

EI-PO8 Sexual Misconduct Policy

FOR IMMEDIATE REPORTING:

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<https://www.uta.edu/titleix/report/index.php>

Report online: <https://www.uta.edu/titleix/report/index.php>

See Section 3.7 below for more detailed information.

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1. Title

Sexual Misconduct Policy

2. Policy

Sec. 1 General Policy Statement.

1.1 The University of Texas at Arlington (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), which provides for prompt and effective responses by higher education institutions to incidents of sexual violence.

1.2 The University will promptly discipline any individuals or organizations within its control who violate this Policy. The University encourages individuals to promptly report violations of this Policy to the Title IX Coordinator or Deputy Coordinators (collectively "Title IX Office") or a Responsible Employee.

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

Sec. 2 Applicability. This Policy applies to all University administrators, faculty, staff, students, and other individuals within the University's control, including visitors and applicants for admission or employment the ("University Community"). This Policy applies to conduct regardless of where it occurs, including off University property, if the conduct potentially affects the complainant's education or employment with the University or potentially affects the University Community. This Policy also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

Sec. 3 Filing a Complaint and Reporting Violations.

3.1 All Members of the University Community and third parties are strongly encouraged to immediately report any incidents of sexual misconduct to the Title IX Office.

- a. Anonymity. Individuals may file an anonymous complaint by telephone, in writing or electronically at <https://www.uta.edu/titleix/report/index.php> with the Title IX Office. An individual's decision to remain anonymous, however, may greatly limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating this Policy.
- b. Confidentiality. Most University employees are required to report and respond to complaints of sexual misconduct. As a result, the University may be unable to honor a request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5 below.
- c. Timeliness of Complaint. Individuals should report sexual misconduct as soon as they become aware of such conduct.

3.2 Responsible Employees Duty to Report. Responsible Employees have the duty to report incidents of, and information reasonably believed to be, sexual misconduct to the Title IX Office. Responsible Employees includes all University employees, including student employees, but does not include Confidential Employees as defined by this Policy. The report must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident.

Under state law, if a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination. For purposes of Failure to Report, the definition of sexual harassment is broader than the definition of sexual harassment under this Policy and is defined as: Unwelcome, sex-based verbal or physical conduct that:

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

(b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities.

Notwithstanding the foregoing reporting requirements, a Responsible Employee is not required to make a report under this section concerning: (1) an incident in which the employee was a victim of sexual misconduct; or (2) an incident of which the employee received information due to a disclosure made at University Title IX public awareness event or by a student organization affiliated with the University.

3.3 Reporting to Law Enforcement. Complainants are encouraged to promptly report crimes to law enforcement, but it is not required. Police jurisdiction depends on where the sexual misconduct occurred. If the sexual misconduct occurred on the University campus, complainants may file a report with the UTA Police Department ("UTAPD") at (817) 272-3381 (non-emergency), or (817) 272-3003 (emergency), or in person at 700 S. Davis Street, Arlington, Texas 76019. If the sexual misconduct occurred off campus and within the city limits of Arlington, complainants may file a report with the City of Arlington Police Department (817) 274-4444 (non-emergency) or 911 (emergency). If the sexual misconduct occurred elsewhere, the complainant should contact local law enforcement authorities. If a report is made by phone, a uniformed officer may be dispatched to the complainant's location to take a written report. The Title IX Office can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

3.4 Reporting to Outside Entities. Complainants may also contact the following external agencies:

For students:

Office of 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, 3rd 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

3.5 Confidential Support and Resources. The law permits specific professions to maintain a Title IX report confidential. Students may discuss an incident with a Confidential Employee, as defined herein, without concern that the person's identity will be reported to the Title IX Office, although Confidential Employees are required to report non-personal identifying information about the incident to the Title IX Coordinator. Employees may also seek assistance from the Employee Assistance Program (EAP), their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource and the incident may remain confidential and not be reported to the Title IX Office. More information regarding such services can be located at the following websites: www.uta.edu/rvsp/resources/important-numbers.php; www.uta.edu/hr/employee-assistance/.

3.6 Immunity. In an effort to encourage reporting of sexual misconduct, the University will grant immunity from student and/or employee disciplinary action to a person who acts in good faith in reporting a complaint, participating in an investigation, or participating in a disciplinary process. This immunity does not extend to the person's own violations of this Policy or a failure to report as required by this policy.

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

Title IX Coordinator:

Michelle Willbanks

841 W. Mitchell St., Student and Administration Building Arlington, Texas 76019-0132

Telephone: (817) 272-4585

titleix@uta.edu

Title IX Deputy Coordinator for Staff, Visitors, and Contractors:

Eddie Freeman

Executive Director, Human Resources

1225 W. Mitchell St., J.D. Wetzel Building 710 S. Davis Dr., Office & Classroom Bldg.,
Suite 104

Arlington, Texas 76019-0132

Telephone: (817) 272-2106

efreeman@uta.edu

Title IX Deputy Coordinator for Faculty:

Antoinette (Toni) Sol, Ph.D.

Vice Provost for Faculty Affairs

701 W. Nedderman Dr., Davis Hall

Arlington, Texas 76019

Telephone: (817) 272-5243

amsol@uta.edu

Title IX Deputy Coordinator for Students:

Heather Snow, Assistant Vice President for Student Affairs

300 W. First Street, University Center, Suite B120

Arlington, TX 76019-0132

Telephone: (817) 272-2354

hsnow@exchange.uta.edu

Title IX Deputy Coordinator for Intercollegiate Athletics:

Debbie Garcia, Executive Senior Associate AD

601 Spaniolo Drive

Arlington, TX 76019

Telephone: (817) 272-2047

rane@uta.edu

Sec. 4. Parties' Rights Regarding Confidentiality. The University has great respect for the privacy of the parties in a complaint. Under federal and state law, however, Responsible Employees who receive a report of sexual misconduct must share

that information with the Title IX Office. The Title IX Office may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality.

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

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

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

Sec. 5. Resources and Assistance.

5.1 Immediate Assistance. Resources are available to both the complainant and respondent in any complaint of sexual misconduct, as well as individuals that have been otherwise impacted or affected by sexual misconduct or a complaint.

- A. Healthcare. Individuals experiencing any form of sexual, domestic, or dating violence, are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 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 Texas Health Arlington Memorial Hospital (AMH) 800 West Randol Mill Road, Arlington, Texas 76012 817.960.6100 or John Peter Smith Hospital (JPS) 1500 South Main Street, Fort Worth, TX 76104 817.702.3431. or the nearest hospital that provides SAFE services. Individuals may be prescribed medication by their health provider to prevent sexually transmitted infections and/or pregnancy even if a SAFE is not performed or the police are not contacted.

For more information about the SAFE, see https://www.texasattorneygeneral.gov/files/cvs/sexual_assault_examination.pdf. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

Medical care can be provided at University Health Services (for students only), at a local emergency room, or by a private physician. Students desiring medical services through the University should contact:

University Health Services
605 S. West Street
Arlington, TX 76019
(817) 272-2771
healthservices@uta.edu
<https://www.uta.edu/healthservices/>

- B. Counseling and Other Services. Counseling support is available to both parties in a complaint and can be provided by University Counseling and Psychological Services (students), a referral through the Employee Assistance Program (employees), or a care provider of the individual's choosing.

Students desiring counseling through the University should contact:

Counseling and Psychological Services
303 Ransom Hall
Arlington, TX 76019
(817) 272-3671

212 Maverick Activities Center
Arlington, TX 76019
(817) 272-1888
<https://www.uta.edu/caps/services/psychological.php>

Counseling and Psychological Services – Psychiatry
605 W. 1st Street
Arlington, TX 76019
(817) 272-2771
<https://www.uta.edu/caps/services/psychiatric.php>

Faculty and staff desiring counseling through the University should contact:

Human Resources Employee Assistance Program
J.D. Wetsel Building, Room 212
1225 W. Mitchell St.

Arlington, TX 76019
(817) 272-5554
(800) 343-3822
<http://www.uta.edu/hr/employee-assistance/>

- C. Police Assistance. If an individual experienced or witnessed sexual misconduct, the University encourages the individual to file a report with the police as described in Section 3.3 of this Policy, even if time has passed since the misconduct occurred. The police may, in turn, share the report with the Title IX Office. Reporting sexual misconduct to law enforcement does not mean the case will automatically go to criminal trial or to a University disciplinary hearing. If the University police are called, a uniformed officer will generally be sent to the scene to take a detailed statement. When appropriate, the police may be able to assist the individual with a ride to the hospital or with obtaining other resources and services. If an individual qualifies, the police will also be able to assist with applying for a Protective Order through the appropriate district or county attorney. A Protective Order is a civil court order issued to prevent further acts of family violence, sexual assault, or stalking. University community members who have Protective Orders are strongly encouraged to provide copies of their orders to the UTAPD.
- D. Written Information. Upon making a report to the Title IX Coordinator, of dating or domestic violence, sexual assault, or stalking, the complainant will be provided written information regarding the following: (1) the importance of preserving evidence that may assist in proving a criminal offense occurred or obtaining a protective order; (2) existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigrations assistance, student financial aid, and other services available both within the University and the community; (3) available assistance regarding how to request changes to academic, living transportation, and working situation.

5.2 Interim Measures.

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual misconduct when applicable.

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

The University's ability to implement interim measures may be affected if the Complainant requests that the University not disclose the Complainant's

identity to relevant University personnel involved in implementing interim measures.

Sec. 6 The Investigation Process

6.1 Key Officials in an Investigation.

A. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. The Title IX Coordinator may delegate any responsibilities under this Policy to Deputy Title IX Coordinators, or assign other designees any responsibilities under this Policy, as necessary, in the best interest of the University.

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

B. Investigators. Employees trained to conduct Title IX investigations. The Title IX Coordinator will ensure that complaints are appropriately investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy.

6.2 Notification of University Offices Offering Assistance. After receiving a complaint, the Title IX Office will inform the parties of available resources and assistance. While taking into consideration requested confidentiality, the Relationship Violence and Sexual Assault Prevention Office ("RVSP") for students and the Employment Opportunity Services Office ("EOS") for employees may serve as a liaison between the parties and the Title IX Office during the investigation.

6.3 Informal Resolution of Certain Complaints.

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

- A. Informal Assistance. If informal assistance is appropriate, the individual will be provided assistance to informally resolve the alleged sexual misconduct. Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual misconduct.
- B. Timeframe. Assistance with informal resolutions of a complaint will be initiated promptly upon the Title IX Coordinator's receipt of the request and will be resolved as soon as possible.
- C. Documentation. The University will document and record informal resolutions. The Title IX Coordinator will retain the documentation.

6.4 Formal Complaint

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

To begin the investigation process, the complainant should submit a formal complaint, including the following:

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

6.5 Investigation Process.

- A. After an investigator is assigned by the Title IX Coordinator, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing. The parties should be provided updates on the progress of the investigation.
- B. The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.

- C. The investigator will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other will be permitted to attend also.
- D. After the investigation is complete, a written report that complies with Texas Ed. Code 51.971 will be issued to the Title IX Coordinator. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred.
- F. After the written report is completed, both parties will be allowed to inspect the report or, at the University's discretion, be provided letters summarizing the findings in the report, and will have reasonable and equitable access to all of the evidence relevant to the alleged violation(s) in the University's possession, subject to FERPA and Texas Education Code, Section 51.971. Each party will have 3 calendar days to submit written comments regarding the investigation to the Title IX Coordinator.
- G. Within 7 calendar days after the deadline for receipt of comments from the parties, the Title IX Coordinator will:
- request further investigation into the complaint;
 - dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
 - find that the Policy was violated.
- H. In the event the final report indicates a preliminary determination of a violation of this policy, a copy of the final report will be forwarded for review and referral for disciplinary action if applicable, to the Office of Student Conduct if the respondent is a student and to the unit head if the respondent is an employee, .
- I. The parties shall be informed concurrently in writing of the decision in accordance with section 6.5.F of this Policy unless the Title IX Coordinator determines notification may jeopardize the safety of either party or other individuals.
- J. If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with applicable policies and procedures.

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

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

At the request of law enforcement, the University may defer its fact-gathering until after the initial stages of a criminal investigation. In such an instance, the University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University may proceed with its investigation.

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

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

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

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

6.10 Sanctions and Discipline. Disciplinary action will be handled under the appropriate disciplinary policy, depending on the status of the respondent. Failure of a student or employee to reasonably cooperate with the investigator

during an investigation is subject to discipline under the applicable student/employee policy.

Sec. 7. Provisions Applicable to the Investigation.

- 7.1 Assistance. During the investigation process, both parties may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in meetings or interviews.
- 7.2 Time Limitations. Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator based on a written showing of good cause by the parties or the University. University recognized holidays will not be included in the calculation of any timelines under this Policy.
- 7.3 Concurrent Criminal or Civil Proceedings. The University will not wait for the disposition of a concurrent criminal or civil justice case to investigate or resolve complaints under this Policy. The University has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 6.7).
- 7.4 Documentation. The University shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and University policy.
- 7.5 Jeanne Clery Act Reporting. Pursuant to the Jeanne Clery Act, the University includes statistics about certain offenses in its annual security report, and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Jeanne Clery Act also requires the University to issue timely warnings and emergency notifications to the University community about certain crimes that have been reported and which may continue to pose a serious or continuing threat to the University Community. Consistent with the Jeanne Clery Act, the University withholds the names and other personal identifiable information of complainants when issuing such notices.

Sec 8. Dissemination of Policy and Educational Programs.

- 8.1 This Policy will be made available to all University administrators, faculty, staff, and students online at <https://www.uta.edu/titleix>. In addition, the General Policy Statement in Section 1 will be made available to all students, faculty, and employees online, in required publications and in specified departments. Periodic notices will be sent to University administrators, faculty, staff and students regarding this Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about University disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.
- 8.2 Ongoing Sexual Misconduct Training. The University's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing

education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about primary prevention, risk reduction, and bystander intervention.

8.3 Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each academic year about offenses, investigatory procedures, due process, and University policies related to sexual misconduct.

Sec. 9. Additional Conduct Violations.

9.1 Retaliation. Any person who retaliates against the parties or any other participants in an investigation or disciplinary process relating to a complaint, or any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in an investigation believes they have been subject to retaliation, they should immediately report the alleged retaliatory conduct to the Title IX Office.

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

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

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

9.4 No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint. The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including: (1) any evaluation or disciplinary action relating to a complainant whose performance is not meeting 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 any interim action.

Sec. 10 Documentation. The University will maintain information related to complaints under this Policy confidential as required by law.

Sec. 11 Appeals. The Student Code of Conduct policy and other University employment policies provide appeal processes for disciplinary actions, which includes disciplinary action for sexual misconduct. There is no separate Title IX appeal process.

Sec. 12 University Reporting Requirements.

Not less than once every three months, the Title IX coordinator will submit to the president a written report ("Quarterly Report") on the reports received by the Title IX Office for the prior period, including information regarding: (1) the investigation of those reports; (2) the disposition, if any, of any disciplinary processes arising from those reports; and (3) the reports for which the University determined not to initiate a disciplinary process, if any. The Title IX Coordinator will immediately report to the president an incident reported to the Coordinator if the Coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

The President will submit to the Board of Regents in a format required by the Board and cause to be posted on the University's website a report regarding the Quarterly Reports for the prior year. The report may not identify any person individually; and must include: (1) the number of reports stated in the Quarterly Reports; (2) the number of investigations conducted as a result of those reports; (3) the disposition of any disciplinary processes arising from those reports; (4) the number of those reports for which the University determined not to initiate a disciplinary process, if any; and (5) any disciplinary actions taken against a Responsible Employee for failing to make a report. The President will also annually certify in writing to the Texas Higher Education Coordinating Board that the University is in substantial compliance with its reporting requirements and Subchapter E-2 of the Chapter 51 of the Texas Education Code.

3. Definitions and Examples¹

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.

¹ 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.

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

Confidential Employees – Confidential Employees include counselors in Counseling and Psychological Services (CAPS), a health care provider in Health Services, UTA Crime Victim Services, and the RVSP Student Advocate. 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.”

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

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.

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.

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.²

Dating Violence³ – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined by the victim with consideration of the following factors:

² 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.

³ 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

- 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) Violence⁴ – 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 harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from the University's programs or activities or an employee's terms and conditions of employment.⁵ A hostile environment can be created by anyone involved in a University's program or activity (e.g., administrators, faculty members, employees, students, and University visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was harassed. To conclude that conduct created or contributed to a

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- (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
- (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
 - (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
 - (1) the length of the relationship;
 - (2) the nature of the relationship; and
 - (3) the frequency and type of interaction between the persons involved in the relationship.
 - (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b).

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

⁴ 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.

⁵ Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University's gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.

hostile environment, the University must also find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.

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

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

Incapacitation – Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

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

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

In evaluating consent in cases of alleged incapacitation, the University asks two questions:

- (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

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

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

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

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

Being impaired by alcohol or other drugs is not a defense to any violation of this Policy.

Intimidation – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

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

Parties -- The term "parties" refers to the "complainant" and the "respondent" in a Title IX complaint.

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

Respondent -- The individual accused of violating this policy.

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

Sexual Assault⁶ – An offense that meets the definition of rape, fondling, incest, or statutory rape:

⁶ Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

- 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.⁷

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

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

- a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's student status, employment, or participation in University activities; or
- b) Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined in this Policy.

Sexual harassment is a form of sex discrimination that includes:

- a) Sexual violence, sexual assault, sexual exploitation, stalking, domestic violence and dating violence as defined herein.
- b) Physical conduct, depending on the totality of the circumstances present and frequency and severity, including but not limited to:
 - i. unwelcome intentional touching; or
 - ii. deliberate physical interference with or restriction of movement.

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- 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.

⁷ Texas Penal Code Section 21.11 and 22.011 dictate 17 years old as the statutory age of consent in Texas.

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

Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. For clarity, Sexual Misconduct includes the VAWA offenses of domestic violence, dating violence, sexual assault and stalking as defined by the Jeane Clery Act. Sexual misconduct can be committed by any person, including strangers or acquaintances.

Sexual Violence – Physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. The term includes, but is not limited to, rape, sexual assault, sexual battery, sexual coercion, sexual abuse, and/or indecency with a child.

Stalking⁸ – 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,

⁸ 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.

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.

4. Relevant Federal and State Statutes, and Standards

[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](#)

5. Other Relevant Policies, Procedures, and Forms

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

[HOP 5-511 Consensual Relationships](#)

[HOP 5-503 Non-Discrimination Policy](#)

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

[HOP 9 Student Conduct and Discipline](#)

[HOP 5-525 Discipline and Dismissal of Classified Employees](#)

[Bystander Intervention](#)

6. University Office(s) Responsible for Policy

Title IX Office

7. Dates Approved or Amended

February 17, 2020

December 9, 2015

8. Contact Information

Questions or comments about this Policy should be directed to the Title IX Office at titleix@uta.edu