

# Sexual Misconduct Policy

**Section:** VI: Equal Opportunity

**Chapter:** 3

**Date Updated:** August 12, 2020

For Immediate Reporting:  
<https://www.utep.edu/titleix/>  
Also, please see Section 3.3 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), Violence Against Women Act (VAWA), and Clery Act. Sexual Misconduct, Retaliation, and other prohibited conduct as defined in this Policy (Section 3.11: 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. The University encourages you to promptly report incidents that could constitute violations of this Policy to the Title IX Coordinator or Title IX Deputy Coordinators (as outlined in Section 3.3 of this Policy).

3.1.3 Free Speech. Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Misconduct under this Policy.

## 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 that occurs on University owned or controlled premises, in an education program or activity including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects a person's education or employment with the University or potentially poses a risk of harm to members of the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

## 3.3 Reporting Incidents.

3.3.1 General Statement Empowering Community. This policy distinguishes between reporting sexual misconduct incidents on the one hand and filing Formal Complaints on the other. Reporting Sexual Misconduct incidents informs the University of the incident, which allows the institution to provide Supportive Measures (as outlined in Section 3.5.2 of this Policy) to the Complainant and does not necessarily result in the initiation of the Grievance Process (as outlined in Section 3.6 of this Policy). All Complainants who report incidents of Sexual Misconduct will be offered individualized Supportive Measures. If Complainants wish to initiate the Grievance Process, they should file a Formal Complaint. As explained in more detail below (including exceptions and details as to applicability), generally speaking, the Grievance Process may involve an investigation into the incident and a hearing to determine the responsibility of the Respondent.

3.3.2. Any person may report Sexual Misconduct, Retaliation, or other conduct prohibited under this Policy to the Title IX Coordinator or Deputy Title IX Coordinators. Any person may report an incident, whether or not the person reporting is the person alleged to be the victim of the incident, and it can be a verbal or written report to the Title IX Coordinator and Deputy Title IX Coordinators:

Gabriel Ramirez  
Title IX Coordinator  
Office of Institutional Compliance – Title IX  
Kelly Hall, Room 312  
Phone: 915-747-8358  
Email: [gramirez2@utep.edu](mailto:gramirez2@utep.edu)

Andrea Lafleche  
Deputy Title IX Coordinator  
Office of Institutional Compliance – Title IX  
Kelly Hall, Room 312  
Phone: (915) 747- 8375  
Email: [aclafleche@utep.edu](mailto:aclafleche@utep.edu)

Beatriz Tapia  
Deputy Title IX Coordinator  
Equal Opportunity Director  
Equal Opportunity Office, Kelly Hall, Room 304  
Phone: (915) 747-5839  
Email: [betapia@utep.edu](mailto:betapia@utep.edu)

Dr. Catie McCorry-Andalis  
Deputy Title IX Coordinator  
Associate Vice President and Dean of Students  
Dean of Students Office  
Union West, Room 102  
Phone: (915) 747-5648  
Email: [cmandalis@utep.edu](mailto:cmandalis@utep.edu)

- A. Filing a Formal Complaint. The Complainant may file a Formal Complaint with the Title IX Coordinator Deputy Title IX Coordinators, as outlined in Section 3.6.2 of this Policy.
- B. Anonymity. You may make an anonymous report by telephone, in writing or electronically [https://cm.maxient.com/reportingform.php?UnivofTexasElPaso&layout\\_id=4](https://cm.maxient.com/reportingform.php?UnivofTexasElPaso&layout_id=4) with the Title IX Office. 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 this Policy.
- C. Confidentiality. You can discuss an incident in strict confidence by using the confidential resources outlined in Section 3.5 of this Policy.
- D. Timeliness of Reporting. Responsible Employees are required to report known incidents and information of Sexual Misconduct promptly to the Title IX Coordinator or Deputy Title IX Coordinators. For others in the University community, you are strongly encouraged to report Sexual Misconduct, Retaliation, and any other conduct prohibited under this Policy as soon as you become aware of such conduct.

3.3.3 Responsible Employees. If a Responsible Employee, defined below under *Part 3.11-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.

3.3.4 Reporting to Law Enforcement. You may also make a complaint with The University of Texas at El Paso Police Department (UTEP PD) 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 Title IX 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

Dallas, TX 75202  
Phone: (800) 537-7697  
FAX: (214) 767-0432

For employees:

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

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

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 clergy person 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 or Deputy Title IX Coordinators.

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

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

3.3.7 Immunity. In an effort to encourage reporting of Sexual Misconduct, the University may grant immunity from student and/or employee disciplinary action to a person who acts in good faith in reporting an incident, filing a Formal Complaint, or participating in a Grievance Process (e.g. investigation, hearing, appeal). This immunity does not extend to the person's own violations of this Policy.

### **3.4 Parties' Rights Regarding Confidentiality, Requests to Not Investigate, and Requests to Dismiss Formal Complaints.**

The University has great respect for the privacy of the parties identified in a report or Formal Complaint. Under state law, however, Responsible Employees who receive information of alleged Sexual Misconduct must share that information with the Title IX Coordinator or Deputy Title IX Coordinators. As such, the University may need to act to maintain campus safety and must determine whether to investigate further, regardless of the Complainant's request for confidentiality or request to not investigate a report received by the Title IX Coordinator.

In making determinations regarding requests for confidentiality, Complainants' requests to not investigate, Complainants' requests to dismiss Formal Complaints, and/or requests to not disclose identifying information to Respondents, the Title IX Coordinator must deliberately weigh the rights, interests, and safety of the Complainant, the Respondent, and the campus community. Factors the University must consider when determining whether to investigate an alleged incident of Sexual Misconduct include, but are not limited to:

- 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.

Under state law, if the Complainant requests in writing that the University not investigate a report, the University must inform the Complainant of the decision whether or not to investigate.

If the University dismisses a Formal Complaint (as outlined in Section 3.6.2(C) of this Policy), the University must provide the Complainant and Respondent a written notice of the dismissal and the reason(s) for the dismissal.

In the course of the Grievance Process, the University may share information only as necessary with people who need to know in compliance with the law, which may include but is not limited to the investigators, witnesses, Complainant, Respondent, parties' advisors, hearing officer, and the appellate officer—if applicable. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation or in any other part of the Grievance Process.

### **3.5 Resources and Assistance.**

#### 3.5.1 Immediate Assistance.

##### Health Care:

UTEP Student Health and Wellness Center (For students)  
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 services for students:

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

UTEP service for employees:

UTEP Employee Assistance Program (Employees)

Deer Oaks

24 hours a day, 7 days a week

[www.deeroakseap.com](http://www.deeroakseap.com)

(866) 327-2400

Non-UTEP services:

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

Ft. Bliss-Family Advocacy Program

915.568.9129

Domestic Violence Hotline (24/7)

(915) 269-2013

Sexual Assault Hotline

(915) 245-8991

National Domestic Violence Hotline

24 hours a day, 7 days a week

(800) 799-7233

(800) 787-3224 (TTY)

National Sexual Assault Hotline

(800) 656-4673 (National)

- 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](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 Office or the 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 incident occurred.

The UTEP Police Department can also assist with applying for any protective orders. Reporting an incident to law enforcement does not mean the case will automatically go to criminal trial or go through a Grievance Process. If the University police are called, a police officer will be sent to the scene to take a detailed statement. A police officer or victim services coordinator may also provide you with a ride to the hospital. 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 incident occurred. If a report is made to the police, a police officer will usually be dispatched to the location to take a written report.

- 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 incident 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), a referral through the Employee Assistance Program (employees), 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  
[www.deeroakseap.com](http://www.deeroakseap.com)  
(866) 327-2400

### 3.5.2 Supportive Measures.

The University will offer reasonably available individualized services, without any fee or charge, to the parties involved in a reported incident of Sexual Misconduct with or without the filing of a Formal Complaint, when applicable.

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

Supportive Measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other party. Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an emergency removal (as outlined in Section 3.7.1) is appropriate.

The University will maintain the confidentiality of Supportive Measures provided to the parties, to the extent that maintaining such confidentiality does not impair the ability of the University to provide the Supportive Measures.

## 3.6 The Grievance Process

### 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 administrative response to reports and Formal Complaints of Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy. The Title IX Coordinator is available to discuss the Grievance Process, coordinate Supportive Measures, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities.

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

- B. Investigator(s). The University will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint. The investigators are neutral and impartial fact-finders, and gather evidence during the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Title IX Deputy Coordinators may supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary to ensure compliance with Title IX.
- C. Hearing Officer. The hearing officer is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner.

### 3.6.2 Formal Complaints Against Students and Employees<sup>1</sup>

- A. Applicability of the Grievance Process. The Grievance Process in this Policy applies to the following situations:
  - 1. Students. The Grievance Process in Sections 3.6.2 to 3.6.10 of this Policy applies in the instances where the Respondent is a student (including student employees)<sup>2</sup> at the University at the time of the alleged conduct and where the conduct alleged includes Sexual Harassment. An alternative Grievance Process in Section 3.6.11 of this Policy applies in instances where the Respondent is a student at the time of the alleged conduct but where the conduct alleged does not include Sexual Harassment.
  - 2. Employees: Faculty and Staff. For employees, the Grievance Process in this Policy only applies where all of the following conditions are met:

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<sup>1</sup> For Formal Complaints against third parties, such as contracted workers, volunteers, or visitors, the University will apply the analysis in Section 3.6.2(A)(2) with regard to employees and may apply other institutional policies to those Respondents if the Grievance Process (outlined in this Policy) does not apply.

<sup>2</sup> Respondents who are both students and employees are treated as students under this Policy.

- a. The respondent is an employee at the University at the time of the alleged conduct;
- b. The conduct alleged is Sexual Harassment under this Policy;
- c. The alleged conduct occurred against a person in the United States; and
- d. Where the complainant was participating or attempting to participate in an education program or activity at the University. This element is met if the conduct occurred in any of the following: on any University property; during any University activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

In all other instances relating to employees, allegations of Sexual Misconduct will be handled in accordance with the University's Handbook of Operating Procedures (HOP) Section 6, Chapter 1: Equal Opportunity/Affirmative Action/Non-Discrimination Policy, HOP Section 5, Chapter 6: Discipline and Dismissal of Staff Employees, and HOP Section 3, Chapter 4: Academic Policies and Faculty Personnel Matters.

- B. To begin the Grievance Process, the complainant must sign a Formal Complaint (requesting an investigation) and submit it to the Title IX Coordinator or Deputy Title IX Coordinator. The complainant must submit a written statement setting out the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:

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

The Complainant may also submit any documents or information that is relevant to the Formal Complaint.

The Title IX Coordinator may also sign a Formal Complaint against a Respondent (requesting an investigation) and in doing so will initiate the Grievance Process.

C. Mandatory and Discretionary Formal Complaint Dismissals.

a. Under Title IX regulations, universities are required to distinguish between prohibited conduct that is “under Title IX” and prohibited conduct that is a violation of university policy. Under Title IX, the University must dismiss a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where:

- Sexual Harassment is alleged and where:

1. The conduct alleged does not meet the definition of Sexual Harassment;
2. The alleged conduct did not occur in the University’s education program or activity; or
3. The alleged conduct did not occur against a person in the United States.

A dismissal under this provision only applies to allegations of Sexual Harassment under Title IX. In such an instance, the University may still investigate a Formal Complaint for allegations of Sexual Harassment under this Policy. The University may also investigate allegations of prohibited conduct under this Policy, but it will not technically be “under Title IX.”

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

- If the Complainant requests in writing to dismiss a Formal Complaint (e.g., withdraws the Formal Complaint or any allegations therein), as outlined in Section 3.4 of this Policy;
- If the Respondent is an employee and no longer employed by the University at the time the Formal Complaint is filed;
- Any specific circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
- The conduct alleged does not meet the definition of any prohibited conduct under this Policy.

c. If the University dismisses a Formal Complaint, the University must provide both parties a written notice of the dismissal and the reason(s) for the dismissal.

D. Concurrent Criminal or Civil Proceedings. The University will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint in a University Grievance Process. The University has an independent duty to respond to Formal Complaints of Sexual Misconduct. At the University's discretion, the University may delay the investigation or Grievance Process for a brief period due to concurrent criminal or civil proceedings on a case-by-case basis.

### 3.6.3 Written Notice of the Formal Complaint, and Notification of University Offices Offering Assistance.

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

- A notice of the Grievance Process, as outlined in this Policy;
- A notice of the allegations that potentially constitute prohibited conduct under this Policy, including sufficient details about the alleged conduct, including the identities of the parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by the University at the time of the Formal Complaint;
- A statement of the potential policy violations being investigated;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the Grievance Process;
- A statement that both parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
- A statement that the parties may inspect and review all evidence gathered as part of any investigation;
- A statement that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action; and
- Any other relevant information for the written notice.

### 3.6.4 Investigation of the Formal Complaint – Gathering of Evidence

A. After the University provides written notice of a Formal Complaint to the parties, the Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator.

- B. The University will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Grievance Process.
- C. Evidence. The parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint, and may have an advisor of their choice attend any related interview, meeting, or proceeding in the Grievance Process. Advisors are not permitted to actively participate in meetings or proceedings in the Grievance Process, unless explicitly outlined in Section 3.6.6(J) of this Policy. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.
- D. Witness Interviews. The investigators will interview relevant and available witnesses. Neither the Complainant nor the Respondent will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.
- E. Investigation Timeframe. The investigation of a Formal Complaint will be concluded within 90 business days of the filing of a Formal Complaint. The parties should be provided updates on the progress of the investigation, as needed.
- F. Access to Evidence. Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained (whether relevant or not) as part of the investigation to both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice). Both parties will have 10 business days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.
- G. Completed Investigation Report. The completed investigation report will outline each of the allegations that potentially constitutes prohibited conduct under this Policy, provide the timeline (e.g. procedural steps) of the investigation, and objectively summarize relevant evidence, participant statements, and responses to questions. The investigator will provide a completed investigation report concurrently to both parties and each party's advisor, if any, upon a party's signed information release for their advisor of choice at least 10 business days prior to the date of the scheduled hearing to review and provide a written response at the hearing. A copy of the completed investigation report will be issued to the Title IX Coordinator, and to the hearing officer assigned for the hearing.

3.6.5 Standard of Evidence & Presumption of Not Responsible. All Grievance Processes will use the preponderance of the evidence standard, as defined in of this Policy. 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. Best efforts will be made to complete the complaint process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

### 3.6.6 Live Hearing – Determination of Responsibility

- A. Absent a Formal Complaint dismissal or the parties' decision to reach an Informal Resolution agreement (if applicable), the University will provide a live hearing for all Formal Complaints subject to the Grievance Process as outlined in this Policy at the time of the alleged conduct.
- B. Written Notice of the Hearing. The University will provide at least 10 business days written notice to participants of the hearing (and the participant's advisor, if any, upon a participant's signed information release for their advisor of choice), including the date, time, location, names of all participants of the hearing (including the hearing officer, and all parties and participants in the investigation report), purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered.
- C. Challenges to the Hearing Officer. Either party may challenge the fairness, impartiality or objectivity of a hearing officer. The challenge must be submitted in writing to the hearing officer through the office coordinating the hearing within 4 business days after notice of the identity of the hearing officer, and must state the reasons for the challenge. The hearing officer will be the sole judge of whether they can serve with fairness, impartiality, and objectivity. In the event that the hearing officer recuses themselves, an alternative hearing officer will be assigned in accordance with the institution's procedures.
- D. Hearing Officer Duties at the Hearing. Hearing officers will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question participants who testify at the hearing, and are entitled to have the advice and assistance of legal counsel from the Office of General Counsel of the U.T. System.
- E. Access to Evidence. Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report, as outlined in Section 3.6.4 (F) of this Policy.
- F. Separate Rooms and Virtual Participation. At the request of either party, the University will provide for the hearing to be held with the parties located in separate rooms with technology enabling the hearing officer and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually, and are not required to be physically present at the same physical location of the hearing.
- G. Each party may make opening and closing statements.
- H. Privileged Information Excluded. No person will be required to disclose information protected under a legally recognized privilege. The hearing officer

must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.

- I. **Advisor of Choice.** Each party may have an advisor of their choice at the hearing. If a party does not have an advisor, the University will provide one. If a party knows that they will not have an advisor present at the hearing, it is encouraged that the unrepresented party notify the Title IX Office at least three (3) days prior to the hearing so that a hearing advisor can be assigned to the party. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.
- J. **Questioning of the participants in the hearing:** The hearing officer may, at their discretion, ask questions during the hearing of any party or witness and may be the first to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The advisors may ask questions under the following procedure:
  - The advisor will ask a question of the applicable participant.
  - Before the participant answers a question, the hearing officer will rule as to whether the advisor's question is relevant to the alleged conduct charges.
  - If the hearing officer rules the advisor's question as not relevant, then the hearing officer must explain any decision to exclude a question as not relevant. If the hearing officer allows the question as relevant, the participant will answer it.

**Prior Sexual History:** A Complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent to the alleged conduct.

**Not submitting to cross-examination:** If a party or witness refuses to submit to any cross-examination questions during the hearing, the hearing officer will not rely on any statement of that party or witness, when reaching a responsibility determination. However, the hearing officer will not draw an inference about the

determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

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

- The allegations that potentially constitutes prohibited conduct under this Policy;
- A description of all of the procedural steps of the Grievance Process under this Policy (from receipt of a Formal Complaint to the determination regarding responsibility of the Respondent, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
- The findings of fact supporting the hearing officer's determination;
- The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
- The disciplinary sanctions, if applicable;
- The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
- The institution's procedures and permissible bases for the parties to appeal, if applicable.

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

L. The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of the University. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

3.6.7 Sanctions and Remedies. The following sanctions and remedies may be considered by the hearing officer in accordance with this Policy:

A. Possible Sanctions and Remedies for Student Respondents:

- Educational training;
- No shared classes or extra-curricular activities;

- Disciplinary probation;
- Withholding of grades, official transcript, and/or degree;
- Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
- Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities;
- Denial of degree;
- Suspension from the University for a specific period of time. Suspension is noted on the academic transcript with the term “Disciplinary Suspension.” The notation can be removed upon the request of the student in accordance with the University’s procedures when all conditions of the suspension are met;
- Expulsion (permanent separation from the University). Expulsion creates a permanent notation on the student’s academic transcript;
- Revocation of degree and withdrawal of diploma; and/or
- Other sanction(s) or remedies as deemed appropriate under the circumstances.

B. Possible Sanctions and Remedies for Employee Respondents:

- Suspension with or without pay for a specific period of time;
- Dismissal or termination;
- Other sanction(s) or remedies as deemed appropriate under the circumstances.

3.6.8 Appeals and Additional Processes Provided to Students and Employees.

Appeals. Either party may appeal in writing to a hearing officer’s determination regarding a Respondent’s responsibility under the Grievance Process, or the University’s dismissal of a Formal Complaint (or any allegations in the Formal Complaint), within 10 business days of notification of such a determination, on the following bases:

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

- The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the parties (generally, or specifically in this matter) that affected the outcome of the matter.

The appellate officer—who will be the President of the University or her or his designee—must not be the same person as the Title IX Coordinator, investigator(s), or hearing officer in the Grievance Process. Both parties will be notified in writing when an appeal is filed and the appeal procedures will apply equally for both parties.

The non-appealing party will have 7 business days from the notification of an appeal to submit a written statement in support of the outcome.

The appellate officer will release a written decision within 21 business days from the date of the appeal. The appellate officer’s written decision shall:

- Affirm the hearing officer’s determination regarding the Respondent’s responsibility and the disciplinary sanctions and remedies, if applicable;
- Affirm the hearing officer’s determination regarding the Respondent’s responsibility, but amend the disciplinary sanctions and remedies, if applicable;
- Remand the process back to the hearing stage for the hearing officer to remedy any procedural irregularity or consider any new evidence;
- Reverse the hearing officer’s determination of the Respondent’s responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the administrative disposition issued under Section 3.6.11 of this Policy.

3.6.9 Grievance Process Documentation. The University (through the appropriate office) will retain all of the documentation included in the Grievance Process (outlined in Section 3.6 of this Policy) for seven (7) years, in accordance with state and federal records laws and University policy. All documentation of records are private and confidential to the extent possible under law. Student records of the Grievance Process are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA), and included in the employee’s official employment record.

3.6.10 Grievance Process Timeframe. The entire Grievance Process (outlined in Section 3.6 of this Policy, including any appeal) will be completed in no more than 150 business days from the filing of the Formal Complaint. However, the circumstances may require a temporary delay in this timeframe and the University may extend this timeframe for good cause. In such an instance, the University will provide written notice to the parties of the delay or extension and the reason(s) for the action. Good cause may include

considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other reasonable considerations.

### 3.6.11 Alternative Grievance Process for Students – Applicable Exceptions for Non-Sexual Harassment Formal Complaints.

For Formal Complaints where the Respondent is a student at the time of the alleged conduct (including student employees), and the alleged conduct does not include Sexual Harassment, the Grievance Process in Section 3.6 of this Policy applies, with the following exceptions:

- A. Investigation Report & Determination Regarding Responsibility. Section 3.6.4(G) applies except that the completed investigation report will include a preliminary determination regarding the responsibility of the Respondent for each allegation, the findings of fact supporting the investigator's determination, and the rationale for the determination for each allegation. The completed investigation report and determination regarding responsibility will be referred to the Office of Student Conduct and Conflict Resolution (OSCCR).

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

- Accept the preliminary determination regarding responsibility of the Respondent, and either dismiss the case or proceed to adjudication (if applicable);
  - Amend the preliminary determination regarding responsibility of the Respondent, and proceed to adjudication (if applicable); or
  - Remand the process back to the investigation stage to address an investigation concern.
- B. Adjudication. Where responsibility finding(s) proceed to the adjudication stage, the Respondent and Complainant may elect one of the following options:
    1. Agree to the determination of responsibility for each of the applicable allegations, the sanctions, and remedies outlined in an administrative disposition, and waive the option of a hearing;
    2. Agree to the determination of responsibility for each of the applicable allegations, appeal (in writing) the sanctions and/or remedies outlined in the administrative disposition, and waive the option of a hearing; or
    3. Select a live hearing where the determination regarding responsibility of the Respondent will be made by a hearing officer.

If either party chooses option 3, then a live hearing must be initiated for the adjudication of the conduct allegations, as outlined in Section 3.6.11(C).

Absent either party choosing option 3 (live hearing), if either party chooses option 2, then any party choosing option 2 may appeal the sanctions and/or remedies outlined in the administrative disposition, using the Appeals process in Section 3.6.8 of this Policy. The finding of responsibility may not be appealed by either party.

If both parties select option 1, then the administrative disposition will be final and there will not be any subsequent adjudication proceedings regarding the allegations.

C. Live Hearing. If a live hearing is selected for adjudication, the hearing procedures in Section 3.6.6 of this Policy will apply, with the following exceptions:

1. Advisor of Choice.<sup>3</sup> Each party may have an advisor of their choice at the hearing. Upon request from either party, the University will provide an advisor to that party. Advisors are not permitted to actively participate in the hearing. In addition, witnesses may have an advisor of their choice at the hearing.
2. Questioning of the participants in the hearing.<sup>4</sup> The hearing officer may, at the hearing officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party may ask relevant questions of any witness at the hearing, except that cross-examination questions of the other party must be submitted in writing to the hearing officer. The hearing officer will then ask relevant cross-examination questions of the other party and allow for relevant follow-up questions (if applicable). Advisors are not permitted to ask any questions at the hearing.
3. Prior Sexual History: A Complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent to the alleged conduct.

### **3.7 Emergency Removal and Employee Administrative Leave.**

- 3.7.1 Emergency Removal (student respondent). A Respondent may be removed from the University's education program or activity on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal is justified because the Respondent poses an immediate threat to the physical health or safety of an

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<sup>3</sup> Subsection 3.6.7(I) does not apply when a hearing is conducted under Section 3.6.11(C) of this Policy.

<sup>4</sup> Subsection 3.6.7(J) does not apply when a hearing is conducted under Section 3.6.11(C) of this Policy.

individual arising from the allegations of Sexual Misconduct. Under these circumstances, the Respondent will be notified in writing of the emergency removal from the University's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal. If the Respondent chooses to appeal an emergency removal, the appeal must be submitted to the Emergency Appeal Official within 5 business days of the notification of emergency removal. After receipt of an appeal of emergency removal, the Emergency Appeal Official(s) will have 5 business days to provide Respondent a written determination regarding the appeal.

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

### **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/hoop/section-6/ch-3.html> and in University student catalog(s) and any employee handbook of operating procedures. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Misconduct Policy, including but not limited to at the beginning of each fall and spring semester. The notice will include information about Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy, including the Formal Complaint procedure, the University Grievance Process, and available resources, such as support services, health, and mental health services. The notice will specify the right to file a Formal Complaint under this Policy, right to file a police report to law enforcement, the Title IX Coordinator's contact information, and will refer individuals to designated offices or officials for additional information.
- 3.8.2 Ongoing Sexual Misconduct Training. The University's commitment to raising awareness of the dangers of Sexual Misconduct includes providing ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. 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/titleix/available-trainings.html>
- 3.8.3 Training of Title IX Coordinators, Investigators, Hearing Officers and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over University Grievance Processes and appeals shall receive training each academic year related to applicable prohibited conduct, Grievance Processes, due process, and University policies related to Sexual Misconduct. All training materials used to train Title IX-related personnel (e.g. Title IX Coordinators, deputies, investigators, hearing officers, and appellate officers (among others)) will be made available on the University's website: <https://www.utep.edu/titleix/available-trainings.html>

- 3.8.4 Annual Reporting and Notice. The University's Title IX General Policy Statement will be made available to all students, faculty, and staff online <https://www.utep.edu/TitleIX/>, in required publications and in specified departments.

### **3.9 Additional Conduct Violations under this Policy.**

- 3.9.1 Retaliation. Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in a Grievance Process believes they have been subject to Retaliation (as defined in this Policy), they should immediately report the alleged retaliatory conduct to the Title IX Coordinator.
- 3.9.2 False Information and False Complaints. Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.
- 3.9.3 Interference with the Grievance Process. Any person who interferes with the Grievance Process (outlined in Section 3.6 of this Policy) is subject to disciplinary action up to and including dismissal or separation from the University. Interference with a Grievance Process may include, but is not limited to:
- a) Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
  - b) Removing, destroying, or altering documentation relevant to the Grievance Process; or
  - c) Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, 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, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as: Unwelcome, sex-based verbal or physical conduct that:

- 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 Formal Complaint under this Policy will not stop or delay any action unrelated to the Formal 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 or execute an emergency removal.

### 3.10 Documentation.

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

### 3.11 Definitions and Examples<sup>5</sup>

**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 individual who is alleged to be the victim of any prohibited conduct 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.”

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<sup>5</sup> 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.

**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. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

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

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

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.<sup>6</sup>

**Dating Violence**<sup>7</sup> – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of the following factors:

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<sup>6</sup> 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.

<sup>7</sup> 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:

- 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**<sup>8</sup> – 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 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 misconduct is sufficiently severe or pervasive to deny or limit the individual’s ability to participate in or benefit from an education program or activity or an employee’s terms and conditions of employment.<sup>9</sup> A hostile environment can be created by anyone (e.g., administrators, faculty members, employees, students, and University visitors) involved in an education program or activity or work environment.

In determining whether sexual misconduct 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 mistreated. 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 may consider a variety of factors related to the severity, persistence, or pervasiveness of the sexual misconduct, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the

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- (1) the length of the relationship;
  - (2) the nature of the relationship; and
  - (3) the frequency and type of interaction between the persons involved in the relationship.
- (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

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

<sup>8</sup> Family Violence is defined by the Texas Family Code Section 71.004 as:

- (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.

<sup>9</sup> Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy.

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 sexual misconduct, 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 sexual misconduct 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. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

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

After establishing that a person is in fact incapacitated, the University 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.

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

**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** – Conduct on the basis of sex that does not meet the definition of “sexual harassment” under this Policy, but is

- 1) If verbal conduct (including through electronic means), unwanted statements of a sexual nature intentionally stated to a person or group of people, that are objectively offensive to a reasonable person and also so severe or pervasive that they created a Hostile Environment, as defined in this Policy. The type of verbal conduct (if all other elements are met) may include:
  - a) Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);

- b) Requests for sexual favors (including overt or subtle pressure);
  - c) Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences;
  - d) Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
  - e) Persistent, unwanted sexual or romantic attention;
  - f) Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
  - g) Deliberate, repeated humiliation or intimidation.
- 2) If physical conduct, either:
- a) Sexual exploitation, as defined in this Policy;
  - b) Unwelcome intentional touching of a sexual nature;
  - c) Deliberate physical interference with or restriction of movement; or
  - d) Sexual violence as defined in this Policy.

**Participants** – The term “participants” includes the Complainant, Respondent, and any witnesses.

**Parties** – The term “parties” refers to the “Complainant” and the “Respondent” under this Policy.

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

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

**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 Coordinator or Deputy Title IX Coordinators. 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 (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone *because* the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.

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

**Sexual Assault**<sup>10</sup> – 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.

**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** – Conduct on the basis of sex that satisfies one or more of the following:

- a) Quid pro quo: An employee of the institution conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- c) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in this Policy.

Subsections (a) and (c) in this definition are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of

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<sup>10</sup> 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.

equal access. Therefore, any instance of quid pro quo sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this Policy.

**Sexual Misconduct** – This term is broadly defined to encompass sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, stalking, and other Inappropriate Sexual Conduct.

**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**<sup>11</sup> – 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.

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<sup>11</sup> 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.

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

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

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

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

[FERPA Regulations, 34 C.F.R. Part 99](#)

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

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

### **3.14 Other Relevant Policies**

[Regents' Rules and Regulations, Rule 30105 Sexual Harassment, Sexual Misconduct, and Consensual Relationships](#)

[Regents' Rules and Regulations, Rule 31008 Termination of a Faculty Member](#)

[University of Texas Systemwide Policy UTS 184, Consensual Relationships](#)

[University HOP Section 6, Chapter 1: Equal Opportunity/Affirmative Action](#)

[University HOP Section 6, Chapter 4: Consensual Relationships Policy](#)

[University HOP: Discipline and Dismissal of Staff Employees Policy](#)

[University HOP Section 3, Chapter 4: Academic Policies and Faculty Personnel Matters Policy](#)

[University HOP Section 2, Chapter 1: Student Conduct and Discipline Policy](#)