

Policy Prohibiting Sex Discrimination and Sexual Misconduct

I. Reason for Policy

A. Institutional Philosophy

1. Southwestern University is committed to providing an educational and working environment for students, faculty, and staff that is free of all forms of sex discrimination and sexual misconduct. This commitment also extends to include all applicants, donors, alumni, volunteers, and any other constituent of the University. All students, faculty and staff are expected to be familiar with this standard of conduct set forth herein.

B. Federal and State Law

1. This policy is established in compliance with Title IX of the Education Amendments of 1972 (see 34 C.F.R. § 106 et seq.), the Violence Against Women Act of 1994 (“VAWA”), the Campus Sexual Violence Elimination Act of 2013 (“Campus SaVE Act”), Title VII of the Civil Rights Act of 1964, Texas Education Code Chapter 51, and all other applicable state and federal laws and regulation.

- #### C. The University reserves the right to make changes to this Policy in its sole discretion, at any time, and without prior notice. The Policy is subject to continuous review and evaluation by the University. Substantive revisions will be communicated to members of the University community. Nothing in this Policy is designed to create contractual rights – explicit or implied – between the University and any member of the University community.

II. Scope

- #### A. What: This policy defines prohibited conduct including sexual assault, interpersonal violence (including domestic violence and dating violence), stalking, sexual harassment, sexual exploitation, sex discrimination, and other forms of inappropriate sexual conduct. This policy prohibits retaliation against anyone associated with a complaint or grievance process. It also prohibits false complaints or testimony, interference with the University’s grievance process, and failure to report prohibited conduct as a responsible employee.
- #### B. Who: This policy applies to all Southwestern University students, faculty, staff, student organizations, visitors, contractors, University affiliates, applicants for admission or employment, and others conducting business on campus. An individual becomes a Southwestern student and is expected to comply with University policy as soon as they have been registered for at least one course. Student status continues during approved Leaves of Absence and until graduation. A student who withdraws after a semester begins will be held accountable for compliance with University policy through the end of that semester. An employee means an individual who receives compensation for work or services for which the University has the right (whether or not it exercises the right) to supervise and control the manner of performance as well as the result of the work or service. For purposes of this policy, individuals who are both students and employees will be treated according to their primary relationship to the University as determined in the sole discretion of the University’s Title IX Coordinator. Volunteers, Vendors, Contractors and Third Parties are not considered “employees” for the purposes of this Policy.
- #### C. When/Where: Consistent with federal law, the specific conduct, location of, and affiliation of parties involved with the surrounding circumstances will determine the appropriate resolution track.
- #### D. How: The University takes all allegations of violations of this policy seriously. All reported or suspected occurrences of prohibited conduct in this policy will be reviewed for application of the appropriate resolution track by the Title IX Coordinator. The Title IX Coordinator or designee’s

role is to oversee the University's application of this policy, including state reporting requirements, education for the prevention of sexual harassment, to identify and address patterns of systemic problems revealed by such reports, and offer support measures and ongoing remedies to affected individuals with the purpose of restoring or preserving access to the University's education program and activities.

III. "Title IX Prohibited Sexual Harassment" is conduct satisfying the following conditions:

- A. Conduct occurring on or after August 14, 2020, within the United States, within a Southwestern University education program or activity, and the Complainant was participating or attempting to participate in the University program or activity at the time of the conduct. A formal complaint must be submitted by the Complainant or signed by the Title IX Coordinator describing the following prohibited conduct:
- B. Conduct on the basis of sex that constitutes one or more of the following:
 1. Quid Pro Quo Sexual Harassment: occurs when an employee of the University conditions the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.
 2. Hostile Environment Sexual Harassment: is unwelcome sex-based conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's education programs and activities.
 3. Sexual Assault as defined below;
 4. Dating Violence as defined below;
 5. Domestic Violence as defined below; or
 6. Stalking as defined below.

IV. University Prohibited Conduct

- A. Discrimination based on sex or gender identity
 1. Disparate treatment of an individual on the basis of sex or gender, including, but not limited to, sexual orientation, gender identity, gender expression, and pregnancy status, that adversely affects the terms or conditions of the individual's employment or substantially interferes with the individual's access to education or educational benefits.
- B. Interpersonal Violence
 1. Domestic/Family Violence: a felony or misdemeanor crime of violence committed, other than a defensive measure to protect oneself, 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, by a member of a family or household against another member of the family or household:
 - a) a current or former spouse or intimate partner of the harmed party;
 - b) a person with whom the harmed party shares a child in common;
 - c) by a person who is cohabitating with, or has cohabitated with the harmed party,
 - d) by a person similarly situated to a spouse of the harmed party under the domestic or family violence laws of the state of Texas.
 2. Dating Violence: an act, other than a defensive measures to protect oneself, that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the harmed party in fear of imminent physical harm, bodily

injury, assault, or sexual assault, and is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the harmed party;

- a) The existence of such a relationship will be determined based on:
 - (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.
- b) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship."

3. Relationship Abuse: abuse committed by a person who is a member of a family or household or has been in a social relationship of a romantic or intimate nature with the harmed party as defined above in Domestic Violence and Dating Violence. For purposes of this form of prohibited conduct, "abuse" is defined as any act, threat, or pattern of behavior, including verbal, physical, psychological, sexual, academic, technological and economic, that one person uses to attempt to gain or maintain power or control over another.

C. Sexual Assault

1. 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 harmed party.
2. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without consent of the harmed party.
3. Statutory Rape: Sexual intercourse with a person who is under 17 years of age, the statutory age of consent as defined by Texas Law.
4. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Texas Law.

D. Sexual Exploitation

1. Any actual or attempted action that threatens or takes non-consensual sexual advantage of another person for the actor's own benefit, or to benefit anyone other than the affected person. Examples of include, but are not limited to:
 - a) Conduct that meets the definition of indecent assault under Texas law;
 - b) Electronically recording, videoing, photographing, or transmitting sexual sounds or images of another individual without their consent;
 - c) Electronically sending or forwarding offensive sexual material to non-consenting recipients;
 - d) Voyeurism, such as watching private sexual activity without the consent of the participants or allowing a third-party to observe sexual acts without all parties' consent; viewing another person's intimate parts in a place where that person would have a reasonable expectation of privacy;
 - e) Threatening to disclose or disclosing a person's sexual activities, sexual orientation, gender identity, or gender expression with the intent to harm the person.

E. Sexual Harassment

1. Unwelcome, sex-based or gender-based verbal or physical conduct that, determined by a reasonable person, in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.
 - a) "Sex-based" is harassment based on an individual's actual or perceived sex.
 - b) "Gender-based" is harassment based on an individual's actual or perceived gender, sexual orientation, gender identity or gender expression.
 - c) "Verbal conduct" is oral, written, symbolic or gestures.
 - d) "Physical conduct" is unwelcome or forced touching of another person's body.
 - e) The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.
 - f) The University will consider the totality of circumstances, including factors such as the demonstrated impact the conduct has had on the Complainant; the nature and severity of the conduct; the frequency and duration of the conduct; the relationship between the Parties (including accounting for whether one individual has authority over the other); the respective ages of the Parties; the context in which the conduct occurred; the number of persons affected; and whether the speech or conduct deserves the protections of academic freedom.

F. Stalking

1. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: Fear for their safety or the safety of others; or suffer substantial emotional distress.
 - a) Course of Conduct means two or more acts, including, but not limited to, acts in which a party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, or communicates to or about a person, in a manner that a reasonable person would regard as threatening. The perception of threat may be about bodily injury or death of the person or their family members, including someone whom the person is dating, or a threat to the person's property.
 - b) Reasonable Person means a person under similar circumstances and with similar identities to the affected individual.
 - c) Substantial Emotional Distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

G. Inappropriate conduct of a sexual nature

1. Behavior that occurs on campus in an education program or activity, and off-campus in an education program or activity, including online conduct that substantially affects the employment or education environment. The inappropriateness of the conduct will be determined by evaluation of the totality of the circumstances, including the frequency and severity of the conduct, the impact on the employment and education environment, whether a reasonable person would construe the conduct as sexual in nature, and whether the conduct deserves the protections of academic freedom. Behavior that could constitute inappropriate conduct of a sexual nature may include, but is not limited to:

- a) engaging in repeated sexually oriented conversations, comments, horseplay, or the telling of jokes or anecdotes of a sexual nature;
- b) engaging in a course of conduct that fails to observe the appropriate boundaries of the supervisor/subordinate or faculty member/student relationship;

H. Prohibition of Retaliation

1. Retaliation means intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with their rights or privileges, because that individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Retaliation is prohibited and is considered a stand-alone policy violation without regard to any finding of responsibility for other Prohibited Conduct.
2. Complaints of retaliation should be reported immediately to the Title IX Coordinator. Any person who knowingly and intentionally retaliates against an individual is subject to disciplinary action, up to and including termination or dismissal from the University.

I. Prohibition on False Complaints and Evidence

1. Reports of behavior reasonably believed to be a violation of this Policy must be made in good faith. The University will not tolerate intentional false reporting of incidents. It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy, or to tamper with or destroy evidence. Any person who knowingly engages in this prohibited conduct is subject to disciplinary action, up to and including termination or dismissal from the University.
2. Good faith reporting is providing information which a party or witness genuinely believes is accurate. If the report or complaint is ultimately dismissed due to insufficient evidence or found to be untrue, it does not constitute false reporting.
3. Members of the University community are encouraged to seek assistance even if they are unsure that what they are experiencing is a violation of this policy.

V. Evaluation of Consent for purposes of this policy is:

A. Obtaining consent is required to initiate sexual activity. To be effective, consent must be all of the following:

1. Informed (knowing): Securing consent is the responsibility of the person initiating sexual activity. Consent may be withdrawn at any time by any party. Any expression of an unwillingness to engage in any instance of sexual activity (whether through words or clear actions) establishes a presumptive lack of consent.
2. Voluntary (freely given): consent is voluntary and is a clear expression of agreement to engage in each instance and stage of sexual activity. Consent cannot be given or obtained when there is any form of force or coercion.
3. Active (not passive): Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Participation in social activities, sexual history, previous sexual involvement, or a lack of response does not itself establish consent. Consent to one act does not imply consent to another; past consent does not imply future consent. Lack of protest does not constitute Consent. Lack of resistance does not constitute Consent. Silence and/or passivity also do not constitute Consent.

- B. Texas law specifies that individuals under the age of 17 are incapable of giving consent.
- C. Consent cannot be obtained by force and cannot be gained by taking advantage of or causing the incapacitation of another.
- D. Force includes the use of physical violence, threats, intimidation or coercion.
 - 1. Physical violence means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking, and brandishing or using any weapon.
 - 2. Threats are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation, or to cause a person academic or economic harm.
 - 3. Intimidation is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit). Previous occurrences of threats or physical violence may also constitute intimidation.
 - 4. Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular form of sexual contact or sexual intercourse, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.
- E. Incapacitation is defined as a state in which someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.
 - 1. Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person. One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs include slurred or incomprehensible speech, unsteady walking or standing, combativeness, emotional volatility, vomiting, incontinence, or unconsciousness. 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 who is with you?"
 - 2. Having sex with someone whom the Respondent knew, or should have known to be, incapacitated (mentally or physically) is a violation of this policy.
 - 3. In evaluating Consent in cases of incapacitation, the University asks the following two questions: (1) Did the Respondent know that the Complainant was incapacitated? and if not, (2) Would a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated? If the answer to either of these questions is "yes," there was no Consent; and the conduct is likely a violation of this policy.

VI. Student Organization Violations

- A. A student organization is defined as any group that has complied with the formal requirements for University recognition or regulation.
- B. A student organization may be held responsible for University prohibited conduct if one or more members permit, encourage, aid, or assist any of its members, alumni/alumnae, or guests in prohibited conduct.

VII. Supporting Terminology

- A. **Amnesty:** To support reporting of behavior potentially prohibited by this Policy, the university will not pursue student conduct proceedings against a student Complainant, Respondent, or witness for personal use of alcohol, marijuana or other drugs at or near the time of the incident provided their use did not place the health or safety of any other person at risk. The University may however, initiate an educational discussion with any student regarding their personal use of alcohol, marijuana or other drugs. Additional information about the University's Good Samaritan Policy can be found in the Student Handbook.
- B. **Complainant:** the individual(s) who is alleged to have been impacted by Prohibited Conduct in this Policy.
- C. **Education Programs and Activities:** operations of the University, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University that is used for educational purposes. It also includes off-campus locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Prohibited Conduct occurs, including in any building owned or controlled by a student organization that is officially recognized by the University.
- D. **Formal Complaint:** document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct in this Policy against a Respondent and requesting that the University investigate the allegation in accordance with this Policy. A "document filed by a Complainant" means a document or electronic submission (such as an email or online report form) that contains the Complainant's physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.
- E. **Reasonable Person:** when used in references about the harmed party or Complainant, "reasonable person" means a person under similar circumstances and with similar identities to the affected individual.
- F. **Respondent:** means the individual(s) who is alleged to have engaged in prohibited conduct in this Policy.
- G. **Reporting Party:** anyone who submits information or a referral to the Title IX Office regarding allegations of prohibited conduct in this policy.
- H. **Participants:** all individuals who provide testimony or evidence during an investigation, alternative resolution, or at the hearing proceedings.
- I. **Party or Parties:** a Complainant and Respondent are each individually a "Party" and collectively the "Parties" with respect to a Formal Complaint filed under this Policy.
- J. **Preponderance of the Evidence Standard:** is the standard for determining allegations of prohibited conduct under this policy. Preponderance of the evidence means the greater weight of the credible

evidence. This standard is satisfied if the evidence and information gathered in the investigation and hearing indicate that the action is more likely to have occurred than not.

- K. President's Staff: Dean of the Faculty; Vice President for Finance and Administration, Vice President for Student Life; Dean of Enrollment Services; Vice President for University Relations; Chief Marketing Officer; Vice President for Information Services and Chief Information Officer; and Director of Administrative Services for the President's Office and the Board of Trustees.
- L. Substantial Emotional Distress: means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- M. Title IX Coordinator/Title IX Office: all references to "Title IX Coordinator" also refer to any designee acting on behalf of the Title IX Coordinator or Title IX Office. For purposes of this policy a Deputy Title IX Coordinator may serve as a designee. The Title IX Coordinator will be responsible for the oversight and implementation of this Policy.
- N. Witness: individuals who, during the investigation or hearing proceedings, provide information directly relevant to the allegations; witnesses are not character witnesses. Participation as a witness is optional for students and non-affiliated persons, but witness participation is mandatory for employees.

VIII. Reporting and Medical Treatment

- A. Receiving Medical Treatment: it is important for a victim to receive medical treatment and preservation of evidence, if applicable, as soon as practicable after an incident. In cases of sexual assault, and for one's safety and well-being, immediate medical attention is encouraged to evaluate for physical injury, sexually transmitted diseases, and pregnancy. Being examined as soon as possible, ideally within 72 hours, is important for evidence collection, which may be used to support prosecution should the Complainant decide to pursue criminal charges. A student may contact the Health Center at 512.863.1252 during business hours, or Southwestern University Police Department (SUPD) after business hours and on the weekend to be connected with confidential medical services. Victims may also seek medical attention such as a sexual assault forensic exam, from the hospital or Brave Alliance at (512)-738-8817.
- B. Reporting to Law Enforcement: The University recognizes and supports the right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement. The University encourages anyone who believes they experienced or witnessed a crime to make a report to Southwestern University Police Department (SUPD), if the assault occurred on campus, or to local law enforcement, if the assault occurred off campus. If a report of a policy violation is made to SUPD, officers will advise the reporting party of their right to file a report with the Title IX Office. SUPD shall also notify the Title IX Office of the report, and provide the Title IX Office access to any related university law enforcement records, so long as doing so does not compromise any criminal investigation. If a crime is reported to police in the State of Texas, they may be obligated to pursue an investigation even without the victim's consent. Therefore, reporting an assault to the police may not be a strictly confidential process. Students can request to be connected with a confidential resource like a University counselor or an advocate from Williamson County Crisis Center (also known as Hope Alliance) at 1-800-460-7233, who can also be resources through the reporting process.
- C. Confidential Resources: Members of the University community who are officially designated Confidential Employees are: (1) Counselors in the Counseling Center, (2) Medical Practitioners in the Health Center, and (3) the University Chaplain. Students may speak with a Confidential Employee about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking without the

conversation triggering a mandatory report of incident details. A Confidential Employee is not required to report any information that would violate an individual's expectation of privacy, such as the name or other identifying information of an individual who has experienced or allegedly engaged in Sexual Harassment. This provision does not affect any employee's duty to report incidents of sexual misconduct as required by other law.

1. Contact the Counseling Center and Medical Center at 512.863.1252 during business hours. After 5:00 p.m. or on weekends, a student can call the SUPD at 512.863.1944, and tell them it is a confidential matter. The Police can then connect the student with a University counselor.
2. The University Chaplain may be reached by dialing 512.863.1056.

D. Where to Report

1. Any person may report sex discrimination and sexual misconduct to the University's Title IX Coordinator, Katie Rallojaj, and/or to law enforcement. A report to the Title IX Office results in a review under the University's administrative process, while a report to law enforcement results in a criminal process.

a) Contact the Title IX Office: 512-863-1111, TitleIXCoordinator@southwestern.edu, or make a report online: <https://www.southwestern.edu/life-at-southwestern/title-ix/help-for-sexual-misconduct-sexual-assault/>

b) Contact SUPD: 512-863-1944

2. Responsible Employees: all employees who are not designated as confidential employees, are required by state law (TEC, Section 51.252), to promptly report to the Title IX Office allegations of sexual harassment, sexual assault, dating violence, and stalking, that is alleged to have been committed by or against a person who was a student enrolled at or an employee of the University at the time of the incident. Failure to make such a report will lead to termination and can result in criminal prosecution under Texas law.

- E. Anonymous reporting: Anyone can make an anonymous report by submitting information on the University's [Title IX website](#) or through a [confidential hotline](#). Once a report has been shared with the Title IX Coordinator, a Complainant may request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action be taken. However, the University must determine whether or not it is required to investigate an alleged incident, even against such a request, in order to protect the health and safety of the University community. As necessary, the University reserves the right to initiate a Formal Complaint without the active participation by the alleged victim of misconduct. If the Title IX Coordinator elects to file a Formal Complaint, the University will inform the alleged victim of the incident of that decision. Even if the University determines not to investigate the alleged incident, the University may take additional steps it deems necessary to protect the health and safety of the University's community in relation to the alleged incident.

IX. Assessment of Complaint

A. Preliminary Assessment of Report:

1. Upon receipt of a report, the Title IX Coordinator will conduct a preliminary assessment to determine whether the reported conduct may constitute a violation of this policy. The Title IX Coordinator will seek more information about the incident, the people involved, potential witnesses and evidence, the date, time, and location, etc.
2. If the Title IX Coordinator determines that the conduct as reported does not fall within the scope of this Policy, even if investigated, the Title IX Coordinator will close the

matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other University offices, as appropriate.

B. Contacting the Complainant:

1. The Title IX Coordinator or their designee will promptly contact the Complainant to provide written information about the individual’s rights under this policy and supportive measures, accommodations, and resources that are available. The Complainant will be asked how they would like the University to respond, and can request from a range of administrative responses including no administrative response, only accessing resources, alternative resolution, or filing a formal complaint. The Complainant will also be given information about their right to seeking medical assistance, and report to law enforcement.

C. Interim or Administrative Removal:

1. At any time after receiving a report of Prohibited Conduct, the Title IX Coordinator may impose an interim or administrative removal of a student or employee Respondent from the University’s education programs and activities if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any University community member arising from the allegations of Prohibited Conduct justifies removal. In the event the Title IX Coordinator imposes an interim removal, the student or employee Respondent has an opportunity to challenge the interim removal within twenty-four hours of notification. For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus at any time, and for any reason.

D. Reasons for Dismissal:

1. Dismissal After a Formal Complaint: In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it from investigation under this policy if the Title IX Coordinator determines the conduct alleged in the Formal Complaint would not constitute prohibited conduct, even if proved, under this policy.
2. Dismissal During Investigation or Adjudication: The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:
 - a) The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
 - b) The Respondent is no longer employed by the University; or
 - c) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).
3. Notice of Dismissal: In the event the Title IX Coordinator determines the Formal Complaint must be dismissed, the Title IX Coordinator will provide written notice of dismissal to the Parties and advise them of their right to appeal. The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of complaint.

E. Referrals

1. If at the conclusion of the formal complaint process, a referral for other University prohibited conduct is necessary, the Title IX Coordinator will facilitate such a referral to the appropriate university department.

X. Supportive Measures and Resources

- A. The Title IX Coordinator will coordinate support measures for individuals affected by or accused of Prohibited Conduct in this policy. Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University's Education Programs and Activities without unreasonably burdening another Party, including measures designed to protect the safety of all Parties implicated by a report or the University's education environment, or to deter Sexual Harassment.
- B. Supportive measures may include but are not limited to: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the Parties implicated by a report via an administrative No Contact Order. In addition, all Parties are allowed to drop a course in which both Parties are enrolled without any academic penalty.
- C. The University encourages any individual who has questions or concerns to seek support of University-identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance. The University will maintain the confidentiality of Supportive Measures provided to the extent that maintaining such confidentiality does not impair the University's ability to provide the Supportive Measures in question.

XI. Resolution Process Options

- A. Title IX Prohibited Sexual Harassment Formal Proceedings, "Track A":
 1. Matters that constitute Title IX Prohibited Sexual Harassment in this policy require the submission of a Formal Complaint or for a Formal Complaint to be signed by the Title IX Coordinator.
 2. After a Written Notice of Formal Complaint, the University may, in the Title IX Coordinators discretion, facilitate an Alternative Resolution in accordance with the protocol in section XI(D).
 3. Track A matters will proceed in accordance with formal complaint procedures in sections XII, XIII, XIV, and XV.
 4. There may be instances where the same set of underlying Track A facts gives rise to allegations simultaneously within the scope of Track B or C processes. When this occurs, all allegations will be joined to be resolved under the Track A process.
- B. University Prohibited Conduct for Student Respondents, "Track B":
 1. Matters that constitute University Prohibited Conduct related to student Respondents in this policy, require either:
 - a) the submission of a Formal Complaint, or a Formal Complaint to be signed by the Title IX Coordinator; or
 - b) a written request from the Complainant to initiate the Alternative Resolution Process.

2. Track B Alternative Resolution will proceed in accordance with section XI(D).
3. Track B Formal Complaints will proceed in accordance with formal complaint procedures in sections XII, XIII, XIV, and XV.

C. University Prohibited Conduct for Employee Respondents, “Track C”:

1. Matters that constitute University Prohibited Conduct related to staff or faculty Respondents in this Policy, require either:
 - a) the submission of a Formal Complaint, or a Formal Complaint to be signed by the Title IX Coordinator; or
 - b) a written request from the Complainant to initiate the Alternative Resolution Process.
2. A Track C Alternative Resolution will proceed in accordance with section XI(D).
3. A Track C Formal Complaint:
 - a) Track C Formal Complaints will proceed as follows:
 - (1) Upon receipt of a complaint, the Title IX Coordinator will consult with the appropriate member of the President’s Staff to decide whether further investigation or a recommendation for an alternative resolution is warranted. The Title IX Coordinator and member of the President’s Staff shall notify the accused employee member as soon as reasonably possible of the complaint and next procedures.
 - (2) Investigations will proceed in the manner outlined in sections XII and XIII, for the investigation proceedings.
 - (3) Upon completion of the investigation, the investigation report will be given to the appropriate member of the President’s Staff who will consult with the Title IX Coordinator about a recommendation of finding.
 - (4) Written Decision will proceed in accordance with section XIV(C)(2).
 - (5) Appeal Proceedings will proceed in accordance with section XV.

D. Alternative Resolution

1. The University may, in the Title IX Coordinators discretion, facilitate an alternative resolution in accordance with the protocol outlined below. Alternative Resolution will not be permitted if the Respondent is a non-student employee accused of committing Prohibited Conduct against a student.
2. Generally, alternative resolution involves a structured intervention process between Parties and/or other affected community members that seeks to identify and meet the needs of the Complainant and/or other affected community members while providing an opportunity for the Respondent to repair harm (to the extent possible). Alternative resolution may not include an investigation, hearing, or disciplinary action against a Respondent (including transcript notations), but may include imposing appropriate and reasonable remedies as agreed to by the Parties. All alternative resolutions are facilitated by a trained administrator, which may be the Title IX Coordinator, a designee, or an outside expert.
3. Parties may request commencement of an alternative resolution at any time prior to the final determination of a Formal Complaint. After initiating an alternative resolution, Parties may request to end the resolution process any time before signing the resolution agreement. Ending the alternative resolution process may result in commencing with the formal complaint process. No statements made during the alternative resolution process may be used for or against either Party (and the hearing officer and appeal officer may

not consider any such statement made during alternative resolution) should the Parties resume the formal complaint process.

4. Factors the University will consider when determining whether a report of Prohibited Conduct is suitable for Alternative Resolution include, but are not limited to:
 - a) the nature and severity of the conduct, including whether the use of force or a weapon was involved;
 - b) the Respondent's prior known disciplinary or criminal conduct, including whether the University has received other reports of Prohibited Conduct committed by the Respondent;
 - c) whether the alleged incident poses a risk of harm to other individuals or the community;
 - d) the dynamics of power or control commonly associated with the alleged conduct or the nature of the Parties' relationship;
 - e) whether multiple Parties are affected or involved;
 - f) any admissions of responsibility by the Respondent; and
 - g) any other factor deemed relevant by the Title IX Coordinator or their designee in the interest of overall campus safety or safety of the Parties involved.
5. Procedure:
 - a) Parties must request in writing, addressed to the Title IX Coordinator, that they voluntarily agree to proceed with Alternative Resolution. The specific manner of any alternative resolution process will be determined by the Parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the Parties that:
 - (1) Describes the parameters and requirements of the informal resolution process to be utilized;
 - (2) Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third party);
 - (3) Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a Party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
 - (4) Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.
 - b) If the Parties reach a resolution, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will document the terms of the agreed resolution in writing and present the resolution to the Parties for written signature. Once both Parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, appeal, or discipline by the University, except as otherwise provided in the resolution itself. Failure to comply with an alternative resolution agreement may result in disciplinary action.

XII. Written Notice of Formal Complaint

- A. Within a reasonable amount of time after receipt of the Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:
1. A physical copy of or hyperlink to this Policy;
 2. Sufficient details known at the time so that the Party(ies) may prepare for an initial interview with the investigator, to include the identities of the Party(ies) involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);
 3. A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
 4. Information about the Party(ies) right to be accompanied by an advisor of their choice;
 5. Notifying the Complainant and Respondent of their right to inspect and review evidence;
 6. Notifying the Complainant and Respondent of the University's prohibitions on retaliation and false statements; and
 7. Information about resources that are available on campus and in the community.
 8. Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.
- B. Consolidation of Formal Complaints: The University may consolidate formal complaints by the same Complainant(s), against the same Respondent(s), or between the parties where the allegations arise out of the same set of facts or circumstances.

XIII. Investigation Proceedings:

A. Overview

1. After the written notice of Formal Complaint is transmitted to the Parties, the Title IX Coordinator, Deputy, or their designee (the "Investigator") will undertake an investigation to gather evidence relevant to the alleged misconduct. The burden of gathering evidence lies with the University and not with the Parties. The investigation will culminate in a written investigation report that will be submitted to the hearing officer prior to the hearing proceedings. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within 60 days of the transmittal of the written notice of Formal Complaint.

B. Equal Opportunity

1. During the investigation, the Investigator will provide an equal opportunity for the Parties to be interviewed and to present witnesses and evidence. The Investigator will not restrict the ability of the Parties to gather and present relevant evidence on their own. The investigation is a Party's opportunity to present testimonial and other evidence that the Party believes is relevant to resolution of the allegations in the Formal Complaint. A Party that is aware of and has a reasonable opportunity to present evidence and/or identify witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, or excusable neglect.

C. Sexual History

1. During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior is not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

D. Witnesses and Evidence

1. The Investigator will make reasonable attempts to contact and interview individuals who are identified as witnesses with information relevant to the allegations of Prohibited Conduct. The Investigator retains discretion to limit the number of witness interviews if the Investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant. The Investigator will make reasonable attempts to obtain other relevant evidence available from the Parties, witnesses, or other University departments.

E. Investigation Report

1. At the conclusion of the evidence-gathering phase of the investigation the Investigator will transmit to each Party and their advisor an electronic copy of the preliminary investigation report including all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence the University may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a Party or some other source. The report outlines each allegation that potentially constitutes a violation of this policy, outlines the procedural steps of the investigation, summarizes the relevant evidence collected, summarizes participant statements, and lists material facts on which the Parties agree and disagree. The Parties will have ten business days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.
2. The Parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.
3. After the period for the Parties to provide a written response has expired, the Investigator will provide the completed investigation report to each Party and their advisor. Parties will be given the completed investigation report no later than ten business days before the scheduled hearing.

XIV. Adjudication Proceedings

A. Hearing Officers

1. Hearing Officers: The Title IX Coordinator will appoint one or more hearing officers who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint at the conclusion of the hearing process. In most cases, hearing officers are convened from a pool of trained Hearing Board members to create a panel of three members to collectively serve as the “hearing officer.”
2. The pool of potential hearing officers is composed of faculty and staff, and its members receive formal training prior to serving as a hearing officer or Hearing Panel member. The hearing officer(s) will be provided access to the completed investigation report and all relevant evidence prior to the scheduled hearing.
3. The Complainant and the Respondent will be informed of the name(s) of the potential hearing officer(s) at least seven days prior to the hearing, and can request dismissal, with cause, of any potential hearing officer up to 72 hours prior to the scheduled hearing. The decision to grant a dismissal shall be made in the sole discretion of the Title IX Coordinator.

B. Coordination of the Hearing

1. The Title IX Coordinator will promptly communicate a Hearing Notice with Parties about setting a date and time for the hearing and providing a copy of the University’s Hearing Procedures. The hearing may not be held any earlier than ten business days from the date

of transmittal of the written notice.

2. The Title IX Coordinator will appoint a Hearing Coordinator (usually a Deputy Title IX Coordinator) to convene and conduct a hearing pursuant to the Hearing Procedures outlined in this Policy.
3. A Party's will be asked to provide a written response to the hearing notice which should include:
 - a) A list of any witnesses that the Party requests to attend the hearing pursuant to an attendance notice issued by the hearing officer;
 - b) Any objection that the Party has to the University's Hearing Procedures;
 - c) Any request that the Parties be separated physically during the hearing;
 - d) The name and contact information of the advisor who will accompany the Party at the hearing;
 - e) If the Party does not have an advisor who will accompany the Party at the hearing, a request that the University provide an advisor for purposes of conducting questioning.
4. Issuance of Notices of Attendance: The Title IX Coordinator will transmit notices of attendance to any University employee (including administrator, faculty, or staff) whose attendance is required at the hearing, as well as any student or non-affiliated person whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the Title IX Coordinator immediately if there is a material and unavoidable conflict. The employee or student subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. If requested in writing to the Title IX Coordinator, a letter requesting accommodations with academic, athletic, or work obligations may be issued. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.
5. The hearing will be recorded. The audio or video recording will be made available to the Parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.
6. The hearing will be conducted live, with simultaneous and contemporaneous participation by the Parties and their advisors. The hearing may also be conducted virtually, using video conference technology, with all participants in different physical locations.
7. While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:
 - a) Opportunity for each Party to address the hearing officer directly and to respond to questions posed by the hearing officer;
 - b) For Track A matters only, an opportunity for each Party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other Party and any witnesses, including questions that support or challenge credibility;
 - c) For Track B and C matters only, an opportunity for each Party to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other Party and any witnesses, including questions that support or challenge credibility;
 - d) Opportunity for each Party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
 - e) Opportunity for each Party to submit evidence that the Party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;

- f) Opportunity for each Party to make a brief closing statement.
8. Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the Parties, their advisors, the investigator, the hearing officer, the Hearing Coordinator, and other necessary University personnel. Witnesses will be sequestered until such time as their testimony is complete.
9. While a Party has the right to attend and participate in the hearing with an advisor, a Party and/or advisor who violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, by the discretion of the hearing officer.
10. Subject to the minimum requirements specified in this Section, the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the Parties and will explain the rationale for any evidentiary rulings to exclude evidence or questions. The hearing officer retains discretion to limit the number of witnesses present at the hearing if the hearing officer finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant.
11. The hearing is not a formal legal proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified above are met.
12. Parties and witnesses are subject to questioning during the hearing. If a Party or witness refuses to attend the hearing or attends but refuses to submit to questioning by the Parties' or Parties' advisors, the hearing officer may determine if previous statements of that Party or witness will be considered in reaching a determination of responsibility. Participating Parties may also choose to allow the testimony of a Party or witness who does not submit to questioning, or in the case where the attendance of the witness at the hearing was not requested. The hearing officer will take into consideration the totality of witness statements and evidence to ensure that equal opportunity has been given for Parties to respond to the investigation report and evidence. The hearing officer will not draw an inference about the determination regarding responsibility based solely on a Party or a witness's absence from the live hearing and/or refusal to submit to questioning by the Parties' advisors.

C. Deliberation/Determination

1. After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, together with testimony and evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the hearing, or investigation. The hearing officer will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.
2. Written Decision:

- a) After reaching a determination and consulting with an appropriate member of the President's Staff (or other University Official) and Title IX Coordinator, the hearing officer will prepare a written decision that will include:
 - (1) Identification of the allegations potentially constituting Prohibited Conduct made in the Formal Complaint;
 - (2) A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the Parties, interviews with the Parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
 - (3) Articulation of findings of fact, made under a preponderance of the evidence standard, that support the determination;
 - (4) A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
 - (5) The discipline determined by the appropriate member of the President's Staff (or other University Official);
 - (6) Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
 - (7) A description of the University's process and grounds for appeal.
- b) The hearing officer's written determination will be transmitted to the Parties which concludes the hearing process, subject to any right of appeal.
- c) Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer's written determination within 15 days of the conclusion of the hearing.

D. Sanctions and Remedies

1. In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will also determine any discipline to be imposed. Regardless of the finding, the Title IX Coordinator will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.
2. Student Respondents
 - a) The range of sanctions for student Respondents will likely be as follows:
 - (1) For Rape, Incest, Statutory Rape: suspension or expulsion
 - (2) For Fondling, Domestic Violence, Dating Violence, and Stalking: disciplinary probation, disciplinary probation with suspension of privileges, suspension, or expulsion.
 - (3) For Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Exploitation, Sex Discrimination, Inappropriate Conduct of a Sexual Nature, Retaliation, and False Complaints and Evidence: contract probation, disciplinary probation, disciplinary probation with suspension of privileges, suspension, or expulsion.
 - b) Additional remedies may be imposed by the hearing officer that is meant to bring restoration where harm was caused.

- c) If a student is found responsible for Prohibited Conduct in this Policy and the sanction imposed makes the student ineligible to reenroll in the University (i.e., suspension or expulsion), the University will include a notation on the student's transcript (see Student Handbook).
 - d) If the University receives an appropriate request by another postsecondary educational institution, the University will provide to the requesting institution information relating to the University's determination that the student violated this Policy.
3. Faculty and Staff Respondents:
- a) If a faculty or staff member is found responsible for Prohibited Conduct in this Policy, the hearing officer will confer with the Title IX Coordinator to review the case findings. The Title IX Coordinator will confer with the appropriate Presidents Staff member to determine the sanction(s). The Title IX Coordinator will then share that information with the hearing officer for them to complete the process.
 - b) The range of sanctions for faculty and staff respondents will likely be as follows:
 - (1) Written warning, final warning, dismissal/termination.
 - c) Faculty: If procedures for dismissal with cause are instituted, those procedures must conform to the policy and procedures adopted at the January 27, 1978, meeting of the Board of Trustees and as may be subsequently amended. (See Dismissal with Cause, Section IV of the Faculty Handbook.)
 - d) Staff and administrators: If found responsible for prohibited Conduct in this policy, procedures for a warning to immediate dismissal as described within the Performance Management Guidelines section of the Staff Handbook, will be followed.

XV. Appeal Proceedings

- A. Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation and evidence available at the time of the Investigation, and pertinent documentation regarding the grounds for appeal. A Party must file an appeal within five business days of the date they receive notice of dismissal or determination, or within three business days of the other Party appealing, whichever is later. The appeal must be submitted in writing to the Title IX Coordinator, who will assign an appeal officer. The appeal must specifically identify the determination and/or dismissal, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing Party believes the appeal should be granted, and articulate what specific relief the appealing Party seeks.
- B. Appellate Officer:
 - 1. The Title IX Coordinator will appoint one or more appellate officers who will oversee the appeal process and render a final determination. The appellate officer will not be the Title IX Coordinator, or any individuals involved in the related hearing or review proceedings. Appellate officers may be a member of the President's Staff, or may be convened from a pool of trained Hearing Board members, to create a panel of three members who collectively serve as the "appellate officer."
- C. Grounds for Appeal:
 - 1. Either Party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:
 - a) A procedural irregularity affected the outcome;

- b) There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- c) The Title IX Coordinator, investigator, hearing officer, or administrative officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome;
- d) The determination was arbitrary and capricious.

D. Resolution of Appeal:

1. Promptly upon receipt of an appeal, the appellate officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal does not meet the outlined criteria, the appeal officer will dismiss the appeal and provide written notice of the same to the Parties. If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other Party that an appeal has been filed and that the other Party may submit a written statement in response. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal. After the time period for submission of statements has passed, the appeal officer will promptly transmit a written decision to the Parties that explains the outcome of the appeal and the rationale.
2. The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no Party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision. No further review beyond the appeal is permitted. Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within 21 days of an appeal being filed.

XVI. Ongoing Training

- A. The University is committed to preventing and raising awareness of the harm resulting from the Prohibited Conduct in this policy. Prevention includes offering ongoing education to both employees and students publishing this policy on the University's website, and including information about this policy in orientation materials for new students, faculty and staff. Training sessions will include information on how and where to report incidents and resources available, as well as safe and positive options for intervention that may be carried out by individuals to prevent harm in situations of misconduct. In addition, the University Title IX Coordinator, Deputy Title IX Coordinators, and appointed investigators and hearing board representatives receive training each academic year about prevention efforts, investigatory procedures, due process requirements, conducting a hearing, state and federal laws, and University policies related to or described in this policy.

XVII. Advisor of Choice

- A. From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney. The only persons disqualified from being an advisor are witnesses, administrators over the

adjudication process, and anyone who supervises a participant in the process as an employee. Except for the questioning of witnesses during a Title IX Prohibited Sexual Harassment hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a Party, insist that communication flow through the advisor, or communicate with the University about the matter without the Party being included in the communication. In the event a Party's advisor of choice engages in material violation of this Policy, the University may preclude the advisor from further participation, in which case the Party may select a new advisor of their choice. In the event a Party is not able to secure an advisor to attend the hearing, and requests the University to provide an advisor, the University will provide the Party an advisor, without fee or charge. For hearings of Title IX Prohibited Sexual Harassment, the University will have sole discretion to select the advisor it provides if the Party.

XVIII. Confidential Employees

- A. The University designates the following roles as "Confidential Employees":
 1. Medical staff (Nurses and Doctors) in the medical center.
 2. Counselors in the Counseling Center.
 3. University Chaplain.
- B. If a Confidential Employee, in the course and scope of their role, learns from a student about an incident of sexual harassment, sexual assault, dating violence, and stalking, they must make a report to the Title IX Office stating only the type of incident reported and may not include any information that would violate a student's expectation of privacy. This does not affect the employee's duty to report an incident under any other law.

XIX. Responsible Employee - Mandatory Reporting Requirements

- A. All employees who are not designated as confidential are considered Responsible Employees.
- B. As required by state law (TEC, Section 51.252), a Responsible Employee who in the course and scope of their employment learns about an incident of sexual harassment, sexual assault, dating violence, and stalking, that is alleged to have been committed by or against a person who was a student enrolled at or an employee of the University at the time of the incident, must promptly report the incident to the Title IX Office.
- C. The University also requires Responsible Employees to report incidents of all other prohibited conduct in this policy.
- D. Such reports must include all information related to the incident known to the employee, including the names of individuals involved, what is alleged to have occurred, and if the person who experienced harm has expressed a desire for confidentiality in reporting the incident.
- E. A Responsible Employee has no obligation to report prohibited conduct that the employee themselves was a harmed party of. This requirement does not apply to students, although the University may require certain student-workers, such as Resident Assistants, to report incidents of prohibited conduct. Responsible Employees who learn about reportable incidents at a "public awareness event" sponsored by the University or by a student organization affiliated with the University are not required to report those incidents (e.g., "Take Back the Night").
- F. All Responsible Employees who fail to make such a report are subject to termination, and criminal prosecution as required by state law (TEC, Section 51.255(a)). Student-workers would not be subject to criminal prosecution.

XX. Conflicts of Interest, Bias and Procedural Complaints

- A. The Title IX Coordinator, Deputy Title IX Coordinator, hearing coordinator, investigator, hearing officer, appeals officer, and alternative resolution facilitator will be free of any material conflicts of interest or material bias. Any Party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a Party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

XXI. Treatment Records and Other Privileged Information

- A. During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:
 - 1. a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party; or information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege unless the University has obtained the Party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.
 - 2. Notwithstanding the foregoing, the investigator and/or adjudicator may consider any such records or information if the Party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

XXII. Academic Freedom Statement: This policy is not intended to limit legitimate claims of academic freedom (*see* Faculty Handbook). In particular, the policy does not limit classroom teaching concerning sexual topics legitimately related to the content or purposes of a course, even though such topics may elicit discomfort in some class members.

XXIII. Discretion in Application of Policy

- A. The University retains discretion to interpret and apply this Policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the Parties.
- B. The provisions of this Policy and the Hearing Procedures are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this Policy and the Hearing Procedures at any time, and for any reason. The University may apply Policy revisions to an active case provided that doing so is not clearly unreasonable.

XXIV. Outside Appointments, Dual Appointments, and Delegations

- A. The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, the investigator, hearing officer, hearing coordinator, informal resolution officer, and/or appeals officer. The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, hearing coordinator, alternative resolution officer, and/or appeals officer.
- B. The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, hearing coordinator, alternative resolution officer, and appeals officer, may, in the University's discretion,

be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

XXV. Vendors, Contractors and Third Parties

- A. The University does business with various vendors, contractors, and other third-Parties who are not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-Party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-Party's access to campus for any reason. And the University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-Party irrespective of any process or outcome under this policy.

XXVI. Recordings

- A. Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the University and is considered property of the University, subject to any right of access that a Party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any Party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

Policy approved July 1, 2023