Sexual Harassment and Sexual Misconduct

Section: VI: Equal Opportunity
Chapter: 3
Date Updated: November 13, 2019

For Immediate Reporting:
https://www.utep.edu/titleix/
Also, please see Section 3.7 below for detailed information.

3.1 General Policy Statement.

3.1.1 The University of Texas at El Paso (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 educational 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). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.

3.1.2 The University will promptly discipline any individuals or organizations within its control who violate this Policy. Violations of this Policy should promptly be reported to the University’s Title IX Coordinator or Deputy Title IX Coordinators.

3.1.3 Free Speech. This Policy encourages and respects the right of free speech guaranteed by the First Amendment of the Constitution and the principles of academic freedom. Constitutionally protected expression cannot be considered harassment under this Policy. Each faculty member is entitled to full freedom in the classroom in discussing the subject which they teach. The right to free speech and principles of academic freedom are not absolute, however. The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University’s commitment to academic freedom, integrity, honesty, dignity, respect and honorable conduct (see generally Regents Rule 10901, Statement of U.T. System Values and Expectations). In these instances, constitutional rights will continue to be protected, but the University will also exercise its right to speak and engage in educational dialogue with those engaged in these types of behaviors. Further, some offensive conduct, even though it contains elements of speech, may rise to the level of the type of conduct that creates a sexually hostile environment and, thus, violates this Policy.

3.2 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 regardless of where it occurs, including off University property, if it potentially affects the complainant’s education or employment with the University or potentially affects the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

3.3 Filing a Complaint and Reporting Violations.

3.3.1 Title IX Coordinator and Deputy Coordinators. The Title IX Coordinator and Deputy Coordinators are:

Gabriel Ramirez  
Title IX Coordinator  
Institutional Compliance  
Kelly Hall, Room 312  
(915) 747-8358  
gramirez2@utep.edu  

Beatriz Tapia  
Deputy Title IX Coordinator  
Oversees concerns related to Faculty and Staff  
Equal Opportunity Director  
Equal Opportunity Office, Kelly Hall, Room 304  
(915) 747-5839  
betapia@utep.edu  

Dr. Charlie Gibbens  
Deputy Title IX Coordinator  
Oversees investigation of concerns related to Students  
Assistant Vice President for Student Support  
Union East Room 301  
(915) 747-7482  
cegibbens@utep.edu  

Dr. Catie McCorry-Andalis  
Deputy Title IX Coordinator  
Education, Training, and Outreach  
Associate Vice President and Dean of Students  
Dean of Students Office  
Union West, Room 102  
(915) 747-5648  
cmandalis@utep.edu
3.3.2 All Members of the University Community, Third Parties and Anonymous Complainants should immediately report any incidents of sexual misconduct and other inappropriate sexual conduct to the Title IX Coordinator or Deputy Coordinators.

   a. Anonymity. You may file an anonymous complaint by telephone, in writing or electronically at http://www.reportlineweb.com/utep, with the Title IX Coordinator or a Deputy Coordinator. Your 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 the Policy.

   b. Confidentiality. All University employees (except Confidential Employees and Student Employees) are required to report and respond to complaints of sexual misconduct and are unable to honor a request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5 below.

   c. Timeliness of Complaint. You should report sexual misconduct as soon as you become aware of such conduct. Responsible Employees must immediately report sexual misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator.

3.3.3 Responsible Employees. If a Responsible Employee, defined below under Part 3- Definitions and Examples, receives a report of sexual misconduct, the employee must promptly report the incident to the Title IX Coordinator or a Deputy Title IX Coordinator.

3.4 Reporting to Law Enforcement. You may also make a complaint with The University of Texas at El Paso Police Department at (915) 747-5611 (emergency and non-emergency), to the City of El Paso Police Department at (915) 832-4400 (non-emergency) or 911 (emergency), or to other local law enforcement authorities. The Title IX Coordinator or Deputy Coordinators 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.

3.3.5 Reporting to Outside Entities. You may also contact the following external agencies:

   For students:

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

   Office for Civil Rights
   U.S. Department of Health and Human Services
   1301 Young Street, Suite 1169
3.3.6 Confidential and Private Support and Resources. Students may discuss an incident with a Confidential Employee, including a counselor in UTEP Counseling and Psychological Services (CAPS), UTEP Campus Advocacy, Resources and Education (CARE) Office or a health care provider in the Student Health and Wellness Center without concern that the Confidential Employee will provide information to the Title IX Coordinator that would violate a student’s expectation of privacy. Confidential Employees who receive reports of sexual misconduct must report to the Title IX Coordinator only the type of incident without disclosing other identifiable information. Students and employees may also discuss an incident with the clergyperson of their choice, their own personal health care provider, or an off-campus resource without concern that the incident will be reported to the Title IX Coordinator. Employees may also seek assistance from the Employee Assistance Program, without concern that the incident will be reported to the Title IX Coordinator. The University and community resources that provide such services are:

UTEP Counseling and Psychological Services
Union West 202
https://www.utep.edu/student-affairs/counsel
(915) 747-5302

UTEP Student Health and Wellness Center
Union East 100
https://www.utep.edu/chs/shc
(915) 747-5624

UTEP Campus Advocacy, Resources and Education (CARE) Office
1101 N. Campbell St. (Campbell Building)
https://www.utep.edu/student-affairs/care/
(915) 747-7452
3.3.7 Immunity. In an effort to protect and encourage reporting of sexual misconduct, the University will grant immunity from student and/or employee disciplinary action to a person who acts in good faith in reporting a complaint, participating in an investigation, or participating in a disciplinary process. This immunity does not extend to the person’s own violations of this Policy.

3.4 Parties’ Rights Regarding Confidentiality.

The University has great respect for the privacy of the parties in a complaint. Under federal and state law, however, Responsible Employees (all employees except Confidential Employees and Student Employees) who witness or receive a report of sexual misconduct must immediately report the incident to the Title IX Coordinator or Deputy Coordinator. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant’s request for confidentiality.

In making determinations regarding requests for confidentiality, requests to not investigate, and/or the disclosure of identifying information to the respondent, the Title IX Coordinator must deliberately weigh the rights, interests, and safety of the complainant, the respondent, and the campus community. Factors the University must consider when determining whether to investigate an alleged incident of sexual misconduct include, but are not limited to:

- The seriousness of the alleged incident;
- Whether the University has received other reports of alleged sexual misconduct by the alleged respondent;
- Whether the alleged incident poses a risk or harm to others; and
- Any other factors the University determines relevant.

If the complainant requests the University not to investigate, the Title IX Coordinator must inform the complainant of the decision whether or not to investigate.

In the course of the investigation, the University may share information only as necessary with people who need to know in compliance with the law, which may include but is not limited to the investigators, witnesses, and the respondent. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation.

3.5 Resources and Assistance.
3.5.1 Immediate Assistance.

Health Care:
UTEP Student Health and Wellness Center
Union East 100
https://www.utep.edu/chs/shc
(915) 747-5624

University Medical Center (UMC)
4815 Alameda Avenue
(915) 544-1200

Police:

UTEP Police Department
3118 Sun Bowl Drive
https://www.utep.edu/police
(915) 747-5611
911 Emergency

El Paso Police Department
Victims Services/Domestic Violence
(915) 212-4000

Counseling:

UTEP Counseling and Psychological Services
Union West 202
https://www.utep.edu/student-affairs/counsel
(915) 747-5302

UTEP Campus Advocacy, Resources and Education (CARE) Office
1101 N. Campbell St. (Campbell Building)
https://www.utep.edu/student-affairs/care/
(915) 747-7452

Center Against Sexual and Family Violence
580 Giles Road
24/7 Crisis Hope Line
(915) 593-7300
(800) 727-0511

La Pinon Sexual Assault Recovery Services of Southern New Mexico
(888) 595-7273

Casa Amiga
Ciudad Juarez, Chihuahua Mexico
011656-6-90-83-00 or 011656-6-90-83-01
A. Healthcare. If you experience any form of sexual, domestic, or dating violence, you 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 4 days 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 University Medical Center (UMC), (915) 544-1200, or the nearest hospital that provides SAFE services. For more information about the SAFE, see https://www.texasattorneygeneral.gov/files/cvs/sexual_assault_examination.pdf. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

B. Police Assistance. If you experienced or witnessed sexual misconduct, the University encourages you to make a report to the police. The police may, in turn, share your report with the Title IX Coordinator or Deputy Coordinators.

A police department’s geographic jurisdiction depends on where the sexual misconduct occurred. Thus, if the incident occurred on the University campus, you may file a report with the UTEP Police Department by calling (915) 747-5611 or in person at UTEP Police Department headquarters at 3118 Sun Bowl Drive (the building is located in the University’s Facilities Services Complex), even if time has passed since the assault occurred.
UTEP Police Department can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean the case will automatically go to criminal trial or to a University disciplinary hearing. If the University police are called, a uniformed officer will be sent to the scene to take a detailed statement. You may also file a report with the University police even if the assailant was not a University student or employee. If the incident occurred in the City of El Paso, but off campus, you may also file a report with the El Paso Police Department, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.

C. Counseling and Other Services. If you experience sexual misconduct, you are strongly encouraged to seek counseling or medical and psychological care even if you do not plan to request a SAFE or report the assault to the police. You 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 individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

You may receive medical care at the UTEP Student Health and Wellness Center (for students only), at a local emergency room, or by a private physician. You may also be provided with psychological support by UTEP Counseling and Psychological Services (students), UTEP Campus Advocacy, Resources and Education (CARE) Office (students), Employee Assistance Program (employees), a referral through the Employee Assistance Program, or a care provider of your choosing.

Students desiring counseling should contact:

UTEP Counseling and Psychological Services
Union West 202
https://www.utep.edu/student-affairs/counsel
(915) 747-5302

UTEP Campus Advocacy, Resources and Education (CARE) Office
1101 N. Campbell St. (Campbell Building)
https://www.utep.edu/student-affairs/care/
(915) 747-7452

Faculty and staff should contact:

UTEP Employee Assistance Program
Deer Oaks
24 hours a day, 7 days a week
(866) 327-2400

3.5.2 Interim Measures.

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual misconduct, when applicable.
Interim measures may include but are not limited to reassignment, suspension, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus, or other similar accommodations tailored to the individualized needs of the parties.

The University’s ability to implement interim measures may be affected if the Complainant requests that the University not disclose the Complainant’s identity to relevant University personnel involved in implementing interim measures.

3.6 The Investigation Process—What You Need to Know.

3.6.1 Key Officials in an Investigation.

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 overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators.

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

B. Investigators. The Title IX Coordinator will ensure that complaints are properly investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy. The Title IX Deputy Coordinators will supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary.

3.6.2 Notification of University Offices Offering Assistance. After receiving a complaint, the Title IX Coordinator or Deputy Coordinator will inform the parties of available resources and assistance. While taking into consideration requested confidentiality, the Dean of Students Office for students and the Equal Opportunity Office for employees may serve as a liaison between the parties and the Title IX Coordinator or Deputy Coordinator during the investigation.

3.6.3 Informal Resolution of Certain Complaints.

Both parties may voluntarily agree to use this option instead of or before the formal resolution process but are not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that they have been subjected to sexual misconduct may immediately file a formal complaint as described in Section 3 of this Policy. Anyone interested in the informal resolution process, should contact the Title IX Coordinator or Deputy Coordinator. During the informal resolution process, the Title IX Coordinator, Deputy Coordinator or designee must
provide both parties full disclosure of the allegations and their options for formal resolution. At any time during the informal resolution process, the complainant may elect to discontinue the informal resolution process and file a formal complaint.

A. Informal Assistance. If informal assistance is appropriate, the individual will be provided assistance in informally resolving the alleged sexual misconduct. Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.

B. Timeframe. Informal resolutions of a complaint will be concluded as soon as possible.

C. Documentation. The University will document and record informal resolutions. The Title IX Coordinator or Deputy Coordinator will retain the documentation.

3.6.4 Formal Complaint and Investigation.

**Formal Complaint.** To begin the investigation process, the complainant should submit a written statement setting out the details of the conduct that is the subject of the complaint, including the following:

- complainant’s name and contact information;
- name of the person directly responsible for the alleged violation;
- detailed description of the conduct or event that is the basis of the alleged violation;
- date(s) and location(s) of the alleged occurrence(s);
- names of any witnesses to the alleged occurrence(s); the resolution sought; and
- any documents or information that is relevant to the complaint.

The University office receiving the complaint must refer the complaint to the Title IX Coordinator or Deputy Coordinator. The University may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what they understand the complaint to be and ask the complainant to verify that statement.

**Investigation.**

A. After an investigator is assigned, the respondent will be provided notice of the formal complaint and be allowed ten (10) business days to respond in writing, unless unusual circumstances warrant additional time.
B. The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.

C. The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.

D. The investigation of a complaint will be concluded as soon as possible after receipt of the complaint.

E. After the investigation is complete, a written report¹ will be issued to the Title IX Coordinator and or designee. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred (based on a “preponderance of the evidence” standard).

F. After the written report is completed, both parties will be allowed to inspect the report and will have reasonable and equitable access to all of the evidence relevant to the alleged violation(s) in the University’s possession, subject to FERPA and Texas Education Code, Section 51.971. Each party will have ten (10) business days to submit written comments regarding the investigation to the Title IX Coordinator or designee.

G. Within ten (10) business days after the deadline for receipt of comments from the parties, the Title IX Coordinator or designee will:

- request further investigation into the complaint;
- dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
- find that the Policy was violated.

H. If it is determined that the Policy was violated, the matter will be referred for disciplinary action.

I. The parties shall be informed concurrently in writing of the final decision in accordance with section 6.4 F of this Policy.

J. If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with the applicable policies and procedures.

3.6.5 Standard of Proof. All investigations will use the preponderance of the evidence standard, as defined in Part 3, Definitions and Examples, to determine violations of this Policy.

3.6.6 Timeliness. Best efforts will be made to complete the complaint process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

¹ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.
At the request of law enforcement, the University may defer its fact-gathering until after the initial stages of a criminal investigation. In such an instance, the University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University will move forward.

The filing of a complaint under this Policy does not excuse the complainant from meeting time limits imposed by outside agencies. Likewise, the applicable civil or criminal statute of limitations will not affect the University’s investigation of the complaint.

3.6.7 Due Process and Privacy Rights.

- The University will strive to ensure that the steps it takes to provide due process to the respondent will not restrict or delay the protections provided by Title IX to the complainant.
- The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.

3.6.8 Remedies. In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the University will take appropriate action(s), including but not limited to those below to resolve complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects:

(a) Imposing sanctions against the respondent, including attending training, suspension, termination, or expulsion;
(b) Ensuring the parties do not share classes, working environments, or extracurricular activities;
(c) Making modifications to the on campus living arrangements of the parties;
(d) Providing comprehensive services to the parties including medical, counseling and academic support services, such as tutoring;
(e) Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
(f) Determining whether sexual misconduct adversely affected the complainant’s University standing;
(g) Designating an individual specifically trained in providing trauma-informed comprehensive services;
(h) Conducting a University climate check to assess the effectiveness of sexual misconduct prevention measures;
(i) Providing targeted training for a group of students, including bystander intervention and sexual misconduct prevention programs;
(j) Issuing policy statements regarding the University’s intolerance of sexual misconduct.

3.6.9 Sanctions and Discipline. Disciplinary action will be handled under the appropriate disciplinary policy depending on the status of the respondent.

Discipline and Dismissal of Staff Employees, Section V, Chapter 6
https://www.utep.edu/vpba/hoop/section-5/ch-6.html

Academic Policies and Faculty Personnel Matters, Section III, Chapter 4
3.7 Provisions Applicable to the Investigation.

3.7.1 Assistance. During the investigation process, both parties may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.

3.7.2 Time Limitations. Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator on a written showing of good cause by the parties or the University.

3.7.3 Concurrent Criminal or Civil Proceedings. The University will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. The University has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 6.7).

3.7.4 Documentation. The University shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and University policy.

3.8 Dissemination of Policy and Educational Programs.

3.8.1 This Policy will be made available to all University administrators, faculty, staff, and students online at https://www.utep.edu/vpba/hoop and in University 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, including the complaint procedure, and about University disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

3.8.2 Ongoing Sexual Misconduct Training. The University’s commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about primary prevention, risk reduction, and bystander intervention: https://www.utep.edu/eoaa/resources/training.html

3.8.3 Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each academic year about offenses, investigatory procedures, due process, and University policies related to sexual misconduct.
3.8.4 Annual Reporting and Notice. The University’s Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments.

3.9 Additional Conduct Violations.

3.9.1 Retaliation. Any person who retaliates against the parties or any other participants in an investigation or disciplinary process relating to a complaint, or 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. If any participant in an investigation believes they have been subject to retaliation, they should immediately report the alleged retaliatory conduct to the Title IX Coordinator or Deputy Coordinator.

3.9.2 False Complaints. Any person who knowingly files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. A finding that a respondent is not responsible for the alleged sexual misconduct does not by itself imply the complaint was false.

3.9.3 Interference with an Investigation. Any person who interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an ongoing investigation may include, but is not limited to:

(a) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
(b) Removing, destroying, or altering documentation relevant to the investigation;
(c) Knowingly providing false or misleading information to the investigator, or encouraging others to do so.;

3.9.4 Failure to Report for Responsible Employees. Under state law, if a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

For purposes of Failure to Report, the definition of sexual harassment is broader than the definition of sexual harassment under this Policy and is defined as: Unwelcome, sex-based verbal or physical conduct that:

(a) in the employment context, unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment; or
(b) 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.

3.9.5 No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint. The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint,
including: (1) 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; (2) 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 (3) any job-related functions of a University employee. Nothing in this section shall limit the University’s ability to take interim action.

3.10 Documentation.

The University shall confidentially maintain information related to complaints under this Policy, as required by law.

3.11 Mandatory Reporting Requirements for University Employees.

Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence and Stalking.

3.11.1 In accordance with Texas Senate Bill 212, an employee of a postsecondary institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student or an employee at the time of the incident shall promptly report the incident to the University's Title IX coordinator or deputy Title IX coordinator.

3.11.2 For the mandatory reporting requirement described under 1.1, the definition of "employee of a postsecondary educational institution" includes all University employees (does not include a student enrolled at the institution.)

3.11.3 Termination for Failure to Report or Filing False Complaint. An employee is subject to termination in accordance with University’s disciplinary procedures if the employee (1) is required to make a report as provided under section 1.1 above and knowingly fails to make the report; or (2) with the intent to harm or deceive, knowingly makes a report that is false.

3.11.4 Criminal Liability for Failure to Report or False Complaint. If the Title IX Coordinator reasonably believes that an employee, after conducting an investigation, knowingly failed to report or made a false complaint, the Title IX Coordinator can determine to report to the proper authorities, as a suspected criminal offense. Classification of offense. The above offense (failing to report or filing a false complaint) constitutes a Class B misdemeanor, except that the offense shall be a Class A misdemeanor if it is shown on the trial of the offense

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2 For mandatory reporting requirements of employees for incidents of sexual harassment, sexual assault, dating violence, and stalking, and other reporting requirements, see Texas Senate Bill “SB 212”, passed during the 86th Legislative Session, which adds subchapter E-2 to Ch. 51 of the Texas Education Code. (Sec. 51.251 et seq.)
that the person acted to conceal an incident that the person was required to report per section 1.1 above.

3.12 Definitions and Examples

**Coercion** – The use of 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. Examples of coercion include but are not limited to threatening to “out” someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone’s prior sexual activity to another person.

**Complainant** – The student, employee, or third party who presents as the victim of any prohibited conduct under this Policy, regardless of whether that person makes the report or seeks action under this Policy.

**Confidential Employees** – Confidential Employees include counselors in Counseling and Psychological Services, a health care provider in Health Services, or clergypersons. Additionally, employees who receive information regarding an incident of sexual misconduct under circumstances that render the employee’s communications confidential or privileged under other law (such as attorneys) are also considered “Confidential Employees.”

Note: Under state law, Confidential Employees who receive information regarding incidents of sexual harassment, sexual assault, dating violence or stalking committed by or against a student or an employee 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.

**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. Past consent does not imply future consent. 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.

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3 The definitions provided in the main body of the text are the definitions adopted by the University. When applicable, we have included the state law definition. In any criminal action brought by law enforcement, the state law definition will apply.
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.\(^4\)

**Dating Violence**\(^5\) – 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 by the victim with consideration of the following factors:

a) The length of the relationship;

b) The type of relationship; and

c) The frequency of interaction between the persons involved in the relationship

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of domestic violence.

**Domestic (Family) Violence**\(^6\) – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim

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\(^4\) 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 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.

\(^5\) 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 acquaintance 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.

\(^6\) Family Violence is defined by the Texas Family Code Section 71.004 as:
shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the state of Texas.

**Hostile Environment** – exists when sexual harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual’s ability to participate in or benefit from the University’s programs or activities or an employee’s terms and conditions of employment. A hostile environment can be created by anyone involved in a University’s program or activity (e.g., administrators, faculty members, employees, students, and University visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a hostile environment, the University must also find that a reasonable person in the individual’s position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists for an individual or individuals, the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual’s education or employment.

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sex-based harassment is not particularly severe.

**Incapacitation** – Incapacitation is 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. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time

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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.

7 Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University’s gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.
of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

The University offers the following guidance on consent and assessing incapacitation:

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.

In evaluating consent in cases of alleged incapacitation, the University asks 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,” consent was absent and the conduct is likely a violation of this Policy.

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, incontinence or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

An individual’s level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one’s own or the other individual’s intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact. **Being impaired by alcohol or other drugs is no defense to any violation of this Policy.**

**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.

**Other Inappropriate Sexual Conduct** – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom. Depending on the facts
of a complaint, the conduct may not violate this Policy but may violate other university policies including but not limited to standards of conduct or professionalism policies.

**Parties** – The term “parties” refers to the “complainant” and the “respondent” in a Title IX complaint.

**Preponderance of the Evidence** – The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**Respondent** – The student, employee, or third party who has been accused of violating this Policy.

**Responsible Employee** – A University employee who has the duty to report incidents of and information reasonably believed to be sexual misconduct to the Title IX Office. All employees are Responsible Employees except Confidential Employees. Responsible Employees include all administrators, faculty, staff, resident life directors and advisors, and graduate teaching assistants. Responsible Employees must report all known information concerning the incident to the Title IX Office, and must include whether a complainant has expressed a desire for confidentiality in reporting the incident.

**Retaliation** – Any adverse action threatened or taken against someone because the individual has filed, supported, or provided information in connection with a complaint of sexual misconduct or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats, or harassment against any complainant, respondent, witness, or third party.

**Sexual Assault** – An offense that meets the definition of rape, fondling, incest, or statutory rape:

a) **Rape**: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

b) **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

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

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

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8 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

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.**
Sexual Exploitation – Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

Sexual Harassment – Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

a) Submission to such conduct is made either explicitly or implicitly a term or condition of a person’s student status, employment, or participation in University activities; or

b) Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined in this Policy.

Sexual harassment is a form of sex discrimination that includes:

a) Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.

b) Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
   i. unwelcome intentional touching; or
   ii. deliberate physical interference with or restriction of movement.

c) Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
   i. explicit or implicit propositions to engage in sexual activity;
   ii. gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
   iii. gratuitous remarks about sexual activities or speculation about sexual experiences;
   iv. persistent, unwanted sexual or romantic attention;
   v. subtle or overt pressure for sexual favors;
   vi. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
   vii. deliberate, repeated humiliation or intimidation based upon sex.

Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. Sexual misconduct can be committed by any person, including strangers or acquaintances.
**Sexual Violence** – Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. The term includes, but is not limited to, rape, sexual assault, sexual battery, sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.

**Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition—

a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.

c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

### 3.13 Relevant Federal and State Statutes, and Standards


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

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

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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.
3.14 Other Relevant Policies

University Equal Opportunity/Affirmative Action/Non-Discrimination Policy, Handbook of Operating Procedures, Section 6, Chapter 1.

University Consensual Relationships Policy, Handbook of Operating Procedures, Section 6, Chapter 4.

University Discipline and Dismissal of Staff Employees Policy, Handbook of Operating Procedures, Section 5, Chapter 6.

Faculty Discipline Policy, Handbook of Operating Procedures, Section 3, Chapter 4.

University Student Conduct and Discipline Policy, Handbook of Operating Procedures, Section 2, Chapter 1.