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**References:**

## UTHSCT Sexual Harassment Sexual Misconduct



# Sexual Harassment/Sexual Misconduct

## Scope

All University of Texas Health Science Center at Tyler (the "University") administrators, faculty, staff, students, and third parties within the University's control, including visitors and applicants for admission or employment. It applies to conduct regardless of where it occurs, including off University property, if it potentially affects the complainant's education or employment with the University or potentially affects the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

## Purpose

The University is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.

## Policy

### Sec. 1 General Policy Statement

1. The University is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.
2. The University will promptly discipline any individuals or organizations within its control who violate this

Policy. The University encourages you to promptly report violations of this Policy to the Title IX Coordinator or Deputy Coordinator (collectively "Title IX Office") or a Responsible Employee, as identified in Section 3.2 below.

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

## **Sec. 2 Applicability**

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

## **Sec. 3 Filing a Complaint and Reporting Violations**

3.1 All Members of the University Community, Third Party and Anonymous Complainants are strongly encouraged to immediately report any incidents of sexual misconduct and other inappropriate sexual conduct to the Title IX Office.

- a. Anonymity. You may file an anonymous complaint by telephone, in writing or electronically <https://www.tnwgrc.com/UTHCTyler/> with the Title IX Office. Your decision to remain anonymous, however, may greatly limit the University's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating the Policy.
- b. Confidentiality. Most University employees are required to report and respond to complaints of sexual misconduct and 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. You should report sexual misconduct as soon as you become aware of such conduct.

3.2 Responsible Employees. You may also report incidents to Responsible Employees, as defined below.

3.3 Reporting to Law Enforcement. You may also make a complaint with The University Police Department at 903-877-5297 (non-emergency) or 903-877-4444 (emergency) or to the City of Tyler Police Department 903-531-1090 (non-emergency) or 911 (emergency) or to other local law enforcement authorities. 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. You 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, 3<sup>rd</sup> Floor  
Dallas, TX 75202  
Phone: (800) 669-4000  
FAX: (214) 253-2720

**Texas Workforce Commission**

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

3.5 Confidential Support and Resources. Students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider in Health Services, the clergyperson of their choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Office. The University and community resources that provide such services are:

**Student Counseling Center on the UT Tyler Campus (Students Only)**

Student Counseling Center  
3900 University Blvd.  
Tyler, TX 75799  
Appointments: 903-565-5746  
24/7 Crisis Line: 903-566-7254

**University Health Clinic**

3310 Patriot Drive  
Tyler, TX 75701

COPY

Appointments: 903-939-7870

**University of Texas Health Science Center at Tyler Family Medicine Clinic**

11937 US Highway 271

Tyler, TX 75708

Appointments: 903-877-7000

**Jack Voss**

Director of Pastoral Care

11937 US Highway 271

Tyler, TX 75708

903-877-2859

**UT Employee Assistance Program**

700 Fannin St. #2

Suite 1670

Houston, TX 77030

800-346-3549

**Andrews Center (Local Mental Health Authority)**

2323 West Front St.

Tyler, TX 75702

903-597-1351

24/7 Crisis Line: 877-934-2131

**East Texas Crisis Center**

2401 Old Noonday Road

Tyler, TX 75701

903-509-2526

24/7 Crisis Line 903-595-5591 or 800-333-0358

3.6 Immunity. In an effort to encourage reporting of sexual misconduct, the University will grant immunity from student disciplinary action to a person who voluntarily initiates a report of sexual misconduct or assists a complainant, if that person acts in good faith in reporting a complaint or participating in an investigation. This immunity does not extend to the person's own violations of this Policy.

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

**Donny Henry, Title IX Coordinator**

11937 US Highway 271

B621

Tyler, TX 75708

903-877-7323

**Kate Starnes, Deputy Title IX Coordinator**

11937 US Highway 271

B200-H

Tyler, TX 75708

903-877-8943

COPY

## Sec. 4 Parties' Rights Regarding Confidentiality

The University has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Office. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality. In making determinations regarding requests for confidentiality and the disclosure of identifying information to the respondent, the Title IX Coordinator should deliberately weigh the rights and interests of the complainant, the respondent and the campus community.

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

## Sec. 5 Resources and Assistance

### 5.1 Immediate Assistance.

- A. Healthcare. If you experience any form of sexual, domestic, or dating violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of UT Health Tyler or CHRISTUS Mother Frances or the nearest hospital that provides SAFE services.

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

Health Care Resources:

#### **UT Health Tyler Emergency Department (SANE services)**

1000 S. Beckham Ave.  
Tyler, TX 75701  
903-596-3159

#### **CHRISTUS Mother Frances Hospital (SANE services)**

800 E. Dawson  
Tyler, TX 75701  
903-593-8441

#### **University Health Clinic**

3310 Patriot Drive

Tyler, TX 75701  
Appointments: 903-939-7870

**University of Texas Health Science Center at Tyler Family Medicine Clinic**

11937 US Highway 271  
Tyler, TX 75708  
Appointments: 903-877-7000

- B. **Police Assistance.** If you experienced or witnessed sexual misconduct, the University encourages you to make a report to the police. The police may, in turn, share your report with the Title IX Office. A police department's geographic jurisdiction depends on where the sexual misconduct occurred. Thus, if the incident occurred on the University campus, you may file a report with the University Police Department by calling 903-877-5297 or in person at University Police Department headquarters at 11937 US Highway 271, Bldg. 717, Tyler, TX 75708, even if time has passed since the assault occurred.

The University Police Department can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean the case will automatically go to criminal trial or to a University disciplinary hearing. If the University police are called, a uniformed officer will be sent to the scene to take a detailed statement. A police department counselor may also provide you with a ride to the hospital. You may also file a report with the University police even if the assailant was not a University student or employee. If the incident occurred in the City of Tyler, but off campus, you may also file a report with the Tyler Police Department, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.

Police Services:

**University Police Department**

11937 US HWY 271  
Bldg. 717  
Tyler, TX 75708  
903-877-5297  
Emergency 903-877-4444

**Tyler Police Department**

711 W. Ferguson St.  
Tyler, TX 75702  
903-531-1000  
Emergency 911

- C. **Counseling and Other Services.** If you experience sexual misconduct, you are strongly encouraged to seek counseling or medical and psychological care even if you do not plan to request a SAFE or report the assault to the police. You may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

You may receive medical care at the University Health Clinic or the University Family Practice Clinic (for students only), at a local emergency room, or by a private physician. You may also be provided with

psychological support by the UT Tyler Student Counseling Center (students), Employee Assistance (employees), a referral through the Employee Assistance Program, or a care provider of your choosing.

Students desiring counseling should contact:

**Student Counseling Center on the UT Tyler Campus**

Student Counseling Center  
3900 University Blvd.  
Tyler, TX 75799  
Appointments: 903-565-5746  
24/7 Crisis Line: 903-566-7254

Faculty and staff should contact:

**UT Employee Assistance Program**

700 Fannin St. #2  
Suite 1670  
Houston, TX 77030  
800-346-3549

5.2 Interim Measures

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.

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.

**Sec. 6 The Investigation Process — What You Need to Know**

6.1 Key Officials in an Investigation

- A. Title IX Coordinator. The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. Any member of the University community may contact the Title IX Coordinator with questions.
- B. Investigators. The Title IX Coordinator will ensure that complaints are properly investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy. The Title IX Deputy Coordinators will supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary.

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.

6.3 Informal Resolution of Certain Complaints

Both parties may voluntarily agree to use this option instead of or before the formal resolution process but are

not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that they have been subjected to sexual misconduct may immediately file a formal complaint as described in Section 3 of this Policy. Anyone interested in the informal resolution process, should contact the Title IX Coordinator. 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 in informally resolving the alleged sexual harassment. Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.
- B. Timeframe. Informal resolutions of a complaint will be concluded as soon as possible.
- C. Documentation. The University will document and record informal resolutions. The Title IX Coordinator will retain the documentation.

#### 6.4 Formal Complaint and Investigation

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

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

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

#### **Investigation**

- A. After an investigator is assigned, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.
- B. The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.
- C. The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- D. The investigation of a complaint will be concluded as soon as possible after receipt of the complaint. The parties should be provided updates on the progress of the investigation.
- E. After the investigation is complete, a written report<sup>1</sup> will be issued to the Title IX Coordinator and the

appropriate administrator. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred (based on a "preponderance of the evidence" standard).

F. After the written report is completed, both parties will be allowed to inspect the report or, at the University's discretion, be provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. Each party will have 7 business days to submit written comments regarding the investigation to the Title IX Coordinator.

G. Within 7 business days after the deadline for receipt of comments from the parties, the Title IX Coordinator (or designee) will:

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

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

I. The parties shall be informed concurrently in writing of the decision in accordance with section 6.5.F of this Policy.

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

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

6.6 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. The University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University will move forward.

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

#### 6.7 Due Process and Privacy Rights

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

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

- a. Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- b. Ensuring the parties do not share classes, working environments or extracurricular activities;
- c. Making modifications to the on campus living arrangements of the parties;

- d. Providing comprehensive services to the parties including medical, counseling and academic support services, such as tutoring;
- e. Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- f. Determining whether sexual misconduct adversely affected the complainant's University standing;
- g. Designating an individual specifically trained in providing trauma-informed comprehensive services;
- h. Conducting a University climate check to assess the effectiveness of sexual misconduct prevention measures;
- i. Providing targeted training for a group of students, including bystander intervention and sexual misconduct prevention programs;
- j. Issuing policy statements regarding the University's intolerance of sexual misconduct.

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

For Students:

- <https://uthealth-tyler.policystat.com/policy/1983072/latest/>

For Employees:

- <https://uthealth-tyler.policystat.com/policy/2061897/latest/>

## **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 a meeting or interview.

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

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

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.

## **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.uthct.edu/title-IX> and in University publications. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Misconduct 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 risk reduction, including bystander intervention. <https://www.uthct.edu/title-IX>

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.

8.4 Annual Reporting and Notice. The University's Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments.

## **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. <https://uthealth-tyler.policystat.com/policy/2882807/latest/>

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. Providing false or misleading information to the investigator, 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 who is not performing up to acceptable standards or who has violated University rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a University employee. Nothing in this section shall limit the University's ability to take interim action.

## **Sec. 10 Documentation**

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

## **Definitions and Examples<sup>3</sup>**

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

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

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

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.<sup>4</sup>

**Dating Violence**<sup>5</sup> – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined by the victim with consideration of the following factors:

- a. The length of the relationship;
- b. The type of relationship; and
- c. The frequency of interaction between the persons involved in the relationship

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

**Domestic (Family) Violence**<sup>6</sup> – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

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

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

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

The more severe the sex-based harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. 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.

First Amendment Considerations: this Policy does not impair the exercise of rights protected under the First Amendment. The University's sexual misconduct policy prohibits only sex-based harassment that creates a hostile environment. In this and other ways, the University applies and enforces this Policy in a manner that respects the First Amendment rights of students, faculty, and others.

**Incapacitation** – A state of being that prevents an individual from having the capacity to give consent. For example, incapacitation could result from the use of drugs or alcohol, a person being asleep or unconscious, or because of an intellectual or other disability.

**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.

**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.

**Responsible Employee** – A University employee who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.5. Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees.

**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, witness or third party.

**Sexual Assault**<sup>7</sup> – An offense that meets the definition of rape, fondling, incest, or statutory rape:

- a. *Rape*: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b. *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c. *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent.

**Sexual Exploitation** – Occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her 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; 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 submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in University activities; such conduct is sufficiently severe or pervasive that it interferes with an individual's education, employment, or participation in University activities, or creates an objectively hostile environment; or such conduct is intentionally directed towards a specific individual and has the effect of unreasonably interfering with that individual's education, employment, or participation in University activities, or creating an intimidating, hostile, or offensive environment. Sexual harassment is a form of sex discrimination that includes:

- a. Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.
- b. Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
  - i. unwelcome intentional touching; or
  - ii. deliberate physical interference with or restriction of movement.
- c. Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
  - i. explicit or implicit propositions to engage in sexual activity;
  - ii. gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
  - iii. gratuitous remarks about sexual activities or speculation about sexual experiences;
  - iv. persistent, unwanted sexual or romantic attention;
  - v. subtle or overt pressure for sexual favors;
  - vi. exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
  - vii. deliberate, repeated humiliation or intimidation based upon sex.

**Sexual Misconduct** – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. Sexual misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex.

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

**Stalking<sup>8</sup>** – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition--

- a. *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly,

indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- b. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## Relevant Federal and State Statues, and Standards

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

[Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e–2000e-17 and its implementing regulations 29 C.F.R. §1604.11](#)

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

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

## Other Relevant Policies, Procedures, and Forms

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

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

[University Consensual Relationship Policy](#)

[University Equal Employment Opportunity Policy](#)

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

[University Staff Disciplinary Policy](#)

[University Student Conduct and Discipline Policy](#)

## System Administration Office(s) Responsible for Policy

Office of General Counsel

## Contact Information

Questions or comments about this Policy should be directed to:

- [ogc\\_intake@utsystem.edu](mailto:ogc_intake@utsystem.edu)
- [compliance@uthct.edu](mailto:compliance@uthct.edu)

<sup>1</sup>For example, a student may make a complaint to an employee in the Dean of Students' Office, a faculty

member or university police. Each of these individuals is considered a Responsible Employee and accordingly each is obligated to report the complaint to the Title IX Coordinator or other appropriate designee.

<sup>2</sup>Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

<sup>3</sup>The definitions provided in the main body of the text are the definitions adopted by the University. When applicable, the state law definition is included. In any criminal action brought by law enforcement, the state law definition will apply.

<sup>4</sup>Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

<sup>5</sup>Dating Violence is defined by the Texas Family Code, Section 71.0021 as:

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

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

<sup>6</sup>Family Violence is defined by the Texas Family Code Section 71.004 as:

1. an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault,

but does not include defensive measures to protect oneself;

2. abuse, as that term is defined by Sections [261.001\(1\)\(C\)](#), (E), and (G), by a member of a family or household toward a child of the family or household; or
3. dating violence, as that term is defined by Section [71.0021](#).

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

<sup>7</sup>Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

- a. Causing the penetration of the anus or sexual organ of another person by any means, without that person's consent; or
- b. Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
- c. Causing the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

<sup>8</sup>Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

- a. is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:
  - i. bodily injury or death for the other person;
  - ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
  - iii. that an offense will be committed against the other person's property;
- b. causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- c. would cause a reasonable person to:
  - i. fear bodily injury or death for himself or herself;
  - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
  - iii. fear that an offense will be committed against the person's property; or
  - iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

## Attachments

No Attachments

## Approval Signatures

Step Description	Approver	Date
	Kirk Calhoun: President/Prof of Medicine	08/2019
Executive Cabinet	Michelle Harris: Executive Assistant Senior	08/2019
Office of Legal Affairs	Carl Baranowski: VP Legal & General Counsel	07/2019
Faculty Senate	Vijaya Lella: Prof Of Biochemistry	07/2019
	Donald Henry: Dir Compliance	05/2019

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