for the finding(s) of policy violation(s), the sanctions, and remedies outlined in the administrative disposition, and waive the option of a hearing. By selecting this adjudication option, the administrative disposition will be final and concludes the Formal Grievance Process for the matter.

    The Respondent will receive the final administrative disposition and a copy of the final administrative disposition will be issued to the Title IX Coordinator as well.

    b. Respondent Disputes Sanctions in the Administrative Disposition. Both parties agree to the Respondent's determination of responsibility for the finding(s) of policy violation(s), but the Respondent and/or Complainant dispute and appeal the sanctions

and remedies outlined in the administrative disposition, and waive the option of a hearing. See Appeals, Section 6.1(E) of this Policy.

c. Selecting a Live Hearing. See Live Hearing, Section 6.2(D) of this Policy.

If both parties decline to respond to the administrative disposition by the designated deadline, a live hearing will proceed accordingly. See Live Hearing, Section 6.2(D) of this Policy.

2. Non-Sexual Misconduct Violations. When a finding of policy violation(s) doesn't include Sexual Misconduct violations but are policy violations applicable for students under this Policy (such as Retaliation, False Information/False Complaints, or Interference with the Grievance Process), the Respondent may elect one of the following adjudication options:

a. Accepting the Administrative Disposition. Both parties agree to the Respondent's determination of responsibility for the finding(s) of policy violation(s), the sanctions, and remedies outlined in the administrative disposition, and waive the option of a hearing. By selecting this adjudication option, the administrative disposition will be final and concludes the Formal Grievance Process for the matter.

The Respondent will receive the final administrative disposition and a copy of the final administrative disposition will be issued to the Title IX Coordinator as well.

b. Respondent Disputes Sanctions in the Administrative Disposition. Both parties agree to the Respondent's determination of responsibility for the finding(s) of policy violation(s), but the Respondent and/or Complainant dispute and appeal the sanctions and remedies outlined in the administrative disposition, and waive the option of a hearing. See Appeals, Section 6.1(E) of this Policy.

c. Selecting a Live Hearing. Only if suspension or expulsion (or deferred suspension) is included in the outlined sanctions of the Administrative Disposition, then a live hearing will be offered as an alternative to accepting all or parts of the Administrative Disposition. See Live Hearing, Section 6.2(D) of this Policy. Otherwise, this adjudication option will not be available.

D. Live Hearing. If the Respondent or Complainant selects a hearing (when available as an adjudicative option), then the administrative disposition is disregarded, and the determination regarding the Respondent's responsibility and sanctions (if appliable) will be made by an impartial Hearing Officer. The hearing procedures in Section 6.1(C) will apply, with the following exception:

1. Procedure for Questioning Participants.[3] 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. 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. The Hearing Officer will then ask relevant cross-examination questions of the other party and allow for relevant follow-up questions

[3] Subsection 6.1(C)(8) does not apply when a hearing is conducted under Section 6.2(D) of this Policy.

(if applicable). Advisors are not permitted to ask any questions of the parties or witnesses at the hearing.

6.3 Informal Resolution (IR).

After the parties have been provided a copy of the written notice of a Formal Complaint, the parties may voluntarily engage in an Informal Resolution (IR) process to resolve the Formal Complaint. The IR process is generally designed to facilitate a mutually agreeable outcome to alleged conduct that centers on eliminating Prohibited Conduct, preventing its reoccurrence, and remedying the conduct's effects in a manner that meets the needs of the Complainant while maintaining the safety of the campus community.

The IR process, if available, may be initiated by the parties, in writing, at any point prior to reaching a determination regarding the Respondent's responsibility of alleged policy violations.

If a party is interested in the IR process, please contact the Title IX Coordinator (or University official/designee) who can assist with determining availability of the IR process and whether the other party is interested in a potential IR.

A. Availability. The Informal Resolution process is not permitted in cases where Sexual Harassment is alleged in the Formal Complaint when the Complainant is a student and the Respondent is an employee. Informal Resolution is also not available where the Respondent:

1. Has previously participated in the Informal Resolution process and where that process resulted in a mutual IR agreement; or

2. Has previous Sexual Misconduct policy violations.

For all other cases, the University has the discretion to determine whether Informal Resolution is appropriate to resolve the Formal Complaint, depending on the specific facts and circumstances of the case. (Insert additional IR eligibility elements, as applicable or relevant at the institutional-level.)

B. Written Notice of the IR Process. Once it is determined that an Informal Resolution (IR) is available to resolve the Formal Complaint, both parties will be notified in writing of the initiation of the IR process, and the parties rights and responsibilities in the IR process.

The written notice of the IR process will include the following:

- The Formal Complaint allegations;

- The requirements of the IR process (as outlined in Section 6.3 of this Policy);

- Prior to an IR Agreement, a party has the right to withdraw from the IR process, and separately, initiate or resume the Formal Grievance Process or Alternative Formal Grievance Process for Students (as outlined in Section 6.1 and 6.2 of this Policy);

- Includes examples of potential terms that may be reached in an IR Agreement;

- If by signing an IR Agreement, the parties would be agreeing to the terms of the agreement, would be bound by the terms of the agreement, and thereby would waive the right to a Formal Grievance Process regarding the alleged conduct at issue; and

- The IR Agreement, if signed, will be retained, as outlined in Grievance Process Documentation and Record Retention, Section 6.5 of this Policy.

C. IR Agreement and Approval Process. The parties may explore and determine their own set of terms for their IR Agreement. The University will provide an IR facilitator to navigate the IR process. Any IR Agreement must be approved by the Title IX Coordinator (or University official/designee).

By signing an IR Agreement, the parties are affirming that the terms of the agreement (along with any other supportive or interim measures in place, if applicable) appropriately address the alleged conduct at issue and remedy its effects. By signing an IR Agreement, the parties are bound by the terms of the agreement and waive the right to a Formal Grievance Process regarding the alleged conduct at issue.

D. Terms and Conditions. By signing an IR Agreement, the parties agree to comply with the terms of the agreement. However, the parties' failure to comply with any terms of the IR Agreement may result in its own disciplinary action and mutually agreed-upon consequences in the agreement.

No recording of the IR process will be made and all statements made during the IR process may not be used for or against either party (in addition, the Hearing Officer and Appellate Officer may not consider any such statement made during IR process) should the parties resume the Formal Grievance Process.

E. Withdrawal from IR Participation. At any point prior to signing the IR Agreement, each party has a right to withdraw from the IR process, and separately, initiate or resume the Formal Grievance Process or Alternative Formal Grievance Process for Students (as outlined in Section 6.1 with respect to the Formal Complaint.

The IR Agreement, if signed, will be retained, as outlined in Grievance Process Documentation and Record Retention, Section 6.5 of this Policy.

6.4 Formal Complaint Dismissal.

A. Mandatory Formal Complaint Dismissals under the 2020 Title IX Regulations.

a. Under the 2020 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. 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:

1. The conduct alleged does not meet the definition of Sexual Harassment;

2. The alleged conduct did not occur in the University's education program or activity; or,

3. The alleged conduct did not occur against a person in the United States.

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 Harassment under this Policy. The University may also investigate allegations of Prohibited Conduct under this Policy but it will not technically be "under Title IX."

B. Other Formal Complaint Dismissals.

The University may dismiss a Formal Complaint, at its discretion, under this Policy's Grievance Process for any of the following circumstances:

- The Complainant voluntarily withdraws any or all of the Formal Complaint allegations and the University determines that the remaining allegations (if any) would not constitute Prohibited Conduct defined in this Policy, even if proven;

- The Complainant submits a written request to the University to not investigate the Formal Complaint filed, and the University determines it can and will honor the request, in accordance with Section 3.1(B) and (C) of this Policy and applicable state law;

- The University is unable to identify the Respondent, after the University has taken reasonable steps to do so;

- The Respondent is no longer employed by the University;

- Any other specific circumstances that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or any allegations therein;

- The University determines the alleged conduct in the Formal Complaint would not constitute Prohibited Conduct under this Policy, even if proven; or

- The University determines the Formal Complaint does not fall within the scope or applicability of this Policy;

C. Notice of Formal Complaint Dismissal. When the University dismisses a Formal Complaint, the University will provide the parties a written notice of the Formal Complaint Dismissal, the basis for the dismissal. The parties may appeal the Formal Complaint Dismissal when it includes Sexual Harassment allegations, as outlined below. Otherwise, there is no appeal available.

D. Appeals of Formal Complaint Dismissals. When the Formal Complaint Dismissal includes Sexual Harassment allegations, an applicable party may appeal in writing within 10 days of notification of the dismissal.

1. Basis for Appeal. For the appeal of a Complaint Dismissal to be considered, the basis for filing an appeal and supporting evidence must be included. An applicable party may appeal the Formal Complaint Dismissal on the following bases:

   - A procedural irregularity that affected the outcome of the matter;
   - There is new evidence that was not reasonably available at the time the dismissal was made that could affect the outcome of the matter; or
   - The Title IX Coordinator, investigator(s), or a decision-maker 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. Notice of Appeal Filed. The parties will be notified in writing when an appeal is filed. The appeal procedures will apply equally for both parties.

3. Opportunity to Respond. The non-appealing party (if applicable) and the University will have 7 days from the notification of an appeal to submit a written statement responding to the appeal.

4. Final Determination Regarding Formal Complaint Dismissals. Before rendering a decision, the Appellate Officer will consider all relevant evidence regarding the Formal Complaint Dismissal and its appeal. The Appellate Officer will release a written decision within 21 days from the date the appeal was filed, with one of the following determinations:

   - Affirm the Formal Complaint Dismissal; or
   - Remand the process back to a Formal Grievance Process.

6.5 Grievance Process Documentation and Record Retention. The University (through the appropriate office) will retain all of the documentation included from the resolution of a Grievance Process under this Policy and all training materials for key roles (as outlined in Section 5.7 of this Policy). The records retention of such documents will be for seven years, in accordance with state and federal records laws and University policy.

All documentation of records is private and confidential to the extent possible under law. Student records of the Grievance Process are subject to FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA), and included in the employee's official employment record.

6.6 Timeframes.

A. Informal Resolution (IR) Timeframe. Informal Resolutions (IR) of a Complaint will be concluded within 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 IR process will "pause" the counting of the Investigation and Grievance Process timeframes, as outlined in Section 6.5(B) and (C) of this Policy. Further, should the IR process fail, the Investigation and Grievance Process timeframes will resume accordingly.

B. Investigation Timeframe. The investigation of a Formal Complaint (outlined in Section 6.1(B) and (C) of this Policy) will be concluded within 90 days of the Formal Complaint filed. The University will provide updates on the progress of the investigation, as needed or requested.

C. Formal Grievance Process Timeframe. The entire Formal Grievance Process (outlined in Sections 6.1(B) and (C) of this Policy, including any appeal) will be completed in no more than 150 days from the filing of the Complaint. However, the circumstances may require a temporary delay in this timeframe and the University may extend this timeframe for good cause. 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.

Delay for good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The time period in this section does not include the period the parties attempted but failed to reach an agreement in the Informal Resolution (IR) Process, if applicable; and in such a case, the Grievance Process timeframe will be extended by the period the parties attempted to reach an IR Agreement (outlined in Section 6.3 of this Policy).

Failure of the institution to adhere to the timeframes above will not result in a dismissal of the matter; instead, if the institution does not adhere to any of the above timeframes, the parties may inquire about the delay to the Title IX Coordinator.

Sec 7 Dissemination of Policy and Educational Programs.

7.1 Policy Notice and Dissemination. This Policy and the University's Title IX Notice of Nondiscrimination on the Basis of Sex will be made available to all University administrators, faculty, staff, and students online at [insert website link], in University student catalog(s), any employee handbook of operating procedures, and any other required publications. 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. The notice will include information about Sexual Misconduct, Retaliation, and other Prohibited Conduct under this Policy, in addition to how to file a report or Formal Complaint, the University Grievance Process under this Policy, and available Supportive Measures and resources, such as support services, health, and mental health services. The notice will specify the right to file a Formal Complaint under this Policy, right to file a police report to law enforcement, the Title IX Coordinator's contact information, and will refer individuals to designated offices or officials for additional information.

7.2 Ongoing Trainings. 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. Prevention 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: [Link to web page with training provided]

7.3 Training Materials for Key Roles in the Grievance Process. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over University 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, and appellate officers (among others)) will be available on the University's website: [insert web page here]

Sec. 8 Definitions of Conduct Violations under this Policy. [4]

Sexual Misconduct Violations:

A. **Sex Discrimination**. Occurs when an individual is treated less favorably on the basis of that person's sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype. Sexual harassment, as defined in this Policy, is a form of sex discrimination.

B. **Sexual Harassment**. Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo: An employee of the institution conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

2. Hostile Environment: 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; or

3. "Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as defined in this Policy.

Note: Subsections (1) and (3) 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. Therefore, any instance of Quid Pro Quo Sexual Harassment and any instance of Sexual Assault, Dating Violence, Domestic Violence, and Stalking are considered Sexual Harassment under this Policy.

For the purposes of Subsection (2) in this definition:
- "*Effectively denies a person equal access*". Conduct that interferes with, limits, or deprives a person from participating in or benefiting from the University's education or employment programs and/or activities.

C. **Sexual Assault**.[5] An offense that meets the definition of rape, fondling, incest, or statutory rape:

[4] The definitions provided in the main body of the text are the definitions adopted by the University. When applicable, the state law definition is included in the respective definition's footnote for the information of the reader. In any criminal action brought by law enforcement, the state law definition will apply.

[5] Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:
a) Causing the penetration of the anus or sexual organ of another person by any means, without that person's consent; or
b) Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

1. **Rape**. The causing of 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.

2. **Fondling**.[6] The causing of intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of another person, without the person's consent, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

3. **Incest**. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4. **Statutory Rape**. Sexual intercourse with a person who is under the statutory age **of** consent.

D. **Dating Violence**.[7] Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of the following factors:
- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

E. **Domestic Violence**.[8] Includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the domestic or family violence laws

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c) Causing the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

[6] "Fondling" as defined in 34 CFR 668.46, will be used for the purposes of complying with the Clery Act's crime reporting statistics requirements in the university's annual security report.

[7] Dating Violence is defined by the Texas Family Code, Section 71.0021 as:
(a) 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 physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
(b) For purposes of this title, "dating relationship" means 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:
(1) the length of the relationship;
(2) the nature of the relationship; and
(3) the frequency and type of interaction between the persons involved in the relationship.
(c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

Texas Penal Code, Section 22.01 provides the criminal penalties associated with Dating Violence.

[8] Family Violence is defined by the Texas Family Code Section 71.004 as:

of the state of Texas, including the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who:

- Is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim;
- Shares a child in common with the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; or
- Commits acts against an adult or youth victim who is protected from those acts under the domestic or family violence laws of the state of Texas.

Domestic Violence, under this Policy, cannot be committed by a person who is simply living together and cohabiting as roommates, if the individuals were not current or former spouses or intimate partners.

F. Stalking.[9] Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others, or (b) suffer substantial emotional distress.
For the purposes of the Stalking definition:

- *Course of conduct.* 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.

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(1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or
(3) dating violence, as that term is defined by Section 71.0021.

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

[9] Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:
a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:
   i. bodily injury or death for the other person;
   ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
   iii. that an offense will be committed against the other person's property;
b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
c) would cause a reasonable person to:
   i. fear bodily injury or death for himself or herself;
   ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
   iii. fear that an offense will be committed against the person's property; or
   iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

- *Reasonable person.* A reasonable person under similar circumstances and with similar identities to the victim.

- *Substantial emotional distress.* Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

G. **Sexual Exploitation**. Any nonconsensual or abusive conduct that takes sexual advantage of another person for the purposes of sexual arousal or gratification, financial gain, or other personal benefit.

Examples of Sexual Exploitation include, but are not limited to:

- Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, audio, or other recordings, images, or generated images of a private and sexual nature, including consensual sexual activity, without the consent of the subject(s);

- Taking, making, sharing, or directly transmitting photographs, films, digital images, or generated images of the private body parts of another person without that person's consent;

- Prostituting another person;

- Surreptitiously watching or knowingly allowing another to surreptitiously watch otherwise consensual sexual activity, without consent;

- The intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner;

- Threatening to "out" someone based on sexual orientation, gender identity, or gender expression;

- Threatening to disclose sensitive details about one's sexual preferences, habits, and/or experiences;

- Threatening to expose someone's prior sexual activity to another person; or

- Knowingly transmitting a sexually transmitted disease (STD) to another person without the person's knowledge.

D. **Other Inappropriate Sexual Conduct**. Conduct on the basis of sex that does not meet the definition of "Sexual Harassment" under this Policy but is:

Unwelcome conduct that is objectively offensive and so severe *or* pervasive that it unreasonably interferes with, limits, or effectively denies a person's ability to participate in or benefit from a University program or activity, or adversely affects the terms and conditions of a person's University employment.

Whether the conduct is "on the basis of sex" will be determined by examining the totality of the circumstances, whether a reasonable person subjected to the conduct would construe

the conduct as "on the basis of sex", and whether the individual subject to the conduct construed it as "on the basis of sex."

Examples of Other Inappropriate Sexual Conduct include, but are not limited to:

- Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- Requests for sexual favors (including overt or subtle pressure);
- Gratuitous comments about an individual's sexual activities or speculation about an individual's sexual experiences;
- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Persistent, unwanted sexual or romantic attention; or
- Deliberate, repeated humiliation or intimidation.
- Unwelcome intentional touching of a sexual nature;
- Deliberate physical interference with or restriction of movement;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
- Consensual sexual conduct that is unprofessional and inappropriate for the educational or workplace environment, such as engaging in sex acts in the workplace.

Depending on the nature of a Formal Complaint, the alleged conduct may not violate this Policy, but may violate [insert specific policies such as other University policies including, but not limited to standards of conduct or professionalism policies)].

Non-Sexual Misconduct Violations:

E. **Retaliation**. Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone either (a) *because* the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities, or (b) for the purpose of *interfering* with any right or privilege secured under Title IX or this Policy.

Any person who retaliates against (a) anyone filing a report or Formal Complaint under this Policy, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any

unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.

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

A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply 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.

G. **Interference with the Grievance Process**. Any person who interferes with the Grievance Process (outlined in Section 6 of this Policy) is subject to disciplinary action up to and including dismissal or separation from the University.

Interference with a Grievance Process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the Grievance Process; or
- Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

H. **Failure to Report for Responsible Employees**. If a Responsible Employee knowingly fails to promptly report to the Title IX Coordinator all information concerning an incident the employee reasonably believes constitutes Sexual Misconduct (including Stalking, Dating Violence, Sexual Assault, or Sexual Harassment) committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

The duty to report acts reasonably believed to be stalking, dating violence, sexual assault, and sexual harassment arises from state law. The University goes further and requires Responsible Employees to report all acts reasonably believed to be any type of Sexual Misconduct, as defined in this Policy. It is important to note that 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:

- 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 institution.

Sec. 9 Additional Terms and Definitions.

A. **Complainant**. The individual who is alleged to have been subjected to conduct that could constitute Prohibited Conduct under this Policy.

B. **Confidential Employee.** Includes counselors in Counseling and Psychological Services, health care providers in Health Services, or clergypersons.

Additionally, employees who receive information regarding alleged Sexual Misconduct under circumstances that render the employee's communications confidential or privileged under other law (such as attorneys) are also considered "Confidential Employees." This only applies with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies. [The University may designate other confidential employees for students, and outline here and/or in this Policy. For designated confidential employees, the employee's "confidential status" is only with respect to information received about alleged Sexual Misconduct in connection with providing those services.]

Note: Under state law, Confidential Employees who receive information regarding incidents of Sexual Harassment, Sexual Assault, Dating Violence or Stalking (as defined under state law) committed by or against a student or an employee of the University, are required to report the **type of incident** to the Title IX Coordinator (or Deputy Coordinators). Confidential Employees may not include any information that would violate a student's expectation of privacy. The Confidential Employee's duty to report an incident under any other law also applies.

C. **Consent**. A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

The definition of consent for the crime of Sexual Assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.[10]

[10] Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against 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

For the purposes of the Consent definition, or as referenced in this Policy:

- *Physical Force (or Threat of Physical Force)*. The use of physical violence or is physically imposing in a manner that is intended to overcome resistance or elicit consent of another individual to gain sexual access. Physical force also includes the threat of such force.

- *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.

- *Coercion. The use of unreasonable pressure to compel another individual to* initiate or continue sexual activity against an individual's will. 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. 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.

- *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.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.

After establishing that a person is in fact incapacitated, the University will ask two questions:

1. Did the person initiating sexual activity know that the other party was incapacitated? and if not,

2. Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

   If the answer to either of these questions is "YES," then consent was absent, and the conduct is likely a violation of this Policy.

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.

A Respondent will be found to have violated policy only if the Respondent knew or should have known that the person was incapacitated.

D. **Economic Abuse**. In the context of Dating and Domestic Violence (Conduct Violations defined in this Policy), it means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, or manipulation to:

- Restrict a person's access to money, assets, credit, or financial information;
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage; or
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or failing or neglecting to act in the best interests of a person to whom one has a fiduciary duty.

E. **Objectively Offensive**. In evaluating whether conduct is "objectively offensive," one considers what a reasonable person would find hostile, intimidating, or abusive.

F. **Participants**. The term "participants" includes the University representative, Complainant, Respondent, and any witnesses.

G. **Party (or Parties)**. The term "party" (or "parties") refers to the "Complainant" and the "Respondent" under this Policy.

H. **Pervasive.** In evaluating whether conduct is "pervasive," one considers the type, frequency, and duration of the conduct.

I. **Respondent**. The individual who has been reported to be the perpetrator of Prohibited Conduct under this policy. (For UT-affiliated K-12 schools (e.g. charter schools), a parent or legal guardian of a Respondent may act on behalf of the Respondent.)

J. **Severe**. In evaluating whether conduct is "severe," one considers the degree to which the conduct was threatening, harmful, or humiliating.

K. **Sexual Misconduct**. This term is broadly defined to encompass Sex Discrimination, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, Sexual Exploitation, and Other Inappropriate Sexual Conduct.

L. **Technological Abuse**. In the context of Sexual Assault, Domestic Violence, Dating Violence, or Stalking (Conduct Violations defined in this Policy), means an act or pattern of behavior that is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, communication technologies, or any other emerging technologies.

4. Relevant Federal and State Statutes, and Standards

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 and its implementing regulations, 34 C.F.R. Part 106

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e–2000e-17 and its implementing regulations 29 C.F.R. §1604 11.

Clery Act, 20 U.S.C §1092(f) and its implementing regulations 34 C.F.R. Part 668

FERPA Regulations, 34 C.F.R. Part 99

Texas Education Code, Chapter 51, Subchapter E-2: Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.251-51.259

Texas Education Code, Chapter 51, Subchapter E-3: Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.281-51.291

Texas Education Code, Chapter 51, Subchapter Z: Protections for Pregnant and Parenting Students §51.982

Texas Labor Code, Chapter 21, Subchapter C-1: Sexual Harassment §21.141-21.142

Texas Code of Criminal Procedure, Chapter 56A, Request for Forensic Medical Examination Art. 56A.251

Texas Code of Criminal Procedure, Chapter 56A, Presence of Sexual Assault Program Advocate Art. 56A.351

Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter X: Parenting and Pregnant Students §4.370-4.376

5. Other Relevant Policies, Procedures, and Forms

[insert reference to]:

Regents' *Rules and Regulations*, Rule 30105 Sexual Harassment, Sexual Misconduct, and Consensual Relationships

Regents' *Rules and Regulations*, Rule 31008 Termination of a Faculty Member

University of Texas Systemwide Policy UTS 184, Consensual Relationships

University's Sex Discrimination Policy

Staff Discipline policy

Faculty Discipline policy

Student Discipline policy

6. System Administration Office(s) Responsible for Policy

Office of Systemwide Compliance

7. Dates Approved or Amended

[insert new date]
August 13, 2026 (pending BOR approval)
August 25, 2022
August 31, 2021
June 17, 2021
July 7, 2020
October 1, 2019
August 2, 2018
April 6, 2015
February 21, 2012

8. Contact Information

Questions or comments about this Policy should be directed to:

SystemwideTitleIX@utsystem.edu