

Policy		Effective Date:	August 1, 2020
DS04 -Sexual Misconduct and Interpersonal Violence		Last Revision Date:	August 24, 2020
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Corporate Owner:	President/CEO	Operational Owner:	Vice President for Student Affairs, Chief Diversity Officer, and Title IX Coordinator
Revision Cycle:	Biennially, or as needed to comply with changes to law and policy	Page No:	Page 1 of 31

I. Policy Statement

A. Purpose

Concordia University Texas strives to maintain a living, working, and learning environment that is free from sex discrimination, sexual harassment, sexual misconduct, and interpersonal violence. Sex discrimination, sexual harassment, sexual misconduct, and interpersonal violence against any student, employee or visitor of Concordia University Texas or of any other person associated with the University violate this policy and are contrary to the religious and moral tenets and the mission of Concordia University Texas.

B. Scope

This policy applies to Concordia University Texas’s administrators, faculty, staff, students, and individuals conducting business with the University. This policy applies to conduct that takes place on campus, in or on University owned or controlled premises, in all Education Programs or Activities, including University-sponsored or supported events, and in University vehicles. Additionally, this policy applies off campus when the conduct potentially affects a person’s education or employment with the University, poses a potential risk to members of the University community, or where the University in its discretion has an identifiable interest.

C. Free Speech

Principles of academic freedom are central to the mission of institutions of higher education. Speech and expression that falls within the ambit of academic freedom will not be considered a violation of this policy.

II. Definitions and Prohibited Conduct

A. Applicable Definitions

1. Complainant

A person who was subject to alleged misconduct as described in this policy. There may be more than one Complainant for an incident.

2. Participants

The term “participants” includes a “Complainant”, “Respondent”, and “Witness” as defined in this policy.

3. Parties

The term “parties” includes “Complainant” and “Respondent” as defined in this policy.

4. Preponderance of the Evidence

Preponderance of the evidence 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 matter indicate that the action is more likely to have occurred than not.

5. Respondent

A person who is alleged to have committed prohibited behavior as described in this policy. There may be more than one Respondent for an incident.

6. Witness

A person who is requested to participate in an investigation or a hearing because they may have information about the alleged misconduct. Names of potential witnesses may be supplied by the Complainant, Respondent, or others with knowledge of the matter.

7. Education Programs and Activities

Education Programs and Activities refers to all the 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. 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 Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

B. Prohibited Conduct

The following, broadly referred to as “Sexual Misconduct,” constitute prohibited conduct that violates this and other University policies.

1. Sexual Harassment

Sexual Harassment for purposes of this policy is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking, as those terms are defined in this policy.

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.

Hostile Environment Sexual Harassment is unwelcome 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.

In determining whether a Hostile Environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position.

Sexual Harassment also includes gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender stereotyping, even if those acts do not involve conduct of a sexual nature.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact;
- Unwelcome kissing, hugging, or massaging;
- Sexual innuendos, jokes, or humor;
- Displaying sexual graffiti, pictures, videos, or posters;
- Using sexually explicit profanity;
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities;
- E-mail and Internet use that violates this policy;
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin;
- Sending sexually explicit emails, text messages, or social media posts;
- Commenting on a person's dress in a sexual manner;
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; or
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes.

2. [Dating Violence](#)¹

¹ Dating and Domestic Violence are collectively referred to as "Interpersonal Violence."

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 a dating relationship shall be determined based on the consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- 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.

3. Domestic Violence

Violence, including 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.

4. Retaliation

Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a formal complaint; or who has supported or provided information in connection with a report or a formal complaint; participated or refused to participate in a grievance process under this policy; or engaged in other legally protected activities. For an action or decision to be considered adverse, it must be materially adverse and be of a nature that would dissuade a reasonable, similarly situated person from exercising their right to file a grievance or to participate in an investigation. Retaliation, for purposes of this policy, does not include petty slights or annoyances.

5. Sex Discrimination

The act of treating similarly situated persons differently on the basis of that person's sex. This may also include disparate treatment on the basis of pregnancy or a pregnancy-related condition, or a sex stereotype.

6. Sexual Assault

An offense or attempted offense that meets the definition of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, or Statutory Rape, as those terms are defined below:

- a. **Rape** is the carnal knowledge of a person, 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 or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person.

- b. **Sodomy** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- c. **Sexual Assault** with an Object is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
- d. **Fondling** is 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 or physical incapacity.
- e. **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Texas law.
- f. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent as defined by Texas law.

7. Sexual Exploitation

Sexual exploitation occurs when a person, knowingly or recklessly, takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Non-consensual video- or audio-recording or photographing of sexual activity;
- 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;
- Any activity that goes beyond the boundaries of Consent (such as permitting others to observe consensual sex with someone who is not aware of the observation);
- Public indecency (exposure of genitals to others without consent); or
- Knowingly exposing another person to a sexually transmitted infection (“STI”) or Human Immunodeficiency Virus (“HIV”) without prior knowledge and consent of the person to be exposed to STI or HIV.

8. Stalking

Stalking is 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 that would cause a reasonable person to suffer substantial emotional distress. For the purposes of this definition:

- Course of conduct: Two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
- Reasonable person: A reasonable person under similar circumstances, similarly situated to the victim.
- Substantial emotional distress: Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

9. Other Unprofessional/Inappropriate Conduct

Other Unprofessional/Inappropriate Conduct means behavior or conduct that is unprofessional and/or inappropriate for the educational and/or working environment, but does not rise to the level of Sexual Harassment or other form of Prohibited Conduct outlined above. Other Unprofessional/Inappropriate Conduct will be investigated and adjudicated according to the policies and procedures outlined in Section IX of this Policy.

C. Consent

Consent means a clear, knowing and voluntary agreement, by words or action, to engage in each instance of mutually agreed upon sexual activity. A person who is incapacitated is not capable of giving Consent. Consent is communicated through mutually understandable words or actions that indicate willingness by all of the involved parties to engage in the same sexual activity, at the same time, and in the same way. Clear and open communication is an essential element to conveying and understanding consent. Consent is active and not passive. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent. Relying on nonverbal communication alone may result in a violation of this Policy.

Consent cannot be inferred from silence, passivity, or lack of resistance. Additionally, consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity. Similarly, a prior sexual history or dating history between the participants does not constitute consent. Even in the context of a relationship, there must be mutual consent. Consent may be given for specific activities and not for others.

Any party has the right to change their mind and withdraw consent at any time through words or actions. Once consent is withdrawn, the sexual activity occurring must cease.

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

An individual is unable to provide Consent to engage in sexual activity when the individual:

1. Is under age 17 and (1) is not a spouse of the Respondent or (2) is more than three years younger than the respondent at the time of the offense;

2. Has a mental disorder or developmental or physical disability that renders her or him incapable of giving knowing Consent;
3. Is unconscious or physically unable to resist; or
4. Is Incapacitated from alcohol or other drugs, and this condition was known, or reasonably should have been known, by the Respondent.

D. Incapacitation

Incapacitation means a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.

An incapacitated individual cannot make an informed and rational decision to Consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (*e.g.*, to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s Incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish Incapacitation. When alcohol or drug use is involved, Incapacitation is a state beyond drunkenness or intoxication. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination, considering the individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of Incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

E. Coercion

Coercion means conduct, including intimidation² and express or implied threats of emotional, educational, reputational, financial, or other harm that would place a reasonable person in fear of immediate or future harm and that is employed to persuade or compel someone to engage in unwelcome sexual contact.

III. Reporting Incidents

A. Reporting to the University

² Intimidation means 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.

It is important to note that the University distinguishes between reporting an incident to the University and filing a formal complaint. Reporting sexual misconduct or interpersonal violence informs the University of the incident and allows the University to provide supportive measures to the Complainant. A report to the University will not necessarily result in a formal complaint being filed. If a Complainant wishes to initiate the grievance process, they should file a formal complaint (as outlined in Section IV.B.4 of this policy).

Reports of alleged violations of this policy can be made electronically, verbally, by telephone, or in writing to a Title IX Coordinator. The preferred method of reporting is electronically, using this [online report form](#).

B. Anonymous Reporting

Anyone may make an anonymous report regarding alleged violations of this policy to a Title IX Coordinator or by completing an [online report form](#). While anonymous reports are accepted and will be reviewed by the Title IX Coordinator, the decision to remain anonymous may significantly impact the University's ability to address the reported conduct, investigate the issue, collect evidence, or take action against parties alleged to have violated this policy.

C. Title IX Coordinators

The University has designated a Title IX Coordinator and a number of deputy coordinators to assist the University in its compliance with Title IX and other applicable laws. While the primary responsibility for each coordinator is described below, if you have a Title IX question, concern, report or complaint, do not hesitate to contact any of the persons listed below.

1. Title IX Coordinator

The Title IX Coordinator is responsible for overseeing the University's compliance with Title IX. The University's Title IX Coordinator is:

Daniel Gregory, VP of Administration

512.313.4004, Daniel.Gregory@concordia.edu, Main Campus D104

2. Deputy Title IX Coordinators

The Deputy Title IX Coordinators are responsible for accepting reports and/or complaints of discrimination, harassment, sexual violence or retaliation from students, faculty and staff, assisting with the investigation of Title IX complaints and assisting with the University's training, education and prevention efforts. The University's Deputy Title IX Coordinators are:

Sai Pathi, Financial Controller & Director of Human Resources

512.313.4412, Sairam.Pathi@concordia.edu, Main Campus D221

Responsible for accepting reports and/or complaints against employees.

Ronda Seagraves, Vice President and Athletic Director

512.313.4501, Ronda.Seagraves@concordia.edu, Main Campus G207

Responsible for accepting reports and/or complaints against students and employees regarding the University's athletic programs.

D. Reporting to Law Enforcement

Complainants may choose to file a police report about an incident, regardless of their decision to file a formal complaint with the University. While local law enforcement contacts are listed below, a Title IX Coordinator can assist individuals with contacting the appropriate law enforcement agency for incidents that take place outside of Austin and/or Travis County.

Manuel Jimenez, Chief of Police, Concordia University Texas Campus Police

512-313-3311, Manuel.Jimenez@concordia.edu, Main Campus D138

Austin Police Department

911 (emergency), 512-974-5017 (non-emergency)

<https://www.austintexas.gov/department/police>

Travis County Sherriff's Office

911 (emergency), 512-854-9770 (non-emergency)

<https://www.tcsheriff.org/>

E. Reporting to Outside Entities

Individuals may also contact the following external agencies:

1. For Students and Employees

U.S. Department of Education - Office for Civil Rights

1999 Bryan Street, Suite 1620, Dallas, TX 75201-6810

214-661-9600 (phone), 214-661-9587 (fax)

OCR.Dallas@ed.gov, <http://www2.ed.gov/about/offices/list/ocr/index.html>

U.S. Department of Health and Human Services - Office for Civil Rights

1301 Young Street, Suite 1169, Dallas, TX 75202

800-537-7697 (phone), 214-767-0432 (fax)

ocrmail@hhs.gov, <https://www.hhs.gov/ocr/about-us/contact-us/index.html>

2. For Employees

U.S. Equal Employment Opportunity Commission - Dallas District Office

207 S. Houston Street, 3rd Floor, Dallas, TX 75202

800- 669-4000 (phone), 214-253-2720 (fax)

<https://www.eeoc.gov/field-office/dallas/location>

Texas Workforce Commission - Civil Rights Division

101 E. 15th Street, Room 144-T, Austin, TX 78778-0001

512-463-2642 (phone), 512-463-2643 (fax)
<https://www.twc.texas.gov/partners/civil-rights-discrimination>

F. Campus-Based Confidential Support and Resources

In addition to a number of off-campus confidential resources, the University has also identified several confidential resources available to students and employees. Students may discuss an incident with confidential employees or an off-campus resource (*e.g.*, rape crisis center, doctor, psychologist, clergy person, etc.) at their discretion, without fear of their identity being reported to the University. Likewise, employees may also seek support from the Employee Assistance Program or an off-campus resource (*e.g.*, rape crisis center, doctor, psychologist, clergy person, etc.) at their discretion, without fear of their identity being reported to the University. A number of off-campus resources are listed in Section VI below.

1. Confidential Employees

The University believes it is critical to provide information about available institutional resources to empower individuals experiencing sexual misconduct to make informed decisions about their rights and options. Members of the University community may speak to officially-designated Confidential Employees about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking without the conversation triggering a mandatory report under subsection G of this policy. The University has designated the following individuals as confidential employees:

Scott Davis, LCSW-S, LCDC, Counselor
512.313.5032, Scott.Davis@concordia.edu, Main Campus F112

Rebekah Capriglione, LPC-I, Counselor Intern
512.313.5652, Rebekah.Capriglione@concordia.edu, Main Campus F111

Steven Fick, M. Div., Campus Pastor
512.313.4308, Steven.Fick@concordia.edu, Main Campus F211

2. Employee Assistance Program

Eligible employees have access to the Employee Assistance Program (EAP) as part of their benefits with the University. The EAP covers up to six free face-to-face sessions with a counselor, per issue, per year, plus unlimited telephonic assistance. The university is not notified when an employee uses the service.

Employee Assistance Program
866.726.5267, <http://www.cignabehavioral.com>, 24 hours a day/7 days a week.

G. Mandatory Reporting Requirement for University Employees

Under Texas law, all University employees, with the exception of Confidential Employees, who:

- in the course and scope of their employment³

³ "Course and Scope of Employment" means an employee performing duties in the furtherance of the institution's interests.

- witnesses or receives information regarding an incident that the employee reasonably believes constitutes Sexual Harassment,⁴ Sexual Assault, Dating Violence, or Stalking, which
- 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 University's Title IX Coordinator or a Deputy Title IX Coordinator.

1. **Writing required.** Employees are requested to make a report using the University's online form, available by [clicking here](#). An email or written memo is also acceptable if it can be delivered to a Coordinator promptly after the employee's duty to report arises.
2. **Report Contents.** The employee's report must include all information concerning the incident known to the employee which is relevant to an investigation under this policy, including whether the subject of the report has expressed a desire for an institutional response to the incident or made a request for confidentiality in reporting the incident.
3. **Anonymous Reporting Prohibited.** Employees are required to report sexual harassment even if they have been requested by the person confiding in them to keep the discussion confidential. Employees are not permitted to use the anonymous reporting option.

When an employee receives a report of sexual harassment from a potential victim, the victim should be notified that:

- the employee must report the complaint to a Title IX Coordinator;
 - a Title IX Coordinator will reach out to the victim to provide supportive measures; and
 - confidential communications can be made with the University's Campus Pastor or counselors in the University's Counseling Center and that those communications will not be reported to the Title IX Coordinator without the victim's consent.
4. **Confidentiality.** Unless waived in writing by the affected individual, the identity of an alleged victim of an incident reported pursuant to this mandatory reporting requirement may be disclosed only to:
 - employees of the university who are charged with receipt of the report and/or those who are necessary to investigate the report and/or conduct any related hearings;
 - a law enforcement officer as necessary to conduct a criminal investigation of the report;
 - the person or persons alleged to have perpetrated the incident (to the extent required by law); and/or

⁴ For the purposes of Texas's mandatory reporting requirement only, "Sexual Harassment" means: 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 the University's educational programs or activities.

- potential witnesses to the incident as necessary to conduct an investigation of the report.

Due to the confidential nature of the report and investigation process, the reporting employee will likely not receive any further information about the outcome of the report.

5. **Exceptions.** The mandatory reporting requirement does not apply to:

- Individuals who are themselves the victims of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking;
- Instances when an employee receives information about Sexual Harassment, Sexual Assault, Dating Violence, or Stalking at a public awareness event sponsored by the University; or
- Employees designated as Confidential Employees.

6. **Consequences of Non-Compliance.** When in doubt about whether to report a potential incident, all administrators, faculty, staff, and affiliated parties should err on the side of reporting to a Title IX Coordinator. Confirmed failure of an employee to make a required report is a violation of this policy and state law and will result in termination of that individual's employment.⁵

7. **Immunity.** An employee who in good faith reports, assists in the investigation of a report, testifies, or otherwise participates in a disciplinary process or adjudicative proceeding arising from a report under this Policy, will not be subject to disciplinary action for violations of the administrative policies of the University that are reasonably related to the incident. This immunity does not apply to a person who perpetrates or assists in the perpetration of the incident reported under this policy or who commits a criminal offense pursuant to Texas Education Code § 51.255(a).

8. **Additional reporting requirements for sexual offenses:** Reporting a sexual offense under this policy is not the same as making a "Clery" report under the University's Policy on Mandatory Crime Reporting. Under the University's crime reporting policy, employees will have a duty to report an offense directly to the campus police for statistical reporting purposes. These reporting requirements are outlined in the Policy on Mandatory Crime Reporting.

IV. Confidentiality, Requests Not to Investigate, and Requests to Dismiss Formal Complaints

A. Requests

The University recognizes that the reports made under this process are personal in nature and will make every effort to respect the privacy and wishes of those identified in a report or formal complaint it receives. As stated

⁵ Employees who fail to make a mandatory report under this provision may also be subject to criminal prosecution pursuant to Texas Education Code section 51.255(a).

in Section III.G above, University employees are required by state law to report any information they receive of an alleged violation of this policy to a Title IX Coordinator. Even though a Complainant may request that the University not initiate an investigation, the University may need to proceed in order to act in the best interest of campus safety.

Complainants may make a verbal or written request to the Title IX Coordinator that the University keep their identity and identifying information confidential from Respondents; not investigate a report the University has received; or dismiss a formal complaint. Generally, the University will make every effort to comply with such requests from Complainants. However, the University's Title IX Coordinators must evaluate such requests for confidentiality in the context of the University's responsibility to provide a safe and nondiscriminatory environment for the entire University community. Accordingly, there are situations in which the University must deny a Complainant's request in order to meet its obligations to the campus community as a whole. When weighing a request for confidentiality, the University will consider a range of factors. These factors include, but are not limited to:

- circumstances that suggest there is an increased risk of the Respondent committing additional acts of sexual misconduct, interpersonal violence, or other violence (e.g., prior allegations of sexual misconduct or interpersonal violence made against the Respondent, a history of arrests, etc.),
- the reported use of force during the commission of an alleged violation of this policy,
- the reported use of a weapon during the commission of an alleged violation of this policy,
- significant physical injury resulting from an alleged violation of this policy,
- the reported involvement of multiple Respondents in the commission of an alleged violation of this policy,
- whether the school possesses other means to obtain relevant evidence (e.g., security cameras, personnel who witnessed the event, physical evidence), and
- other relevant factors, including but not limited to:
 - the frequency and severity of the alleged behavior
 - the age of the Complainant (for example, if the Complainant is a minor)
 - any position of trust a Respondent may hold due to the nature of their employment or other relevant status with the university.

B. Notice of Decision on Request

If a Complainant requests in writing that the University not investigate a report, the University must notify the Complainant of its decision related to that request. A Title IX Coordinator will make that notification in writing to the Complainant. Similarly, if a Complainant has made a request that their identifying information not be used in an investigation, a Title IX Coordinator will notify the Complainant in writing of their decision. Lastly, in accordance with Title IX, should the University dismiss a Formal Complaint at any stage of the process, the University must provide both the Complainant and Respondent a written notice of the dismissal of the complaint as well as the reason(s) for the dismissal.

C. Confidentiality

The University recognizes that the privacy of all involved in reported incidents and in all matters resolved through the grievance process is extremely important. The University may only share information as necessary in order to meet its investigative and compliance obligations.

V. Resources and Assistance

A. Immediate Assistance

1. Medical Care

The University strongly encourages victims of dating or domestic violence, sexual assault, or other sexual violence to seek immediate medical attention. Not only will medical personnel be able to provide appropriate medical treatment, they may also be able to preserve DNA and other evidence related to the sexual violence. This evidence may be helpful in any criminal investigation that may take place as well as in obtaining a protective order against the perpetrator. Victims have access to a medical examination in order to preserve evidence whether or not they choose to make a report to law enforcement. Whenever possible, this exam should be done immediately after the incident. If it is not possible to complete the exam immediately, victims who have experienced sexual assault can still obtain a Sexual Assault Forensic Exam (SAFE) within four days of the assault.

More information about the Sexual Assault Forensic Exam is available from the Texas Attorney General at 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.

2. Law Enforcement Assistance

The University strongly encourages individuals who have witnessed or been the victim of sexual misconduct or interpersonal violence to report the incident to law enforcement, even if time has passed since the incident. A law enforcement agency's jurisdiction is geographic, and the agency responsible for receiving a report will depend upon where the incident occurred. If the incident occurred on the Concordia University Texas campus, reports may be filed with the Concordia University Texas Police Department by calling 512-313-3311 or in person at Main Campus, Suite D138. Reports made to the Concordia University Texas Police Department may be shared with a Title IX Coordinator. In addition to receiving reports, the Concordia University Texas Police Department can assist in applications for protective orders.

If the incident occurred in the City of Austin, but off campus, you may file a report with the Austin Police Department by calling 911 (emergency) or 512-974-5017 (non-emergency). If you are not sure which law enforcement agency has jurisdiction over the location in which the incident occurred, the Concordia University Texas Police Department can assist you in identifying the appropriate agency and contacting them to make a report.

3. Counseling Assistance

In addition to medical care, individuals who have experienced sexual misconduct or interpersonal violence are encouraged to seek counseling assistance, even if they do not intend to report the incident to the University or to law enforcement. Additionally, other individuals who may have been impacted by an incident are also encouraged to seek counseling. Counseling can be accessed independently through a provider of the individual's choosing, however the university also provides counseling resources.

Students wishing to talk to a University counselor should contact:

Concordia University Texas Counseling Center
512.313.5032, counseling@concordia.edu, Main Campus F112

Employees should contact:

Employee Assistance Program
866.726.5267, <http://www.cignabehavioral.com>, 24 hours a day/7 days a week.

B. Additional Off-Campus Resources

In addition to the on-campus resources discussed above, there are a number of off campus resources available to students, faculty, and staff.

SAFE – Stop Abuse for Everyone (Sexual & Domestic Violence)
HOTLINE: 512 -267-SAFE (7233); PO Box 19454, Austin TX, 78760
Provides hospital & legal advocacy, free counseling & emergency shelter.

Austin Police Department Victim Services Unit
512-974-5950 or 512-974-5037
APD victim services can assist with protective orders and making a report & crime victim's compensation.

Travis County Sherriff's Dept. Victim Services Unit
512-854-9709
TCSO can assist with obtaining protective orders, making a report, & crime victim's compensation.

VICARS (Legal Service)
888-343-4414; 815 Brazos Ste. 1100, Austin 78701; <https://www.tlsc.org/>
Provide free legal services for crime victims

Texas Association Against Sexual Assault
512-474-7190; <http://www.taasa.org>;
Crisis Center Locator - <https://taasa.org/crisis-center-locator/>
Offers training and information regarding sexual violence.

RAINN (Rape, Abuse, & Incest National Network) (Sexual Assault)
1-800-656-4673 (HOPE); <http://www.rainn.org>
National 24 hr. helpline for sexual assault survivors. Assists in directing people to local services and will speak with persons in crisis

VI. Supportive Measures

Parties involved in an incident reported under this policy are entitled to reasonably available supportive measures, regardless of whether or not a formal complaint is filed. Supportive measures are offered without fee or charge, are not disciplinary or punitive in nature, and are not designed to unreasonably burden the other party.

The University will maintain the confidentiality of the individuals receiving supportive measures, to the extent that maintaining such confidentiality does not impair the University's ability to provide the supportive measures. Supportive measures are assessed individually and tailored to the specific needs of the parties involved. Supportive measures may include, but are not limited to, the following:

- Residence hall reassignment
- Counseling
- Extensions of course-related deadlines
- Modifications to class or work schedules and/or locations
- Withdrawal from or re-taking a class without penalty
- Mutual restrictions on contact between the parties
- Campus escorts
- Leave of absence

VII. Emergency Removal and Employee Administrative Leave

In addition to the supportive measures described in Section VI, the University may, where appropriate, remove a student or employee on an emergency basis.

A. Emergency Removal

A student Respondent may be removed from the University's education programs and activities on an emergency basis if, after an individualized safety and risk analysis by the Title IX Coordinator or their designee, it is determined that that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. Under these circumstances, the student Respondent will be notified in writing of the emergency removal from the University's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.

B. Employee Administrative Leave

An employee Respondent may be placed on administrative leave, in accordance with the University's policy and procedures on employee administrative leave, during the pendency of a grievance process.

VIII. Additional Conduct Violations

A. Other Prohibited Conduct

In addition to the prohibited conduct described in Section II of this policy, individuals subject to this policy should be aware that all other University policies apply as well. Other violations of University policy that occur in the course of an investigation, informal resolution, or formal grievance process are subject to discipline. Examples of such conduct include, but are not limited to:

1. False Complaint or Providing False Information

All participants in this process are expected to provide truthful information to the best of their ability. Any person who, in bad faith, knowingly files a false complaint under this Policy or provides materially false

information is subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of sexual misconduct does not imply a report, formal complaint, or information provided by a Complainant or witnesses was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's or witness statements disclaiming responsibility were false.

2. Failure of Employee to Report

Under state law, if an 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. Required reporting by employees is explained in detail in Section III.G of this policy.

3. Interference with Complaint Resolution Process

Any person who interferes with the complaint resolution process under this policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with a grievance process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the grievance process; or
- Knowingly providing false or misleading information to a Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

B. Concurrent Pending Personnel, Academic, or Conduct Actions

The filing of a formal complaint under this policy will not stop or delay the enforcement of other University policies, including, but not limited to:

- Any evaluation or disciplinary action relating to a Complainant who is not performing up to acceptable standards or who has violated other University rules or policies;
- Any evaluation or grading of students participating in a class;
- The ability of a student to add/drop a class or change academic programs; or
- Any job-related functions of a University employee.

IX. Grievance Procedures

A. University Officials Involved in the Grievance Process

1. Title IX Coordinator

The Title IX Coordinator is the senior University administrator responsible for oversight of the University's compliance with Title IX. The Title IX Coordinator is responsible for responding to reports and formal complaints of sexual misconduct and interpersonal violence as well as other conduct prohibited under this policy. Any member of the University community may contact the Title IX Coordinator with questions or to discuss the grievance process. The Title IX Coordinator is also available to discuss this policy and the grievance process, coordinate supportive measures, and provide education on sexual misconduct, interpersonal violence, and other

relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to assist with these responsibilities. A full list of the Title IX Coordinators can be found in Section III.C of this policy.

2. Investigators

Investigators are neutral and impartial fact finders assigned by the University to investigate formal complaints and gather evidence and information. Investigators are responsible for completing an investigation report at the end of the investigation.

3. Hearing Officers

Hearing officers are responsible for conducting the hearing in an efficient and orderly fashion. This includes ensuring that all participants and attendees of the hearing comply with University expectations for their conduct during the proceedings. Hearing officer are also responsible for evaluating the relevancy of questions the parties wish to ask of each other and witnesses and rendering a written determination regarding the responsibility of the Respondent as related to the alleged conduct charges. Hearing officers are responsible for conducting themselves and rendering a decision in a neutral, impartial, and objective manner.

4. Appeal Officer

The appeal officer is a neutral party assigned to review appeals of the grievance process as outlined in Section IX of this policy. The appeal officer cannot be the Title IX Coordinator or an investigator or hearing officer involved in the decision being appealed.

B. Applicability of Grievance Processes

1. Students

- a. The grievance process in Sections IX.A to IX.J of this policy applies in instances where:
 - The Respondent is a student at the University at the time of the alleged conduct;
 - The conduct alleged is Sexual Harassment, as defined by this policy;
 - The alleged conduct occurred against a person in the United States; and
 - The Complainant was participating in, or attempting to participate in, an education program or activity of the University.
- b. The alternative grievance process in Section IX.K of this policy applies in all other instances where the Respondent is a student at the time of the alleged conduct.

2. Employees

- a. For employee Respondents, the grievance process in Sections IX.A to IX.J of this policy only applies where all of the following conditions are met:
 - The Respondent is an employee at the university at the time of the alleged conduct;
 - The conduct alleged is Sexual Harassment, as defined by this policy;
 - The alleged conduct occurred against a person in the United States; and

- The Complainant was participating in, or attempting to participate in, an education program or activity of the University.
- b. If any of the conditions above are not met, allegations of sex discrimination against employees will be handled pursuant to the procedures outlined in the Employee Handbook.

3. Contracted Workers, Vendors, Visitors, Volunteers, Etc.

In reviewing formal complaint against third parties, the University will apply the analysis described in Section 2b above with regard to employees. The University may apply other institutional policies to third party Respondents if the grievance procedures outlined in this policy do not apply to the alleged conduct.

4. Formal Complaint

In order to initiate the grievance process, the Complainant must sign a formal complaint requesting an investigation and submit it to the Title IX Coordinator. The complaint may be submitted electronically using the [Formal Complaint of Sexual Misconduct or Interpersonal Violence form](#) or in writing and must include the following:

- Name and contact information of Complainant;
- Name(s) of Respondent(s) (if known);
- A detailed description of the alleged conduct or incident that is the basis of the alleged violation under this policy;
- Dates(s), time(s), location(s) of the alleged occurrence(s); and
- Names of any witnesses to the alleged conduct or incident

The Complainant may also submit any documents or information relevant to the formal complaint. The Respondent will have access to any and all information gathered during the course of an investigation, including the formal complaint and any materials submitted with it.

The Title IX Coordinator may also submit and sign a formal complaint against a Respondent in order to request an investigation and initiate the grievance process.

5. Dismissal of Formal Complaints

a. Discretionary Dismissal

The University may dismiss a formal complaint, at its discretion, for any of the following reasons:

- If the Complainant requests in writing to withdraw the formal complaint or any allegations therein;
- If the Respondent is an employee and no longer employed by the University at the time the formal complaint is filed;
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or
- The alleged conduct does not meet the definition of any prohibited conduct as described in this policy.

b. Required Dismissal

Under the Title IX regulations, universities are required to distinguish between prohibited conduct under the purview of Title IX and prohibited conduct that may be a violation of other University policies. The University is legally required to dismiss a formal complaint of Sexual Harassment as defined by this Policy, in whole or in part, when Sexual Harassment is alleged and where:

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

A required dismissal under this section applies only to allegations of Sexual Harassment under the purview of Title IX. The University may still investigate a formal complaint to assess whether other institutional policies have been violated. The University may also investigate allegations of prohibited conduct under this policy but not technically under the purview of Title IX.

c. Notice of Dismissal

If the University dismisses a formal complaint pursuant to the preceding paragraph, the University will provide both parties a written notice of the dismissal in addition to the reason(s) for the dismissal.

d. Appeal of Decision to Dismiss

Either party may appeal the University's decision to dismiss a formal complaint, utilizing the appeal process outlined in Section IX of this policy.

6. Concurrent Criminal or Civil Proceedings

As a matter of practice, the University will not wait for the outcome of a concurrent criminal or civil proceeding to take action on a formal complaint. At the University's discretion, the University may pause or delay an investigation for a brief period of time due to concurrent criminal or civil proceedings on a case-by-case basis.

C. Notice of Formal Complaint

Once a formal complaint is received, a Title IX Coordinator will provide a written notice to the parties of the formal complaint and available University resources. The written notice of the formal complaint will include the following:

- A notice of the grievance process as outlined in this policy;
- A notice of the allegations that potentially constitute prohibited conduct under this policy, including sufficient details about the alleged conduct known to the University at the time of receipt of the formal complaint. "Sufficient details" include the identity of the parties (if known), as well as the date(s), time(s), and location(s) of the alleged conduct;
- A statement of the potential policy violations being investigated;
- A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the grievance process;

- The rights of both parties to an advisor of their choice who may be, but is not required to be, an attorney, and that their advisor may inspect and review all evidence;
- A statement that the parties may review evidence gathered as part of any investigation;
- A reference to the provision of this policy (Section VIII.A.1) that knowingly making false statements or submitting false information during the grievance process is prohibited and subject to disciplinary action; and
- Any other information relevant to the written notice.

If, during the course of the investigation, additional allegations against either party come to light and the University moves forward to investigate allegations that were not included in the original notice to the parties, the University must provide notice of the additional allegations to both parties.

D. Informal Resolution

The University may, in the Title IX Coordinator's discretion, facilitate an Informal Resolution in accordance with the protocol outlined below.

Generally, informal resolution involves a structured, supervised interaction between the Parties and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent and/or other affected community members to accept responsibility and repair harm (to the extent possible). Informal 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 informal resolutions are facilitated by a trained administrator or outside expert.

1. Informal Resolution Availability

Informal resolution is available in matters in which the Title IX Coordinator, in the Title IX Coordinator's discretion, determines it is appropriate. Factors the University will consider when determining whether a report of Prohibited Conduct is suitable for Alternative Resolution include, but are not limited to:

- the nature and severity of the conduct, including whether the use of force or a weapon was involved;
- the Respondent's prior known disciplinary or criminal conduct, including whether the University has received other reports of Prohibited Conduct committed by the Respondent;
- whether the alleged incident poses a risk of harm to other individuals or the community;
- the dynamics of power or control commonly associated with the alleged conduct or the nature of the parties' relationship;
- whether multiple parties are affected or involved;
- any admissions of responsibility by the Respondent; and
- 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.

Informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

2. Informal Resolution Process

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

The specific manner of any informal 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:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-Party);
- 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
- 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.

After receiving the written notice specified in this paragraph, each Party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. The University will not pressure or compel any individual to engage in mediation, to directly confront the other, or to participate in any particular form of informal resolution. Individuals may be accompanied by an adviser or support person at any meetings related to the informal resolution process.

3. Informal Resolution Timeframe

Informal resolutions of a formal complaint will typically be concluded within 30 days after notice to the University that both parties wish to proceed with the Informal Resolution process. The Title IX Coordinator may adjust any time periods or deadlines in the informal resolution process for good cause. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

4. Termination of Informal Resolution

A Party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. If a party exercises their right to terminate an informal resolution, the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

5. Informal Resolution Agreements and Documentation

If the Parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their 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, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a Party

induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either Party or to the University.

Any final resolution pursuant to the informal resolution process will be documented and kept for at least seven years as required by law. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process may not be used for or against either party (and the hearing officer and appeal officer may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

E. Investigation of a Formal Complaint

1. Time to Respond

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

2. Notice of Meetings, Proceedings, and Interviews

The University will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the grievance process, with sufficient time for the party to prepare to participate. The Complainant and Respondent may have an advisor of their choice attend any related interview, meeting, or proceeding in the grievance process. Advisors are not permitted to actively participate in meetings or proceedings in the grievance process, unless explicitly provided for in this policy.

3. Evidence

The parties may present the investigator with any information or evidence that may be relevant to the formal complaint. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the formal complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.

4. Witness Interviews

The Complainant and Respondent may present witnesses to the investigator. The investigator will interview relevant and available witnesses.

5. Investigation Timeframe

The investigation of a formal complaint will typically be concluded within 90 days of the filing of a formal complaint. The University, for good cause, may extend the time frame and must notify both parties of any such extension. The parties should be updated on the progress of the investigation as needed.

6. Access to Evidence

After the investigation report has been drafted, but not yet finalized, the investigator will provide each party and the party's advisor, if any, with access to all evidence obtained (relevant or not) as part of the investigation. Both parties will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be

submitted by the parties, in writing, to the investigator. Advisors are not permitted to submit written response to the evidence on their own or on behalf of the party they are advising. The investigator will consider all timely responses submitted by the parties in finalizing the investigation report.

7. Completed Investigation Report

The investigator will complete an investigation report that fairly summarizes all relevant evidence. In addition, the completed investigation report will contain the following:

- A list of each of the allegations that potentially constitutes prohibited conduct under this policy;
- A timeline of the procedural steps of the investigation;
- Summaries of participant statements and responses to questions.

The investigator will provide the completed investigation report concurrently to both parties and each party's advisor, if any, at least 10 days prior to the date of the scheduled hearing in order to review and prepare for the hearing. A copy of the completed investigation report will also be issued to the Title IX Coordinator and the hearing officer assigned to the hearing.

F. Standard of Evidence and Presumption of Not Responsible

Respondents have the right to be, and will be, presumed not responsible for a violation of prohibited conduct unless found in violation at the end of the grievance process. All decisions in the grievance process will be made using the preponderance of the evidence standard.

G. Hearing

Unless a formal complaint is dismissed or the parties reach an agreement through informal resolution (if applicable), the University will provide a live hearing for all formal complaints subject to the grievance process as outlined in this policy.

1. Written Notice of Hearing

The University will provide written notice to participants of the hearing, and the participant's advisor, if any, at least 10 days in advance of the hearing. The written notice shall include the date, time, and location for the hearing as well as names of all participants in the hearing (including the hearing officer and all parties and participants in the investigation report). The notice shall also include the purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered

2. Challenges to the Hearing Officer

Both the Complainant and the Respondent have the right to challenge the hearing officer on the basis of fairness, impartiality, or objectivity. The challenge must be submitted in writing to the hearing officer within five (5) days after receiving notice of the name of the hearing officer and must state the reasons for the challenge. The hearing officer will be the sole judge of whether they can serve with fairness, impartiality, and objectivity. In the event that the hearing officer recuses themselves, another hearing officer will be selected.

3. Duties of the Hearing Officer during the Hearing

The hearing officer is responsible for conducting the hearing in an efficient and orderly fashion. The hearing officer may question participants who testify at the hearing at any time and will rule on the relevancy of questions posed to participants at the hearing. Additionally, the hearing officer will rule on all procedural matters and on any objections that may arise during the hearing.

4. Physical and Virtual Hearing Space

The University may provide for a live hearing to occur either in person or virtually, utilizing technology that allows both parties and the hearing officer to simultaneously see and hear participants answering questions. At the request of either party, the University will arrange for the hearing to occur with the parties in separate rooms and allowing participants to participate virtually. Participants may choose to appear at the hearing virtually, and are not required to be physically present at the same physical location as the hearing.

5. Access to Evidence

Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report.

6. Recording of the Hearing

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

7. Advisor of Choice

Both parties are entitled to an advisor of their choice at the hearing. If a party does not have an advisor, the University will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and of any witnesses.

8. Opening and Closing Statements

Both the Complainant and the Respondent may make opening and closing statements.

9. Exclusion of Privileged Information

The hearing officer may not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. This includes information protected by attorney-client privilege and physician-patient privilege.

10. Questioning Participants

a. Questioning by the Hearing Officer

The hearing officer may ask questions of any participant in the hearing at any time, and may be the first person to ask questions of any party or witness.

b. Questioning by Advisors

Each party's advisor will have the opportunity to ask relevant questions and follow up questions of the other party and of any witnesses that participate in the hearing. This includes questions challenging credibility. The parties will not be permitted to question other participants themselves. Each advisor has the ability to ask questions verbally, directly, and in real time at the hearing. After an advisor asks each question, but before the participant being questioned responds, the hearing officer will rule as to whether or not the question is relevant to the alleged conduct charges. If the hearing officer decides the question is irrelevant, the hearing officer must explain their decision to exclude the question. If the hearing officer decides the question is relevant, the participant must answer it.

c. Prior Sexual History

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are 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 by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove the Complainant consented to the alleged conduct.

d. Not Submitting to Cross-Examination

If a party or witness refuses to submit to cross-examination during the hearing, the hearing officer may or may not rely on any statement of that party or witness, when reaching a responsibility determination. The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

11. Hearing Officer Determination

Within seven days of the conclusion of the hearing, the hearing officer will issue a written decision, which will include the following:

- The allegations that potentially constitute prohibited conduct under this policy and were under review at the hearing;
- A timeline of the procedural steps of the grievance process, beginning with the receipt of the formal complaint through the conclusion of the hearing;
- The findings of fact that support the hearing officer's determination;
- The decision and rationale as to whether the Respondent is responsible for each allegation;
- Any disciplinary sanctions imposed, if applicable;
- The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

The hearing officer will send a copy of the written decision concurrently to both parties. In addition, a copy will be sent to the dean of students (for student Respondents) or appropriate administrator (for employee Respondents) and the Title IX Coordinator.

H. Sanctions and Remedies

The following sanctions and remedies may be imposed by the hearing officer in accordance with this policy:

1. Student Respondents

- Educational training;
- Prohibition on shared classes or extra-curricular activities;
- Suspension or revocation of rights and privileges, including but not limited to participation in athletic or extracurricular activities and ability to reside in University owned or operated housing;
- Withholding of grades, official transcript, and/or degree;
- Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
- Denial of degree;
- Revocation of degree and withdrawal of diploma;
- Disciplinary probation;
- Suspension from the university. Suspension is for a set period of time and is noted on the academic transcript. At the request of the student, the notation can be removed from the transcript when the period of suspension has concluded and all conditions of the suspension and any other sanctions have been met;
- Expulsion (permanent removal from the University). Expulsion creates a permanent notation on the student's academic transcript; and/or
- Other sanction(s) or remedies as deemed appropriate by the hearing officer.

2. Employee Respondents

- Employment probation;
- Job demotion or reassignment;
- Suspension (with or without pay) for a specific period of time;
- Dismissal or termination;
- Ineligibility for rehire; and/or
- Other sanction(s) or remedies as deemed appropriate by the hearing officer.

I. Appeals

Either party may appeal either the University's decision to dismiss a formal complaint or a hearing officer's decision in writing within 10 days of notification of the decision to dismiss the complaint or the hearing officer's determination. Appeals are limited to the following bases:

- There was a procedural irregularity that affected the outcome of the matter;
- There is new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator(s), or hearing officer had a conflict of interest or bias for or against the parties (generally or the parties specifically involved in this matter) that affected the outcome of the matter.

When an appeal is filed, both parties will be notified in writing of the appeal, and the University will promptly provide a copy of the appeal to the non-appealing party. Any non-appealing party will have seven (7) days from

the notification of the appeal to submit a written statement in support of the outcome. The appeal officer will review the appeal and issue a written decision within 21 days from the date the appeal was submitted.

At the conclusion of their review, the appeal officer will issue a written decision to:

- Affirm the University's decision to dismiss a formal complaint;
- Affirm the hearing officer's determination regarding the Respondent's responsibility and affirm the disciplinary sanction(s) and remedies, if applicable;
- Affirm the hearing officer's determination regarding the Respondent's responsibility and amend the disciplinary sanction(s) and remedies, if applicable;
- Remand the process back to the hearing stage for the original hearing officer to remedy any procedural irregularity or consider new evidence;
- Remand the process back to the hearing stage for a new hearing officer to conduct a new hearing on the matter;
- Reverse the University's decision to dismiss a complaint, reinstate the complaint, and imitate the formal grievance process;
- Reverse the hearing officer's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in an administrative resolution.

J. Record Keeping

The University will retain all of the documentation included in the grievance process for at least seven years, in accordance with state and federal records laws and University policy. Records of all matters resulting in expulsion (students) and ineligibility for rehire (employees) will be kept permanently. All documentation of records are private and confidential. Student records of the grievance process are disciplinary records under [FERPA](#).

K. Alternative Grievance Process for Students

For all other formal complaints where the Respondent is a student at the time of the alleged conduct, the grievance process as outlined below applies:

1. Investigation Report and Preliminary Determination Regarding Responsibility

Section IX.E of this policy applies except that the investigator will include a preliminary determination of responsibility for each allegation in the completed investigation report. The preliminary determination of responsibility will also include the findings of fact that support the investigator's determination as well as the rationale for the determination for each allegation. The completed investigation report will be forwarded to the Title IX Coordinator (or designee).

The Title IX Coordinator (or designee) will conduct an independent review of the investigation report and, at the conclusion of the review, will:

- Accept the preliminary determination regarding responsibility of the Respondent, and either dismiss the matter or proceed to resolution (if applicable);

- Amend the preliminary determination regarding responsibility of the Respondent and either dismiss the matter or proceed to resolution (if applicable); or
- Remand the process back to the investigation stage to address an investigation concern.

2. Resolution

Where a determination of responsibility proceeds to the resolution stage, the Complainant and Respondent may elect one of the following options:

a. Administrative Resolution

Both parties agree to the determination of responsibility outlined in the completed investigation report and waive their right to a hearing. The matter is referred to the dean of students to implement sanctions and/or remedies. Both parties retain the right to appeal the sanctions and/or remedies as outlined in Section X.I of this policy. The finding of responsibility may not be appealed by either party.

b. Hearing

If either party chooses this option, then a hearing must be convened for the resolution of the allegations. In a hearing, the determination regarding responsibility of the Respondent will be made by a hearing officer. Both parties retain the right to appeal the outcome of the hearing, as described in Section IX.I of this policy.

3. Hearing Procedures under the Alternative Grievance Process

The hearing procedures described in Section IX.G will apply to hearings conducted under this alternative grievance process, with the following exceptions:

a. Advisor of Choice

Each party and any witness may have an advisor of their choice at the hearing. Upon request, the University will provide an advisor to either party. Advisors are not permitted to actively participate in any portion of a hearing conducted under the alternative grievance process.

b. Questioning Participants

The hearing officer may ask questions of any participant in the hearing at any time, and may be the first person to ask questions of any party or witness. Each party may ask relevant questions of any participant in the hearing by submitting the questions they would like to be asked to the hearing officer in writing. The hearing officer will determine whether or not the question is relevant to the alleged charges. The hearing officer will then ask relevant cross-examination questions to the participant and allow for relevant follow up questions, if applicable. Advisors are not permitted to ask any questions of participants during hearings conducted under the alternative grievance process.

c. Prior Sexual History

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are 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 by the Complainant, or if the questions and

evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove the Complainant consented to the alleged conduct.

X. Dissemination of Policy, Educational Programs, and Training

A. Dissemination of Policy

This policy will be made available to all University administrators, faculty, staff, and students online on the University's [Title IX website](#). A link to the policy will also be provided in University student catalog(s) and the employee handbook. Periodic notices will be sent to University administrators, faculty, staff and students about the University's sexual misconduct policy, including but not limited to at the beginning of each fall and spring semester.

B. Training and Ongoing Education

The University is committed to making sure the University community is aware of the prohibition on sexual misconduct and interpersonal violence as well as strategies related to primary prevention, risk reduction, and bystander intervention. This ongoing education and training is provided through a number of sources, including training and programs coordinated or conducted by faculty, staff, mental health professions, and trained University personnel. The University may also utilize online courses or modules to assist in training students, faculty, and staff in regards to sexual misconduct. Employees will be trained on their reporting obligations and will be reminded annually of that obligation. More information on training and education can be found online on the University's [Title IX website](#).

C. Training of Personnel Involved in the Grievance Process

All personnel involved in the grievance process (including Title IX Coordinators, investigators, hearing officers, and appeal officers) shall receive annual training related to the grievance process, university policies and procedures related to sexual misconduct, and conducting fair and impartial investigations, hearings, and appellate reviews. All training materials used to train personnel involved in the grievance process will be made available online on the University's [Title IX website](#).

D. Required Reporting and Notice

1. General Title IX Policy Statement

The University's general Title IX policy statement will be made available to all students and employees online on the University's [Title IX website](#). Additionally, it will be included in required publications and made available in specific departments.

2. Reporting to the President and the Board

The Title IX Coordinator shall submit a written report to the President on a quarterly basis. That report shall contain:

- The number of reports of sexual harassment, sexual assault, dating violence, and stalking;
- The investigation of those reports;
- The disposition, if any, of any disciplinary processes arising from those reports; and

- The reports for which the institution determined not to initiate a disciplinary process, if any.

In addition to this quarterly written report, the Title IX Coordinator or Deputy Title IX Coordinator must immediately report to the President any reported instance of sexual harassment, sexual assault, dating violence, or stalking that causes the coordinator to believe that the safety of any person is in imminent danger as a result of the incident.

Annually, the President will submit to the institution's governing body and post on the website a report concerning employee mandatory reports. The report cannot identify any person and must include:

- the number of mandatory reports received;
- the number of investigations conducted as a result of those reports;
- the disposition, if any, of any disciplinary processes arising from those reports;
- the reports for which the institution determined not to initiate a disciplinary process, if any; and
- any disciplinary actions taken against an employee for failing to make a mandatory report.

That report can be found on the University's website at on the University's [Title IX website](#).

3. [Certification to the Texas Higher Education Coordinating Board](#)

On an annual basis, the President will certify in writing to the Texas Higher Education Coordinating Board that the institution is in substantial compliance with SB 212.