



**TEXAS SOUTHERN UNIVERSITY  
MANUAL OF ADMINISTRATIVE POLICIES AND PROCEDURES**

**SECTION: Title IX**  
**AREA: Office of Compliance**  
**SUBJECT: Title IX Grievance Policy & Procedures<sup>1</sup>**

**Policy 02.05.09**

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**1. POLICY STATEMENT:**

- 1.1 Texas Southern University (“University”) does not tolerate sex discrimination, including sexual harassment. Such conduct is harmful to the well-being of our community members, our learning and working environments, and the collegial relationships among students, faculty, and staff that characterize the culture of the University. All forms of prohibited conduct under this Policy are regarded as serious University offenses, and violations may result in discipline, including the possibility of separation from the University. State and federal laws also address conduct that may meet the University’s definitions of prohibited conduct. Criminal prosecution may take place independently of any disciplinary action instituted by the University.

**2. PURPOSE AND SCOPE:**

- 2.1 Purpose of Policy. This Title IX Grievance Policy & Procedures is based on definitions set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972, and this Policy limits the scope of Title IX Grievance to, among other things, conduct that occurs within the United States and conduct that occurs within the University’s education program or activity. Those amendments are in effect as of August 14, 2020.

To address incidents of sexual misconduct, the University has two policies: (1) this Policy and (2) the University Sexual Misconduct Policy (see <http://www.tsu.edu/mapp/pdf/human-resources/020701-sexual-misconduct-policy-and-procedures.pdf>). These policies are interrelated and must be read together. If the allegations forming the basis of a Formal Complaint, if substantiated, would constitute prohibited conduct under both policies, then the grievance process set forth in this Title IX Grievance Policy & Procedures will be applied in the investigation and adjudication of all of the allegations.

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<sup>1</sup> Policy History: Created June 2012; Revised November 2013; Revised September 2015; Revised September 2018; Revised February 2020.

The University Sexual Misconduct Policy applies only to certain conduct, as defined under that policy. Specifically, the University Sexual Misconduct Policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Grievance Policy & Procedures, including sexual exploitation, improper conduct related to sex, and sexual harassment that does not fall under the jurisdiction of Title IX. The University Sexual Misconduct Policy also applies to certain conduct that would otherwise be prohibited under the Title IX Sexual Grievance Policy & Procedures (*e.g.*, Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Grievance Policy & Procedures), but which may be dismissed under the Title IX Grievance Policy & Procedures, because they do not meet the jurisdictional requirements.

The University will respond to Reports or Formal Complaints of misconduct prohibited under this Policy with supportive measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in University-related programs or activities.

- 2.2 This Policy will not apply to pending investigations regarding conduct that occurred prior to the effective date of August 14, 2020.
- 2.3 This Policy applies to University students, faculty, and staff.

### 3. DEFINITIONS:

- 3.1 **Complainant** refers to the person making a complaint of sexual misconduct, and shall be referred to herein as either Complainant, or alleged victim or Title IX Coordinator, and these terms may be used interchangeably throughout this Policy.
- 3.2 **Consent** is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to ensure that s/he has the consent of the other to engage in each instance of sexual activity. (The definition of consent for the crime of sexual assault in Texas can be found at Texas Penal Code, Section 22.011.)

The University will consider the following factors in determining whether consent was provided:

- Consent is a voluntary agreement or assent to engage in sexual activity;
- Someone who is incapacitated cannot consent;
- Consent can be withdrawn at any time;
- Past consent does not imply future consent;
- Silence or an absence of resistance does not imply consent;

- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- Coercion, force, or threat invalidates consent; and
- Being intoxicated or under the influence of alcohol, drugs, or any other substance is never an excuse for engaging in sexual misconduct.

3.3 **Formal Complaint** refers to a document filed by a Complainant (meaning a document or electronic submission (such as by electronic mail) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) alleging Title IX Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Title IX Sexual Misconduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided in this Policy, and by any additional method identified in this Policy.

**Formal Complaint** may also refer to a document signed by the Title IX Coordinator alleging Title IX Sexual Misconduct against a Respondent. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

3.4 **Incapacitation** (or incapacity) is the state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to a sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes Title IX Sexual Misconduct as defined by this Policy.

3.5 **Party or parties** refer to the Complainant(s) and the Respondent(s).

3.6 **Report** refers to information brought to the attention of the Title IX Coordinator alleging conduct prohibited under this Policy; a report is not considered to be a Formal Complaint. A party may bring a report and then subsequently file a Formal Complaint.

3.7 **Respondent** refers to the individual(s) who has been alleged to be the perpetrator of conduct that could constitute Title IX Sexual Misconduct.

3.8 **Third Party** refers to any individual who is not a University student, a faculty member, or a staff member (e.g., vendors, alumni/ae, visitor, or local residents).

- 3.9 **Title IX Sexual Misconduct** refers to Quid Pro Quo Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking as further defined herein.
- 3.10 **Witness** refers to any individual who shares information relating to an allegation of prohibited conduct under this Policy.

#### 4. **POLICY PROVISIONS:**

##### **Title IX Coordinator**

- 4.1 The Title IX Coordinator oversees the University's centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA) and coordinates the University's compliance with Title IX and all University conduct policies related to sexual misconduct. The Title IX Coordinator will be informed of all Reports or Formal Complaints of violations of this Policy. The Title IX Coordinator's responsibilities include (but are not limited to):
- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
  - Reviewing applicable University policies to ensure institutional compliance with Title IX, sexual misconduct, and VAWA;
  - Monitoring the University's administration of its own applicable policies, including this Policy and the University Sexual Misconduct Policy and all related record keeping, timeframes, and other procedural requirements;
  - Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this Policy and related policies; and
  - Responding to any Report or Formal Complaint regarding conduct that violates this Policy. For any Report of which the University has actual knowledge (and any Formal Complaint), the Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the Title IX Coordinator promptly contacts the parties involved, oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal

The Title IX Coordinator may delegate certain responsibilities under this Policy to designated administrators, who will be appropriately trained.

The Title IX Coordinator's contact information is as follows:

Title IX Office  
3100 Cleburne Street  
Hannah Hall  
Houston, Texas 77004  
713-313-1371

The University provides the contact information of the Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and all professional organizations agreements with the University.

### **Jurisdictional Requirements**

4.2 This Policy addresses Title IX Sexual Misconduct, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the University's education program or activity, meaning: a) locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Title IX sexual misconduct occurs, and b) any building owned or controlled by a student organization that is officially recognized by the University; and
- At the time of filing a Formal Complaint, a Complainant is participating in or attempting to participate in an educational program or activity at the University.

Allegations of sexual misconduct that do not fall under this Policy because they do not constitute prohibited conduct or meet jurisdictional requirements as defined herein may constitute violations of the University Sexual Misconduct Policy.

In determining whether alleged conduct violates this Policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this Policy can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

### **Title IX Sexual Misconduct**

4.3 Title IX Sexual Misconduct includes:

- **Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

- **Title IX Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity;
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:
  - Rape: The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - Sodomy: Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - Sexual Assault with an Object: To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
  - Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent;
- **Domestic Violence:** A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred. For purposes of this Policy, an intimate partner is defined as an individual with whom one has or had a short- or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same

gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, “hook-up” relationships, relationships in which partners are characterized as “girlfriends” or “boyfriends,” and relationships between individuals with a child in common;

- **Dating Violence:** Violence committed by an individual 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 reporting individual’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence; and
- **Stalking:** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual’s safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: Course of conduct means two or more acts, including 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 an individual, or interferes with an individual’s property. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### **Retaliation**

4.4 Retaliation under this Policy: The University takes reports within jurisdiction of this Policy very seriously and will not tolerate retaliation against those who make such reports or participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report under this Policy, or otherwise participating in any way in an investigation, proceeding, or hearing under this Policy. Any actual or threatened retaliation, or any act of intimidation, threats, coercion, or discrimination to prevent or otherwise obstruct the reporting, investigating, or adjudicating of Title IX Sexual Misconduct may be considered a separate violation of this Policy and may result in disciplinary sanctions. Any person who believes that she or he has been subjected to retaliation should immediately report this concern to the Title IX Coordinator.

A University may not discipline or discriminate against an individual who in good faith:

- Makes a report of Title IX Sexual Misconduct and/or prohibited behaviors; or
- Cooperates with an investigation, disciplinary process, or judicial proceeding regarding a report of Title IX Sexual Misconduct and/or prohibited behaviors.

This subsection does not apply to an individual who perpetrates an incident of Title IX Sexual Misconduct as defined in this Policy.

The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, proceeding, or hearing under this Policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

- 4.5 Formal Complaints alleging retaliation under this Policy, including for the exercise of rights under this Policy, must be filed in accordance with this Policy and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise subject to its policies, the University will process the Formal Complaint and take appropriate measures.
- 4.6 Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy; and charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **5. NOTICE, ASSESSMENT AND DISMISSAL OF FORMAL COMPLAINTS:**

- 5.1 Upon receipt of a Formal Complaint, the Title IX Coordinator will respond to any immediate health or safety concerns raised.
- 5.2 Upon receipt of a formal complaint, the Title IX Coordinator will provide the written notice to the parties who are known that includes:
  - Notice of the allegations potentially constituting Title IX Sexual Misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Misconduct, and the date and location of the alleged incident, if known.
  - A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
  - Notice that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
  - Notice that the parties may inspect and review evidence, as described below.
  - Notice of any provision in the University's code of conduct and/or this Policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the University decides to investigate allegations



about the Complainant or Respondent that are not included in the notice provided pursuant to this paragraph, the University must provide notice of the additional allegations to the parties whose identities are known.

5.3 The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute Title IX Sexual Misconduct prohibited under this Policy. The University will seek to complete this initial assessment within ten (10) business days of receipt of the Formal Complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- In addition, the Title IX Coordinator shall initiate an investigation of the allegations. However, if the Title IX Coordinator deems the Formal Complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process, as described below.
- If the allegations forming the basis of the Formal Complaint would not, if substantiated, constitute Title IX Sexual Misconduct, did not occur in the University's education program or activity, or did not occur against a person in the United States, the Title IX Coordinator shall dismiss the Formal Complaint from the Title IX grievance process (and either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter to the University Sexual Misconduct process or to another office for review; or, if the Title IX Coordinator deems the Formal Complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

5.4 In addition, at any time prior to the hearing, the University may dismiss a Formal Complaint if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations therein.
- Upon dismissal, the University shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties via written or electronic format. Both parties will have equal right to appeal the dismissal through the appeal process described in section XII.

The determination regarding dismissal becomes final either on the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a complainant cannot file a Formal Complaint under this Policy concerning the same alleged conduct.

## 6. CONFIDENTIALITY, PRIVACY, AND RELATED RESPONSIBILITIES:

- 6.1 Issues of privacy and confidentiality play important roles in this Policy, and may affect individuals differently. In some circumstances, the reporting responsibilities of University employees, or the University's responsibility to investigate, may conflict with the preferences of the Complainant and/or Respondent with regard to privacy and confidentiality. Therefore, all individuals are encouraged to familiarize themselves with their options and responsibilities, and make use of Confidential Employees and support services, if applicable, in determining their preferred course of action.
- 6.2 Requests for confidentiality or use of anonymous reporting may limit the University's ability to conduct an investigation.

### **Confidentiality and Confidential Resources**

- 6.3 The term "confidentiality" refers to the circumstances under which information will or will not be disclosed to others.
- 6.4 Several campus professionals are designated Confidential Employees, to whom confidentiality attaches. Confidential Employees are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of the University's Title IX Grievance Policy & Procedures may be submitted to the Department of Public Safety for purposes of the anonymous statistical reporting under the Clery Act.
- 6.5 An individual who is not prepared to make a Report or Formal Complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a Confidential Employee. *See Appendix A* for a complete list of Confidential Resources on campus.
- 6.6 In particular, any individual who may have been subjected to a violation of this Policy, or who is considering making a Report or Formal Complaint under this Policy, is encouraged to contact the University's Title IX Coordinator. Information is provided regarding support services and advocacy services, and about the roles and reporting obligations of other offices at the University in order to empower individuals to make informed decisions about their options.
- 6.7 In light of the University's obligation to respond promptly and effectively to individuals alleged to be victimized by Title IX Sexual Misconduct, University employees who are not designated Confidential Employees are required to notify the Title IX Coordinator of suspected violations of this Policy, and cannot guarantee the confidentiality of a report under this Policy.

## **Confidentiality Rights of Complainants and Respondents**

- 6.8 While Complainants, Respondents, and Witnesses involved in the grievance process under this Policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, Complainants and Respondents are not restricted from discussing the allegations under investigation.
- 6.9 Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this Policy without the relevant party's voluntary, written consent.

## **Privacy**

- 6.10 In cases involving students, the Title IX Coordinator may notify residential college staff, and/or other University employees of the existence of the Report and/or Formal Complaint for the purpose of overseeing compliance with this Policy and addressing any concerns related to educational and residential life. These individuals are bound to respect the confidentiality and privacy of the parties to the extent provided by this Policy and applicable law.
- 6.11 In accordance with federal regulations, the University will keep confidential the identity of any individual who has made a Report or Formal Complaint under this Policy, including any complainant, any individual who has been reported to be the perpetrator, any Respondent, and any Witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of conducting any investigation or hearing under this Policy.
- 6.12 Any additional disclosure by the University of information related to the Report or Formal Complaint may be made if consistent with FERPA or the Title IX requirements. In addition, governmental agencies may mandate certain reporting related to prohibited conduct under this Policy involving University employees or students.
- 6.13 If the Department of Public Safety becomes aware of a serious and continuing threat to the campus community, the Department of Public Safety may issue a timely warning in accordance with federal regulation to protect the health or safety of the community. The Department of Public Safety may also publish a reported incident in the daily crime log or annual security report. In addition, the University may also share non-identifying information, including data about outcomes and sanctions, in aggregate form. The University will not otherwise disclose the name or other personally identifiable information of the Complainant unless it has received the express consent of the Complainant or unless the release of such information is consistent with this Policy, legal requirements or mandated by law.

## 7. OPTIONS FOR COMPLAINANTS, RESPONDENTS, AND OTHER REPORTING INDIVIDUALS:

- 7.1 A Complainant, Respondent, or Witness has many options, including counseling and various other support services. Information regarding contact information for local law enforcement as well as contact information for Confidential Employees that are available to provide support to parties and Witnesses are described in further detail in *Appendix A*.
- 7.2 After consulting the Title IX Coordinator or Confidential Employees as appropriate, a Complainant may:
- Request supportive measures from the Title IX Coordinator;
  - File a Formal Complaint with the Title IX Coordinator, thereby invoking the University's internal grievance process;
  - Contact the Department of Public Safety for assistance in filing a criminal complaint and preserving physical evidence (see *Appendix A*); and/or
  - Contact local law enforcement to file a criminal complaint (see *Appendix A*). At the Complainant's request, the University will assist the Complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue a criminal process.
- 7.3 An individual may pursue some or all of these steps at the same time. When initiating any of the above, an individual does not need to know whether they wish to request any particular course of action, nor how to label what happened.
- 7.4 An investigation against a Complainant's wishes or without a Complainant's willingness to participate will only occur when the Title IX Coordinator has determined that the investigation is necessary under the particular circumstances.

### **Employees' Responsibility to Report**

- 7.5 In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must immediately contact the Department of Public Safety or dial 911.
- 7.6 In non-emergency situations, employees (other than those formally designated as Confidential Employees under this Policy) must promptly report suspected violations of this Policy to the Title IX Coordinator. Some students with special responsibilities, including residential advisors, must promptly report alleged violations of this Policy to their immediate supervisor within Student Life, who will then consult with the Title IX Coordinator.
- 7.7 In accordance with Texas law, the University must terminate an employee who is found to have knowingly failed to make a report of Title IX Sexual Misconduct when the employee was required to do so or knowingly made a false report of Title IX Sexual Misconduct with intent to harm or deceive. Knowingly failing to make a report and

knowingly making a false report are criminal offenses under Texas law. *See Texas Education Code*, Section 51.252.

- 7.8 Students are encouraged to report any suspected violation of this Policy (after consulting a Confidential Employees as appropriate).

### **Anonymous Reporting**

- 7.9 If a reporting individual makes an anonymous report, the Title IX Coordinator will consider how to proceed, taking into account the individual's articulated concerns; the best interests of the University community; fair treatment of all individuals involved; and the University's obligations under Title IX.
- 7.10 A Complainant cannot file a Formal Complaint anonymously, because the University must provide written notice of the allegations to both parties upon receiving a Formal Complaint, including the identity of parties. The University will otherwise keep the parties' identities as confidential as possible, recognizing that the parties' identities may become apparent to witnesses during the course of an investigation..
- 7.11 Any individual may make an anonymous report concerning a violation of this Policy through the University's hotline. However, such anonymous reporting does not satisfy employees' reporting obligation as described above. A hotline report can be made without disclosing the reporting individual's own name, identifying the respondent, or requesting any action. However, if the reporter provides limited information, the University may be limited in its ability to take action.
- 7.12 Telephone Hotline: (713) 528-7273.
- Website: <http://students.tsu.edu/home/student-complaints/>.

### **Third Party Reporting**

- 7.13 A Third Party who is not participating in, or attempting to participate in, the institution's education program or activity at the time of filing a Formal Complaint may not file Formal Complaint.
- 7.14 A parent or guardian may file a Formal Complaint on behalf of their child only if they have legal parental rights over the child.
- 7.15 Circumstances Where Student Not Currently Enrolled May File Formal Complaint - Generally, a Complainant must be participating in, or attempting to participate in, the institution's education program or activity at the time of filing a Formal Complaint.

## **Timeliness of Report**

- 7.16 Complainants and other reporting individuals are encouraged to report any violation of this Policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and Formal Complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the Respondent is no longer a student or employee at the time of the Report or Formal Complaint, the University may not be in a position to gather evidence sufficient to reach a determination as to the Formal Complaint and/or the University may not be able to take disciplinary action against the Respondent. However, the University will still seek to provide supportive measures for the Complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

## **Amnesty**

- 7.17 In order to encourage reports of conduct that is prohibited under this Policy, the University may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved. If a student enrolled at the University makes a report or Formal Complaint of Title IX Sexual Misconduct in good faith, the University may not take disciplinary action against that student for violation(s) of the University's student conduct policy occurring at or near the time of the incident.

## **8. SUPPORTIVE MEASURES (ALSO KNOWN AS INTERIM MEASURES OR SUPPORT SERVICES:**

- 8.1 Upon receipt of a Report or Formal Complaint of a violation of this Policy, the University, through the Title IX Coordinator, will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the complainant the process for filing a Formal Complaint. The University will also consider supportive measures, as appropriate and reasonably available, for the Respondent.
- 8.2 These supportive measures are designed to restore or preserve equal access to the University's educational and working programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader University community, or deter sexual harassment. While a supportive measure may impose some restrictions on a party, it will not unreasonably burden them. The University may provide supportive measures to the Complainant or Respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the Complainant seeks formal disciplinary action. Once supportive measures are approved, the parties or affected individuals will be notified in writing of the supportive measures. The University will maintain any supportive measures provided to the Complainant or Respondent as confidential to the extent possible.

8.3 Interim/support measures may include:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules to ensure the Complainant and Respondent do not share classes, working environments, or extracurricular activities;
- Campus escort services - LiveSafe-Safe walk;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations (if the Complainant requests to be moved);
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; and/or
- Any other measure that can be used to achieve the goals of this Policy.

8.4 Requests for supportive measures may be made by or on behalf of the Complainant or Respondent to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus.

8.5 All individuals are encouraged to report concerns about the failure of another to abide by any restrictions imposed by a supportive measure. The University will take immediate action to enforce a previously implemented measure and disciplinary sanctions can be imposed for failing to abide by a University-imposed measure.

## **9. EMERGENCY REMOVAL:**

9.1 In connection with this Policy, whether or not a grievance process is underway, the University may summarily remove an individual from an education program or activity on an emergency basis, after undertaking an individualized safety and risk analysis, and upon the determination that the individual poses an immediate threat to the physical health or safety of any student or other individual (including themselves, the Respondent, the Complainant, or any other individual). In these situations, the University will provide the individual with notice and an opportunity to challenge the decision immediately following the removal.

## **10. INFORMAL RESOLUTION PROCESS:**

10.1 The University will not require, encourage, or discourage the parties from participating in the informal resolution process. The University will not offer the informal resolution process unless a Formal Complaint is filed.

10.2 Subject to the consent of the parties and the approval of the Title IX Coordinator, the University permits informal resolution processes in cases in which a Formal Complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student

Complainant and a student Respondent as well as in matters involving a faculty/staff Complainant and a faculty/staff Respondent. The informal resolution process is not available in matters involving a student Complainant and an employee Respondent.

- 10.3 The informal resolution process is a voluntary, remedies-based process designed to provide parties with an option to resolve disputes in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Grievance Policy & Procedures. The purpose of the informal resolution process is to address the conduct which has been reported by the Complainant, and place the parties in a position to pursue their academic and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record.
- 10.4 The University may facilitate the informal resolution process prior to conducting a hearing. Before the informal resolution process is used, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX grievance process with respect to the Formal Complaint.
- 10.5 See *Appendix B* for additional information regarding the informal resolution process.

## **11. GRIEVANCE PROCEDURES FOR TITLE IX COMPLAINTS, IN GENERAL:**

- 11.1 The University is committed to providing a prompt and impartial investigation and adjudication of all Formal Complaints alleging violations of this Policy. During the grievance process, both parties (Complainant and Respondent) have equal rights to participate.

### **Conflict of Interest**

- 11.2 All individuals who have responsibilities in administering the grievance process under this Policy must be free of any conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and will be trained as provided by federal regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, Hearing Panel members, Sanction Officers, and Appeal Panel members. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has conflicting interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the



allegations of conflict or bias to determine whether or not the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

### **Responsibility to Review Reports and Formal Complaints**

- 11.3 In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this Policy even absent the filing of a Formal Complaint, or under certain circumstances, even if a Formal Complaint has been withdrawn. The Title IX Coordinator may need to themselves file a Formal Complaint and proceed with an investigation even if a Complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the best interests of the University community, fair treatment of all individuals involved, and the University's obligations under Title IX.
- 11.4 Proceedings under this Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this Policy has occurred.

### **Prior Sexual Behavior**

- 11.5 The Complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **Consolidation**

- 11.6 The Title IX Coordinator has the discretion to consolidate multiple Formal Complaints as to allegations of Title IX Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Sexual Misconduct arise out of the same facts or circumstances.

### **Investigation of Allegations of Violations of Other University Policies**

- 11.7 Allegations under the University Sexual Misconduct Policy.

When an initial assessment or investigation under this Policy identifies additional related possible violations of the University Sexual Misconduct Policy by the same party(ies), the grievance process set forth in the Title IX Grievance Policy & Procedures will apply to all allegations. Under such circumstances, the parties will be provided with written notice containing the following information: (a) the alleged

prohibited conduct, and (b) the policy(ies) under which alleged prohibited conduct falls.

11.8 Allegations under Other University Policies.

When an initial assessment or investigation under this Policy identifies additional related possible violations of University policies (other than the University Sexual Misconduct Policy, as described above) by the same party(ies) that would normally be handled by another responsible office, the Title IX Coordinator, with the approval of that responsible office, may direct investigators under this Policy to investigate such other possible violations at the same time that they investigate the allegations covered by this Policy. Under such circumstances, the records from the investigation of the non-Title IX Sexual Misconduct matter shall be provided to the office responsible for adjudicating that non-Title IX Sexual Misconduct matter in accordance with applicable University policies and procedures.

**12. TITLE IX SEXUAL MISCONDUCT GRIEVANCE PROCEDURE:**


12.1 Upon referral by the Title IX Coordinator of a Formal Complaint for investigation and adjudication under this Policy, the Title IX Grievance Procedure, described in *Appendix C* of this Policy, will apply.

**Review and Responsibilities:**

Responsible Party: Title IX Office

Review: Every two years, on or before July 1

**Approvals:**

  
[Kenneth Huewitt \(Aug 14, 2020 18:32 CDT\)](#)

Mr. Kenneth Huewitt, Interim President

Mr. Bobby Brown, Title IX Coordinator

Effective Date: August 14, 2020

## APPENDIX A: LAW ENFORCEMENT AND CONFIDENTIAL RESOURCES

### 1. Emergency Resources and Law Enforcement

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged (but not required) to contact law enforcement and seek medical treatment as soon as possible following an incident that poses a threat to safety or physical well-being or following a potential criminal offense. For more information about filing a criminal complaint with law enforcement, please contact:

- University Department of Public Safety  
(713) 313-7000 (emergency) or (713) 313-7001 (non-emergency)  
Internal support information can be found on <https://tsu.edu/police>
- Houston Police Department:
  - 911 (emergency) or (713) 884-3131 (non-emergency);
  - Family Violence Unit: If you need to speak with a counselor or for information, call (713) 308-1100; and
  - Victim Services – (713) 308-0080 or Email us [atvictim.services@houstonpolice.org](mailto:atvictim.services@houstonpolice.org).

### 2. Confidential Resources

Information shared with Confidential Employees (including information about whether an individual has received services) will be disclosed to the Title IX Coordinator or any other individual only with the individual's express written permission, unless there is an imminent threat of serious harm to the individual or to others, or a legal obligation to reveal such information (*e.g.*, if there is suspected abuse or neglect of a minor).

The University's Student Health Center and Counseling Center are confidential resources offering support and advocacy services. Individuals are encouraged to access support services and learn about their options. These centers can provide information about the roles and reporting obligations of other offices at the University in order to empower individuals to make informed decisions about their options.

Campus confidential resources include:

- University Counseling Center  
(713) 313-7804  
<http://students.tsu.edu/departments/university-counseling-center/>

- Student Health Center  
(713) 313-7173  
<http://students.tsu.edu/departments/health-services/>

Other Available Resources:

- Division of Student Services  
(713) 313-1038  
Student Recreation Center, Second Floor

## APPENDIX B: INFORMAL RESOLUTION PROCESS

The informal resolution process is a voluntary, remedies-based process designed to provide members of the University community with an option to resolve certain disputes with each other in a forum that is separate and distinct from the University's formal grievance processes under the Title IX Grievance Policy & Procedures or the University Sexual Misconduct Policy. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student or employee Complainant and a student Respondent as well as in matters involving an employee Complainant and an employee Respondent; the informal resolution process is not available in matters involving a student Complainant and an employee Respondent. The purpose of the informal resolution process is to eliminate the conduct which has been reported by the Complainant (and prevent its recurrence), and place both individuals in a position to pursue their academic, working, and non-academic interests in a safe, respectful, and productive educational and working environment. Under this process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record.

Prior to participating in the informal resolution process, parties will be notified in writing of the information contained in this Appendix B. The following are features of the informal resolution process:

- Participation in the informal resolution process is completely voluntary.
  - No party will be required to participate in the informal resolution process and the University will not require, encourage, or discourage the parties from participating in the informal resolution process.
  - All parties must consent in writing to participation in the informal resolution process.
- The University may offer the informal resolution process only under the following circumstances:
  - A Formal Complaint has been filed;
  - The Title IX Coordinator has determined, through an initial assessment that the alleged conduct, if substantiated, would constitute Title IX Sexual Misconduct; and
  - The Title IX Coordinator has determined that the informal resolution process is appropriate for this matter.
- All parties will be provided with a written notice disclosing the allegations, the requirements of the informal resolution process, and any outcomes resulting from participating in the informal resolution process.
- At any time prior to signing an informal resolution agreement, any party has the right to withdraw from the informal resolution process and resume the Title IX formal grievance process.
- Under the informal resolution process, there will be no disciplinary action taken against a Respondent, and the resolution will not appear on the Respondent's disciplinary record. If a Formal Complaint is filed against the Respondent in a subsequent matter under the Title IX Grievance Policy or Procedures or the University Sexual Misconduct Policy, the Respondent's participation in a prior informal resolution process will not be considered relevant and will not be taken into account in the resolution of the subsequent complaint.

- Parties may be accompanied by an advisor who will serve as a support person to any meeting related to the informal resolution process. However, the advisor may not actively participate in meetings and may not serve as a proxy for the party. Any individual who serves as an advisor is expected to make themselves available for meetings as scheduled by the University. The University (including any official acting on behalf of the University) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor and to take appropriate steps to ensure compliance with this Policy.
- Any agreements reached as part of the informal resolution process must be approved by the Title IX Coordinator in order to ensure consistency with the University's federal obligations. If the Title IX Coordinator determines at any time prior to the signing of the informal resolution agreement that the informal resolution process is no longer appropriate, the Title IX Coordinator may terminate the process.
- Upon signing the informal resolution agreement, the parties are bound by its terms and cannot opt for a formal grievance process based on the conduct alleged in the Formal Complaint.
- Failure to comply with the signed agreement may result in disciplinary action for either party.
- If the parties' circumstances change significantly, they may request a supplemental agreement; the Title IX Coordinator will determine whether it is appropriate to proceed. Either party could request a supplemental agreement to address the changed circumstances, provided that both parties agreed to any such revisions. Under such circumstances, the above conditions would apply.

### **Initiation of the Informal Resolution Process:**

If the Complainant files a Formal Complaint and requests to engage in the informal resolution process, the Title IX Coordinator will consider whether the informal resolution process is appropriate in the particular matter. In making this determination, the Title IX Coordinator will consider the following factors:

- The disciplinary record (or past conduct) of the Respondent relating to sexual misconduct, physical violence, failure to comply with a No Contact Order, and/or other relevant conduct;
- The nature of the alleged conduct, whether allegations involve multiple victims and/or a pattern of conduct, or other evidence-informed factors indicative of increased risk to campus safety;
- Whether the circumstances warrant the Title IX Coordinator filing a Formal Complaint (*e.g.*, if there is sufficient evidence to proceed with an investigation/adjudication even absent participation by the Complainant);
- Whether proceeding with the informal resolution process is in accordance with the principles and objectives of the University's Title IX Grievance Policy & Procedures, as determined by the Title IX Coordinator; and/or
- Whether proceeding with the informal resolution process in matters involving faculty and staff members is in accordance with University employment practices.

If the Title IX Coordinator determines that a case is not appropriate for the informal resolution process, the Title IX Coordinator will inform the complainant that the informal resolution process is **unavailable**.

If the formal grievance process has already begun, either party may seek to initiate the informal resolution process up until five (5) business days prior to the hearing. If both parties agree to participate in the informal resolution process and the Title IX Coordinator approves of the informal resolution process, the formal grievance process will be adjourned while the informal resolution process is pending; if an agreement is not reached, the formal grievance process will be resumed.

Upon initiation of the informal resolution process, the Title IX Coordinator will refer the matter to a trained informal resolution facilitator (“Facilitator”). The Facilitator will consult (separately) with each party in an effort to reach a resolution that best meets the interests and needs of the parties. Unless they mutually choose to do so as part of an agreement, the parties will not meet together in person as part of the process.

### **Potential Outcomes of the Informal Resolution Process:**

Depending on the nature and circumstances of the particular situation, parties may agree to outcomes such as:

- Long-term extension of a mutual No Contact Order or No Communication Order;
- Imposition of a “one-sided” No Contact Order, placing the burden on one party to limit the party’s physical proximity to the other party;
- Restrictions on a party from participation in particular organizations or events;
- Changes to on-campus housing, subject to availability;
- Participation in a University-provided program that serves to assist individuals in exploring harmful attitudes and behaviors, with an aim to empower individuals to actively contribute to a healthier and safer campus community;
- Participation in a University-provided alcohol education program designed to reduce the harmful problems associated with alcohol misuse;
- Provision to the Respondent of an “impact statement” written by the Complainant (describing the impact(s) that the Respondent’s conduct had on the Complainant), and a response from the Respondent;
- Conversation between the parties facilitated by the Facilitator; and
- Other measures deemed appropriate by the Title IX Coordinator.

### **Failure to Comply with the Informal Resolution Agreement:**

Failure to comply with the signed agreement may result in disciplinary action for either party, consistent with the disciplinary procedures described in Student Code of Conduct (for students) or in applicable policy manuals (for faculty and staff members).

### **Records Relating to the Informal Resolution Process:**

The records relating to the informal resolution process will be maintained in accordance the University's records retention schedule.

Prior to participating in the informal resolution process, parties will be notified in writing that any information gathered in the informal resolution process may be used in the Title IX or University sexual misconduct formal grievance processes if the informal resolution process ends prior to a written agreement being signed by the parties. However, the University will not draw any adverse inference based on either party's participation in the informal resolution process, nor will such participation be considered an admission by either party.

Even if the parties enter into a written informal resolution agreement, if information related to the violation of other University policies (*i.e.*, policies other than the Title IX Grievance Policy & Procedures or the University Sexual Misconduct Policy) comes to light through the informal resolution process, such information may be used in other University disciplinary processes, subject to the respective Immunity/Amnesty provisions.

### **Retaliation:**

The protections against retaliation apply to individuals participating in the informal resolution process. Disciplinary consequences may result for those found responsible for retaliation.

### **Time Frame for the Informal Resolution Process:**

The time frame for completion of the informal resolution process may vary, but the University will seek to complete the informal resolution process within thirty (30) business days of completion of the initial assessment. Should the time period extend beyond this time frame, the parties will be notified.



## APPENDIX C – TITLE IX GRIEVANCE PROCEDURE

### 1. TITLE IX INVESTIGATIVE REPORT AND INVESTIGATIVE REPORT:

- 1.1 A trained investigator shall conduct the investigation of a Formal Complaint referred for investigation by the Title IX Coordinator.
- 1.2 During the course of the investigation and grievance process, the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this Policy.
- 1.3 The University shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, during the investigation. Credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.
- 1.4 The University shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- 1.5 The parties shall have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or interview by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either party in any meeting or grievance proceeding; however, an advisor may not actively participate in any meeting or interview, but may only observe any such meeting or interview for purposes of advising the parties. The University is not required to provide a party an advisor other than a Hearing Advisor, as set forth below.
- 1.6 The University shall provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- 1.7 The University shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source,

so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the University must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- 1.8 The investigator shall draft an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the hearing, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. The parties' written response shall be submitted no later than five (5) business days prior to the hearing.
- 1.9 Upon completion of the investigation by a Title IX investigator, the University will hold a live hearing during which both parties' advisors will have the opportunity to present relevant evidence and ask questions of the parties and Witnesses.

## **2. PREPARING FOR A HEARING:**

- 2.1 Absent extenuating circumstances, the Title IX Coordinator will schedule a hearing within fifteen (15) business days from the conclusion of the investigation.
- 2.2 Once the hearing is scheduled, requests to reschedule the hearing must be submitted in writing to the Title IX Coordinator and will be considered by the Hearing Officer.
- 2.3 The Complainant and Respondent(s) will be notified of the identity of the Hearing Officer for their hearing. Within five (5) business days of this notification, the Complainant and Respondent(s) have the opportunity to object in writing to the Hearing Officer for cause, including any alleged conflict of interest or bias. The Title IX Coordinator, in consultation with the Hearing Officer, will consider any objection and replace the Hearing Officer if appropriate. In the event that the Hearing Officer recuses themselves, an alternative hearing officer will be assigned.
- 2.4 No later than five (5) business days prior to the hearing, all materials that will be used by the parties at the hearing must be submitted to the Title IX Coordinator. The Title IX Coordinator will simultaneously make this material available for inspection or provide the materials to both parties as well as the Hearing Officer. The materials must include:
  - All documents and other tangible evidence that will be used as evidence during the hearing;

- The names of any Witnesses and a brief summary concerning the subject matter of the Witness' expected testimony;
- The name of any advisor to be in attendance at the hearing and whether that person is an attorney; and
- No Witness, document, or tangible evidence will be permitted at the hearing unless such information was timely submitted.

2.5 It is the responsibility of the party wanting to present a witness to secure that witness.

### 3. TITLE IX HEARING:

#### **Roles and Responsibilities**

##### 3.1 Designated Representative:

- A designated representative may be present at a hearing to serve as a resource to the Hearing Officer for sanctioning purposes in the case of a finding. If there is a finding of responsibility, the Hearing Officer will coordinate with the following departments to issue sanctions and remedies as appropriate.
- Any finding against a faculty member Respondent must be addressed through the Provost's Office. The designated representative will determine sanctions and/or remedies consistent with the University's faculty manual.
- Any finding against a student Respondent must be addressed through the Dean of Students Office. The designated Representative will determine sanctions and/or remedies consistent with the University's policies and procedures related to student conduct/discipline.
- Any findings against a staff member Respondent must be addressed through the Human Resources department. The designated representative will determine sanctions and/or remedies consistent with the University's policies and procedures related to employee discipline.

##### 3.2 Hearing Advisor:

- A Hearing Advisor is responsible for advising and acting on behalf of a named party as to presentation of Witnesses. Each party may have one (1) Hearing Advisor. If a party does not have a Hearing Advisor present at the live hearing, the University must provide without fee or charge to that party, a Hearing Advisor of the University's choice, who may be, but is not required to be, an attorney.
- A Hearing Advisor may present evidence, question witnesses, and will conduct cross examination of the parties and Witnesses. Each party will present their own opening and closing statements, which will be limited to fifteen (15) minutes each.

- C. Hearing Advisors shall address all remarks outside of cross examination to the Hearing Officer, not to the opposing Hearing Advisor or the opposing party.
- D. Hearing Advisors and the parties shall refrain from making any comments after the Hearing Officer has issued a determination.
- E. Hearing Advisors and parties shall not cause unreasonable delays by failing to schedule or appear for a meeting as requested by a Hearing Officer.
- F. Hearing Advisors must adhere to the rules of decorum.

3.3 Hearing Officer:

- A. The Hearing Officer may question any individual at any time during the hearing.
- B. The Hearing Officer may impose reasonable time limits on any stage of the hearing.
- C. The Hearing Officer may determine the relevance of, and place restrictions on, any Witness testimony or questions or information presented. The Hearing Officer has the responsibility to determine the relevancy of questions and explain in real time any decision not to permit a question to be asked.
- D. The Hearing Officer will make determinations on admissibility.
- E. The Hearing Officer has the authority to dismiss a Hearing Advisor who, in the Hearing Officer's judgement, is badgering or harassing a witness or party. Should the Hearing Officer dismiss a party's Hearing Advisor, the hearing shall be suspended until that party is assigned or obtains a new Hearing Advisor.
- F. The role of the Hearing Officer is to determine whether or not there is a finding of a violation of the University's Title IX Grievance Policy & Procedures. The finding(s) will be determined using a preponderance of the evidence standard; that is, whether it is more likely than not that a Respondent violated this Policy.

3.4 Parties:

- A. Complainants and Respondents are precluded from conducting cross-examination personally. The only method for conducting cross-examination is by a party's Hearing Advisor.
- B. Parties shall not address each other during the hearing.

C. Parties must adhere to the rules of decorum.

3.5 Witnesses:

- A. Witnesses must have observed the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual's character. The Hearing Officer will determine whether to allow a witness to speak at the hearing.
- B. Witnesses must adhere to the rules of decorum.

**Decorum**

3.6 Decorum- During the hearing, all participants must adhere to the following rules of behavior and decorum:

- A. All participants should refrain from making disparaging personal remarks or displays of hostility toward opposing parties or advisors.
- B. All participants should refrain from making gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of Witnesses or a party, or at any other time.
- C. All participants should refrain from interrupting or talking over one another.
- D. All participants shall not engage in conduct that disrupts the orderly operation of the hearing.

**Hearing Process**

3.7 The hearing process is as follows:

- A. The live hearing will be held in accordance with process set forth in this Policy.
- B. Standard of Evidence. In all cases before a Hearing Officer, the standard of proof is a preponderance of evidence. A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the reasonable evidence presented, that the Respondent violated this Policy. The burden of proof is on the University. By law, it is presumed that the Respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the grievance process.
- C. The general course of the hearing procedure will be as follows, subject to the discretion of the Hearing Officer:

- D. The Hearing Officer will convene the hearing, introduce the individuals present, give a brief description of the process, invite questions about the process, and allow the parties the opportunity to present a brief opening statement.
- E. The Complainant or the Hearing Advisor for Complainant shall present evidence (including calling and questioning their own Witnesses) to the Hearing Officer.
- F. The Hearing Advisor for the Respondent shall have the opportunity to conduct cross-examination after the Hearing Advisor for the Complainant has completed questioning each of their own Witnesses.
- G. After all the Complainant's Witnesses have been examined by both sides, the Respondent or the Hearing Advisor for the Respondent shall have the same opportunity to present their evidence and their own Witnesses.
- H. The Hearing Advisor for the Complainant shall have the opportunity to conduct cross-examination after the Hearing Advisor for the Respondent has completed questioning each of their own Witnesses.
- I. After both parties have presented their Witnesses, a representative of the Title IX office (*e.g.*, the investigator) may present their documentation related to the investigation to the Hearing Officer. The Title IX representative may also be questioned by the Hearing Advisors or Hearing Officer.
- J. The Hearing Officer will allow the parties or their advisors the opportunity to present a brief closing statement before concluding the hearing.
- K. The hearing shall be no more than four (4) hours in length, unless the Hearing Officer determines that exceptional circumstances exist justifying a longer hearing. The time of the hearing for opening and closing statements, presenting evidence, and examination of witnesses shall be divided equally among the parties, and each party may not exceed their allotted time for these portions of the hearing.
- L. At the request of either party, the University will provide the parties separate rooms and use technology so that the Hearing Officer and parties may simultaneously see and hear the questions. The live hearing may also take place virtually.
- M. An audio and/or video recording of the hearing will be kept for the use of the Hearing Officer and for any appeal. The parties and their Hearing Advisors may request to review the recording.

## **Evidence**

### 3.8 Evidence that is not relevant or admissible:

- A. Information protected by a legally recognized privilege.
- B. Evidence about a Complainant's prior sexual history cannot be used to prove character or reputation and may only allowed to prove that someone other than the Respondent committed the alleged conduct or if offered to prove consent.
- C. Any party's medical, psychological, and similar records unless the party has given voluntary written consent.
- D. If a party or Witness does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or Witness in reaching a determination regarding responsibility. The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or Witness' absence from the live hearing or refusal to answer cross-examination or other questions. This exclusion shall not apply to a Respondent's alleged verbal conduct that itself constitutes the alleged Title IX Sexual Misconduct at issue.
- E. Hearsay exceptions such as statements against a party's interest or death or disability of a party or Witness are not recognized in Title IX Hearings.
- F. Similarly, police reports, SANE reports, medical reports, and other documents and records may not be relied on to the extent they contain the statements of a party or Witness who has not submitted to cross-examination.

### 3.9 Evidentiary Exceptions:

- A. Evidence or statements that have not been subject to cross examination at a live hearing may be submitted in the following circumstances:
- B. If the evidence involves intertwined statements of both parties (e.g., a text message exchange or e-mail thread) and one party refuses to submit to cross-examination and the other does submit, the statements of one party cannot be relied on but the statements of the other party may be relied on.
- C. Where a Complainant refuses to answer cross-examination questions but video evidence exists showing the underlying incident, the Hearing Officer may still consider the available evidence and make a determination.

- D. Where a grievance process is initiated because the Title IX Coordinator, and not the Complainant, signed the Formal Complaint, the Complainant who did not wish to initiate a grievance process remains under no obligation to then participate in the grievance process.

### **Finding(s) and Written Determination**

3.10 The Written Determination will contain both the finding(s) and the sanctions or remedies, if applicable, and will be provided to the parties simultaneously.

3.10.1 Sanctions: The sanctions for a finding of a violation under this Policy will be commensurate with the offense and may include, but are not limited to, the following:

- Probation (including disciplinary probation);
- Temporary or permanent ban from campus locations (such as residence hall communities);
- Educational programs such as state-certified batterer's intervention;
- Ban from participating in campus organizations or activities;
- Disqualification from employment or student leadership positions;
  
- Withholding of transcripts, grades, diploma, or degree;
- Partial or full criminal trespass;
- Suspension from employment and/or enrollment;
- Revocation of admission;
- Termination of employment:
  - For faculty members, the Hearing Officer will recommend the termination of employment and the matter will be referred through the policies and procedures pertaining to the dismissal of faculty members.
  - For staff members, the Hearing Officer will recommend the termination of employment and the matter will be referred to Human Resources for further determination;
- Expulsion:
  - If a student is issued a sanction that makes them ineligible to reenroll in the University, the University will include on the student's transcript a notation stating that the student is ineligible to reenroll in the University for a reason other than an academic or financial reason.
  - On the student's request, the University may remove the notation from a student's transcript if the student is eligible to reenroll in the University or the University determines that good cause exists to remove the notation.

3.10.2 Remedies: Regardless of the finding(s), and in addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the University will take appropriate action(s) to resolve Formal Complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects. These actions may include,



but are not limited to the following:

- Ensuring the Complainant and Respondent do not share classes, working environments, or extracurricular activities;
- Making modifications to the on-campus living arrangements of a Respondent or Complainant (if the Complainant requests to be moved);
- Providing comprehensive, services including medical, counseling, and academic support services such as tutoring;
- Determining whether the Sexual Misconduct adversely affected the Complainant's University standing and providing a remedy for same;
- In conjunction with University leaders, conducting a University climate check to assess the effectiveness of efforts to ensure that the University is free from Sexual Misconduct, and using that information to inform future proactive steps that the University will take; and
- Providing targeted group training.
- These remedies are separate from, and in addition to, any Support Measures that may have been provided before the end of the University's investigation. If the Complainant did not take advantage of a specific service (*e.g.*, counseling) when offered as a support measure, the Complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the Complainant declined as a support measure.

3.10.3 Written Determination: The Hearing Officer will provide a Written Determination of responsibility simultaneously to the Title IX Coordinator and the parties. The Written Determination will include the following statements from the Hearing Officer:

- Identification of the allegations at issue;
- Description of the procedural steps taken throughout the case including any notifications to the parties, interviews with parties and Witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Sexual Misconduct Policy;
- A statement and rationale as to the determination for each allegation; and
- A statement of any disciplinary sanctions imposed on the Respondent and whether any remedies will be provided to the Complainant.
- The Written Determination will also include a description of the procedures and permissible grounds for appeal.

#### **4 WRITTEN APPEAL:**

4.10 The Complainant and the Respondent(s) both have the right to appeal to the appropriate administrator a Title IX dismissal or Written Determination by submitting their written appeal to the Title IX Coordinator within five (5) business days from the date they receive the Title IX dismissal or Written Determination. The appealing party may appeal the dismissal, finding, sanction, or remedy. The non-appealing party will be

notified of the appeal and be permitted to submit a written statement in response within five (5) business days of receiving notice of the appeal.

4.11 Grounds for Appeal:

4.11.1 Procedural irregularity that affected the outcome of the matter, including failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence;

4.11.2 New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could significantly affect the outcome of the matter;

4.11.3 The Title IX Coordinator, investigator(s), Hearing Officer, or designated representative had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and

4.12 Parties may appeal erroneous determinations on the relevancy of evidence submitted during the Live Hearing if they significantly affected the outcome.

4.13 The role of the appropriate administrator is to accept, reject, or remand the Title IX dismissal or Written Determination.

4.14 A Written Determination will become final upon the earlier of when:

- The parties are notified of the appropriate administrator's decision on an appeal; or
- The time to file an appeal has passed with neither party appealing.

4.15 The appropriate administrator will review the record on appeal which may include the investigative file, hearing recording, and appeal documentation from the parties only, and will render a written decision simultaneously to the Title IX Coordinator and the parties within fifteen (15) business days from the date that the response to the appeal is filed, with extensions for good cause allowed.

4.16 If the appropriate administrator extends the fifteen (15) day deadline, (s)he must provide a written explanation to the Title IX Coordinator and the parties in writing by that deadline and every ten (10) business days thereafter.