

SEXUAL MISCONDUCT

A. Purpose

The University of Texas Rio Grande Valley (UTRGV) 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).

B. Persons Affected

This policy applies to all UTRGV administrators, faculty, staff, students, and third parties within UTRGV's control, including visitors and applicants for admission or employment. The policy applies to conduct regardless of where it occurs, including off UTRGV property, if it potentially affects the complainant's education or employment with UTRGV or generally affects the UTRGV 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.

C. Policy

UTRGV prohibits discrimination on the basis of sex in its educational programs or activities and in employment. Sexual misconduct (which includes sexual harassment, sexual violence, sexual assault, stalking, domestic violence and dating violence) is not tolerated. Individuals who engage in sexual misconduct will be subject to disciplinary action. UTRGV will promptly discipline any individuals or organizations within its control who violate this policy. UTRGV encourages you to promptly report violations of this policy to the Title IX Coordinator or Deputy Coordinators (collectively "Title IX Officer") or a Responsible Employee, as identified in Section D.1 below.

This policy does not prohibit speech and conduct protected by the First Amendment of the Constitution and the principals of academic freedom. UTRGV respects the right of a faculty member to discuss freely the subject that they teach and the right of students to engage in constitutionally protected expression.¹ The right to free expression, however, is not absolute. Conduct that creates a sexually hostile environment, even though it contains elements of speech, violates this policy.

¹ The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University's academic freedom and its commitment to integrity, honesty, dignity, respect and honorable conduct (*see generally* Regents' Rule 10901, *Statement of U.T. System Values and Expectations*). In these instances, the University will uphold constitutional rights, but will also exercise its right to speak and engage in educational dialogue with those who expression is contrary to its values.

D. Procedures

1. *Filing a Complaint and Reporting Violations*

- a. All Members of the UTRGV Community, Third Party and Anonymous Complaints You are strongly encouraged to immediately report any incidents of sexual misconduct to the Title IX Officer.
 - i. Anonymity You may file an anonymous complaint in any manner, including by telephone or written communication with the Title IX Officer or online through [Vaqueros Report It](#). Your decision to remain anonymous, however, may greatly limit UTRGV's ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating the policy.
 - ii. Confidentiality Most UTRGV 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 D.1.e below.
 - iii. Timeliness of Complaint You should report sexual misconduct as soon as you become aware of the misconduct.
- b. Responsible Employees You may also report sexual misconduct to a Responsible Employee, as defined below.²
- c. Reporting to Law Enforcement You may also make a complaint to UTRGV University Police at (956) 665-7151 or (956) 882-7777 (non-emergency); 911 (emergency); City of Edinburg Police (956) 289-7700 or City of Brownsville Police (956) 548-7000 (non-emergency) or other local law enforcement authorities. The Title IX Officer 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 UTRGV University Police.
- d. Reporting to Outside Entities You may also contact the external agencies below. For students:

Office of Civil Rights
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810

² 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 a Responsible Employee and is obligated to report the complaint to the Title IX Coordinator or other appropriate designee.

214-661-9600
214-661-9587 (fax)
OCR.Dallas@ed.gov
TDD#: 1-800-521-2172

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
San Antonio EEOC Field Office
Legacy Oaks, Building A
5410 Fredericksburg Road, Ste. 200
San Antonio, TX 78229
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

- e. Confidential Support and Resources Students may discuss an incident with a counselor in the Counseling Center, a health care provider in Health Services, the clergyperson of the student's choice, an individual who works or volunteers in the Office of Victim Advocacy and Violence Prevention, 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 Officer. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of the employee's choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Officer. UTRGV and community resources that provide such services are:

[Office of Victim Advocacy and Violence Prevention \(OVAVP\)](#)
UTRGV Edinburg and Brownsville Campuses

Phone: (956) 665-8287 (E)
 Phone: (956) 882-8282 (B)
 Email: OVAVP@utrgv.edu

[Mujeres Unidas](#) in Hidalgo County
 511 Mustang Dr.
 McAllen, TX 78501
 Phone: (956) 630-4878 or (800) 580-4879
 Fax: (956) 687-4715

[Friendship of Women](#)
 95 E. Price Rd.
 Brownsville, TX 78521
 Phone: (956) 544-7412

[Family Crisis Center](#) in Rio Grande Valley
 616 W. Taylor
 Harlingen, TX 78550
 Phone: (956) 423-9305

- f. Immunity In an effort to encourage reporting of sexual misconduct, UTRGV 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.
- g. Title IX Coordinator and Deputy Coordinators The Title IX Coordinator and Deputy Coordinators are:

Role	Name	Position Title	Dept. Location	Contact Info
Title IX Coordinator:	Florence R. Nocar	Chief Equity & Diversity Officer, Office of Institutional Equity & Diversity	Office of Institutional Equity & Diversity Edinburg Campus	956-665-2103 florence.nocar@utrgv.edu
Deputy Coordinator: Athletics	Chelsea Blakely	Sr. Assoc. AD for Ex. Operations	Athletics HPE1 1.102 - Edinburg Campus	956-665-2205 chelsea.blakely@utrgv.edu
Deputy Coordinator: Staff & Faculty	Debra Torres	HR Business Partner	Human Resources MASS 2.144 - Edinburg Campus	956-665-3815 debra.torres@utrgv.edu
Deputy Coordinator: Students	Douglas R. Stoves	Associate Dean for Student Rights and Responsibilities	Student Rights and Responsibilities Cortez Hall #204 – Brownsville Campus	956- 882-7196 douglas.stoves@utrgv.edu
Assistant Deputy Coordinator: Students	David Marquez	Assistant Director for Student Rights and Responsibilities	Student Rights and Responsibilities Cortez Hall #211 – Brownsville Campus	956-882-5034 david.marquez@utrgv.edu

2. *Parties' Rights Regarding Confidentiality*

UTRGV 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 Officer. 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 the course of the investigation, UTRGV may share information only as necessary with people who need to know to fulfill the purposes of this policy and applicable law, such as investigators, witnesses, and the respondent. UTRGV will take all reasonable steps to ensure there is no retaliation against any participant in the investigation.

3. *Resources and Assistance*

a. *Immediate Assistance*

[UTRGV Counseling Center](#)

Edinburg Campus
Phone: (956) 665-2574

Brownsville Campus
Phone: (956) 882-7641
counseling@utrgv.edu

[UT Employee Assistance Program](#)

Phone: (800) 346-3549

[Mission Regional Medical Center](#)

Phone: (956) 323-1111

[Valley Baptist Medical Center](#)

Phone: (956) 389-1100

[University Police](#)

Phone: (956) 882-4911

[City of Edinburg Police Department](#)

Phone: (956) 289-7700

[City of Brownsville Police Department](#)

Phone: (956) 548-7000

Emergency Phone: 911

- i. 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:

[Doctors Hospital at Renaissance](#)

Safe HAVEN Forensic Exam Center
Edinburg, Texas
(956) 362-7774

[Valley Baptist Medical Center](#)

(956) 389-1100

or to the nearest hospital that provides SAFE services.

For more information about the SAFE, visit [OVAVP](#). 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.

- ii. Police Assistance If you experienced or witnessed sexual misconduct, UTRGV encourages you to make a report to the police. A police department's geographic jurisdiction depends on where the sexual misconduct occurred. So if the incident occurred on a UTRGV campus, you may file a report with UTRGV University Police at (956) 882-4911, even if time has passed since the assault occurred.

UTRGV 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 UTRGV disciplinary hearing. If the UT Rio Grande Valley University Police is called, a uniformed officer will be sent to the scene to take a detailed statement. A police department victim services specialist may also provide a ride to the hospital. You may file a report with the UTRGV University Police

even if the assailant was not a UTRGV student or employee. If the incident occurred in the City of Edinburg or the City of Brownsville, but off campus, please call the Edinburg Police Department at (956) 289-7700 or Brownsville Police Department at (956) 548-7000. A report may be filed with that city's 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.

- iii. Counseling and Other Services If you experience sexual misconduct, you are strongly encouraged to seek 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 or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, if you are not the victim but impacted by a sexual misconduct complaint you are encouraged to seek counseling or psychological care.

You may receive medical care at Health Services (for students only), at a local emergency room, or by a private physician. You may also receive psychological support at the Counseling Center (students), UT Employee Assistance Program (employees), a referral through the UT Employee Assistance Program, or a care provider of your choosing.

Students desiring counseling should contact:

[UTRGV Counseling Center](#)

Edinburg Campus
Phone: (956) 665-2574

Brownsville Campus
Phone: (956) 882-7641

Faculty and staff should contact:

[UT Employee Assistance Program](#)

Phone: (800) 346-3549

b. *Interim Measures and Ongoing Assistance*

UTRGV 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.

4. *The Investigation Process*

a. *Assessment of Complaint*

The Title IX Coordinator or designee will conduct a preliminary assessment of the complaint and determine either that the complaint should be dismissed or authorize an investigation of the complaint. A complaint may be dismissed if the facts alleged in the complaint, even if taken as true, do not constitute a violation of the policy; the complaint fails to allege facts that would violate the policy; or the appropriate resolution or remedy has already been achieved.

b. *Notification of University Offices Offering Assistance*

After receiving a complaint, the Title IX Officer will inform the complainant about resources available through the Office of Victim Advocacy and Violence Protection and the parties of other available resources and assistance. While taking into consideration requested confidentiality, the parties may have the assistance of a support person during the investigation.

c. *Informal Resolution or Formal Resolution*

i. *Informal Resolution*

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 this policy. 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 the informal resolution process and file a formal complaint. With a complaint solely of sexual harassment, not including sexual violence as defined in this policy; and

A. *Informal Assistance* - Assistance may include providing the complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a UTRGV official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, UTRGV 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 Title IX Officer will document and record informal resolutions. The Title IX Coordinator will retain the documentation.

ii. *Formal Complaint and Investigation*

A. Formal Complaint To request an investigation, the complainant should submit a written request with a detailed description of the conduct or event that is the basis of the alleged violation; the complainant's name, and contact information; the name of the person directly responsible for the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. UTRGV 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 the investigator understands the complaint to be and ask the complainant to verify that statement. The UTRGV office receiving the complaint should refer the complaint to the Title IX Coordinator.

B. Investigation

- i. After an investigator is assigned, the respondent will be provided notice of the complaint and allowed a reasonable time to respond in writing.
- ii. The parties may present any information they believe is relevant to the complaint, including the names of witnesses who may provide relevant information.
- iii. The investigator will interview relevant and available witnesses.
- iv. The investigation of a complaint will be concluded as soon as possible after receipt of the complaint. The complainant, respondent, and supervisor, if applicable, should be provided updates on the progress of the investigation and issuance of the report.
- v. After the investigation is complete, a written report³ will be prepared. The report shall include factual findings and a preliminary conclusion

³ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

regarding each allegation of whether a policy violation occurred (based on a “preponderance of the evidence” standard).

- vi. After the written report is completed, the parties will be notified that they have five (5) business days to schedule a time to inspect the report or, at UTRGV’s discretion, letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. Each party will have ten (10) calendar days from inspection to submit written comments regarding the investigation to the Title IX Coordinator.
- vii. Within ten (10) business days after the deadline for receipt of comments from the parties, the Title IX Coordinator or designee will: (1) request further investigation into the complaint; (2) dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or (3) find that the policy was violated.
- viii. If the investigation concludes that the policy was violated, the Title IX Coordinator or designee will refer the matter for disciplinary action under the applicable disciplinary policies.
- ix. The parties will be informed concurrently in writing of the decision in accordance with this policy.
- x. If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with the applicable policies and procedures.
 - a. UTRGV 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 alleged victim.
 - b. The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.

d. *Standard of Proof*

All investigations will use the preponderance of the evidence standard to determine violations of this policy.

e. *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, UTRGV may defer its fact-gathering until after the initial stages of a criminal investigation. UTRGV 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, UTRGV 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 UTRGV's investigation of the complaint.

f. *Remedies*

In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, UTRGV 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:

- i. Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- ii. Ensuring the parties do not share classes, working environments or extracurricular activities;
- iii. Making modifications to the on campus living arrangements of the parties;
- iv. Providing comprehensive services to the parties including medical, counseling and academic support services, such as tutoring;
- v. Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- vi. Determining whether sexual misconduct adversely affected the complainant's standing at UTRGV;
- vii. Designating an individual specifically trained in providing trauma-informed comprehensive services;
- viii. Conducting a UTRGV climate check to assess the effectiveness of sexual misconduct prevention measures;
- ix. Providing targeted training for a group of students including bystander intervention and sexual misconduct prevention programs;
- x. Issuing policy statements that communicate to the UTRGV community that UTRGV does not tolerate sexual misconduct.

g. *Sanctions and Discipline*

Disciplinary action against faculty and employees will be handled under the appropriate disciplinary policy depending on the [status of the respondent](#) as faculty, staff or student.

5. *Provisions Applicable to the Investigation*

- a. Assistance During the investigation process, either party may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.
- b. Time Limitations Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator when a request is made in writing showing good cause by either party or UTRGV.
- c. Concurrent Criminal or Civil Proceedings UTRGV will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. UTRGV has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. D.4.e).
- d. Documentation UTRGV shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and UTRGV policy.

6. *Dissemination of Policy and Educational Programs*

- a. This policy will be made available to all UTRGV administrators, faculty, staff, and students [online](#) and in UTRGV publications. Periodic notices will be sent to UTRGV administrators, faculty, staff and students about UTRGV's Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about UTRGV 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.
- b. Ongoing Sexual Misconduct Training UTRGV'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, or trained UTRGV personnel. Preventive education and training programs will be provided to UTRGV administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention.
- c. 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 UTRGV policies related to sexual misconduct.

7. *Additional Conduct Violations*

- a. Retaliation Any person who knowingly and intentionally retaliates against the parties or anyone who participated in an investigation or disciplinary process related to a

complaint, or against any person who under this policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from UTRGV. A complaint of retaliation should be immediately reported to the Title IX Officer.

- b. 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 UTRGV. A finding that the respondent is not responsible for the sexual misconduct as alleged does not imply a report was false.
- c. Interference with an Investigation Any person who knowingly interferes with an ongoing investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from UTRGV. Interference with an ongoing investigation may include, but is not limited to:
 - i. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
 - ii. Removing, destroying, or altering documentation relevant to the investigation; or
 - iii. Providing false or misleading information to the investigator, or encouraging others to do so.
- d. 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 UTRGV 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 UTRGV employee. Nothing in this section shall limit UTRGV's ability to take interim action.

8. *Documentation*

UTRGV shall confidentially maintain information related to complaints under this policy, as required by law.

E. Definitions and Examples⁴

1. Coercion – The use of undue pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors,

⁴ The definitions provided in the main body of the text are the definitions adopted by UTRGV. When applicable, the state law definition has been included. In any criminal action brought by law enforcement, the state law definition will apply.

including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone's prior sexual activity to another person.

2. Complainant – Anyone who reports prohibited conduct under this policy, regardless of whether that person seeks action under this policy.
3. Consent – Knowing and voluntary words or actions clearly expressing mutually understandable permission to engage in each instance of sexual activity. Silence, in and of itself, cannot be interpreted as consent. Consent to one sexual act does not necessarily imply consent to another. Past consent to sexual acts or activity does not necessarily 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 through either words or actions, as long as that withdrawal is clearly communicated. Any expression of an unwillingness to engage in any instance of sexual activity, whether through words or actions, establishes a presumptive lack of consent. In order to give consent, one must be of legal age to consent under Texas law.

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

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.001(b) of the Texas Penal Code.⁵

4. Dating Violence⁶ – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined by the victim with consideration of the following factors:

⁵ 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.

⁶ 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:

- 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.

5. Domestic (Family) Violence⁷ – 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.
6. Hostile Environment – exists when sexual harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from UTRGV's programs or activities or an employee's terms and

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- (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.

⁷ 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.

conditions of employment.⁸ A hostile environment can be created by anyone involved in a UTRGV program or activity (e.g., administrators, faculty members, employees, students, and UTRGV visitors).

In determining whether sex-based harassment has created a hostile environment, UTRGV 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, UTRGV 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, UTRGV considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including:

- a. the type, frequency, and duration of the conduct;
- b. the identity and relationships of the persons involved;
- c. the number of individuals involved;
- d. the location of the conduct and the context in which it occurred; and
- e. the degree to which the conduct affected an individual's education or employment.

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

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

UTRGV offers the following guidance on consent and assessing incapacitation:

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

⁸ Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University's gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.

determining whether an individual is incapacitated requires an individualized determination.

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

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

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

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

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

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

Being impaired by alcohol or other drugs is no defense to any violation of this policy.

8. **Intimidation** – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.
9. **Other Inappropriate Sexual Conduct** – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or

classroom. Depending on the facts of a complaint, the conduct may not violate this policy but may violate other UTRGV policies including but not limited to standards of conduct or professionalism policies.

10. Parties – The alleged victim of a violation of this policy and the respondent to a complaint under this policy.
11. 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.
12. Respondent – The student, employee, or third party who has been accused of violating this policy.
13. Responsible Employee – A UTRGV employee who has the duty to report incidents of sexual misconduct to the Title IX Officer, 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 individual who works or volunteers in the Office of Victim Advocacy and Violence Prevention and employee with confidentiality obligations as defined in Section D.1.e. Incidents of sexual misconduct and other inappropriate sexual conduct may also be reported to Responsible Employees.
14. Retaliation – Any adverse action threatened or taken against someone because the individual has filed, supported, provided information in connection with a complaint of sexual misconduct or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, respondent, witness or third party.
15. Sexual Assault⁹ – 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

⁹ 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.

the victim is incapable of giving consent because of age or because of 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.

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

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

- a. submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in UTRGV activities;
- b. such conduct is sufficiently severe or pervasive that it creates a hostile environment as defined in this policy.

Sexual harassment is a form of sex discrimination that includes:

- a. Sexual violence, sexual assault, 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.
18. Sexual Misconduct – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, and stalking. The term also includes “other inappropriate sexual conduct,” as defined above. Sexual misconduct can be committed by any person, including strangers or acquaintances, and can occur between or among people of the same or opposite sex.
19. 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, or aggravated sexual assault.
20. Stalking¹⁰ – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for 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.

¹⁰ 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.

- 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.

21. *Title IX Coordinator* - The senior UTRGV administrator who oversees UTRGV'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 UTRGV policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators.

F. Related Statutes or Regulations, Rules, Policies, or Standards

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1618 et seq., and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex.

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

[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.](#)

Texas Labor Code, [Chapter 21](#)

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

University of Texas System Administration Systemwide Policy ([UTS 184](#)), Consensual Relationships
[FERPA Regulations, 34 C.F.R. Part 99](#)

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

UTRGV *Handbook of Operating Procedures*, [STU 02-100](#) Student Conduct and Discipline

G. Dates Reviewed or Amended

Reviewed and Amended - August 23, 2017

October, 2018

Reviewed and Amended – January 17, 2019