

## Handbook of Operating Procedures

### SEXUAL MISCONDUCT

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#### 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; the Campus Sexual Violence Elimination Act (SaVE Act), Violence Against Women Act (VAWA), and Clery 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. It applies to conduct that occurs on UTRGV owned or controlled premises; in an education program or activity, including UTRGV sponsored or supported events; buildings owned or controlled by student organizations officially recognized by UTRGV; or off campus when the conduct potentially affects a person's education or employment with UTRGV or potentially poses a risk of harm to members of the UTRGV community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

#### C. Policy

UTRGV prohibits discrimination on the basis of sex in its educational programs or activities and in employment. Sexual misconduct, retaliation, and other conduct prohibited under this policy will not be tolerated. The definitions of prohibited conduct under this policy are found in Section E. UTRGV will promptly discipline any individuals or organizations within its control who violate this policy. UTRGV encourages you to promptly report incidents that you believe violate this policy to the [Title IX Coordinator or Deputy Coordinators](#) (collectively "Title IX Officer") or a Responsible Employee. 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.<sup>[1]</sup> 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.

<sup>[1]</sup> 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, UTRGV will uphold constitutional rights, but will also exercise its right to speak and engage in educational dialogue with those whose expression is contrary to its values.

## D. Procedures

### 1. *Reporting Incidents*

- a. Report Distinguished from Filing of a Formal Complaint - There is a distinction between reporting an incident of sexual misconduct and filing a formal complaint. Reporting sexual misconduct incidents informs UTRGV of the incident, which allows the institution to provide supportive measures (as outlined in Section D.3.b of this policy) to the complainant. All complainants who report incidents of sexual misconduct will be offered individualized supportive measures. A complainant who wishes to initiate a grievance against a Respondent should file a formal complaint as outlined in more detail under Section D.1.d below. A formal complaint will be reviewed by the Office of Institutional Equity & Diversity (Title IX Office) and may involve an investigation and a hearing to determine the responsibility of the respondent (see Grievance Process in Section D.4 below).
- b. All Members of the UTRGV Community, Third Party and Anonymous Complaints - Any person may report sexual misconduct, retaliation, or other conduct prohibited under this policy to the Title IX Coordinator, even if the person reporting is not the alleged victim of the incident. You are strongly encouraged to immediately report any incidents of sexual misconduct to the Title IX Officer; the report can be a verbal or a written report.
  - i. Anonymity - You may make an anonymous complaint in any manner, including by telephone or written communication with the Title IX Officer or online through [the OIED Report It Form](#). 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.g below.
  - iii. Timeliness of Complaint - Responsible Employees are required to report known incidents and information of sexual misconduct promptly to the Title IX Coordinator. For others in the UTRGV community, you are strongly encouraged to report sexual misconduct, retaliation, and any other conduct prohibited under this policy as soon as you become aware of such conduct.
- c. Title IX Coordinator and Deputy Coordinators - If you are required to inform the Title IX Officer of sexual misconduct, complete the [OIED Report It Form](#) or the [Confidential Employee Sexual Misconduct Reporting Form](#), as applicable.
- d. Filing a Formal Complaint - The complainant may file a formal complaint with the Title IX Coordinator, as follows:

- i. The complainant must submit and sign a written statement requesting an investigation and setting out the known details of the alleged conduct that is the subject of the formal complaint, including the following:
    1. Complainant's name and contact information;
    2. Respondent's name;
    3. Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
    4. Date(s) and location(s) of the alleged occurrence(s);
    5. Names of any witnesses to the alleged occurrence(s); and
    6. The resolution sought.
  - ii. The complainant may also submit any documents or information that is relevant to the formal complaint.
  - iii. The Title IX Coordinator may also sign a formal complaint against a respondent (requesting an investigation).
- e. Reporting to Law Enforcement - You may also report to UTRGV [University Police](#); (956) 882-4911, or call 911 (for emergency services); [City of Edinburg Police](#) (956) 383-7411, [City of Harlingen Police](#) (956) 216-5940, [City of Brownsville Police](#) (956) 548-7000, 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.
- f. 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  
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

- g. Confidential Support and Resources - Students may discuss an incident with confidential employees (as defined below) or an off-campus resource (i.e. rape crisis center, doctor, psychologist, clergy person, etc.) without concern that the person's identity 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 clergy person of their choice, or an off-campus rape crisis resource without concern that the person's identity will be reported to the Title IX Office. UTRGV and community resources that provide such services are:

[Office of Advocacy and Violence Prevention](#) (OAVP)  
UTRGV Edinburg and Brownsville Campuses  
Phone: (956) 665-8287 (E)  
Phone: (956) 882-8282 (B)  
Email: [OAVP@utrgv.edu](mailto:OAVP@utrgv.edu)

[Mujeres Unidas](#) in Hidalgo County  
Phone: (956) 630-4878 or (800) 580-4879

[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

- h. Immunity - In an effort to encourage reporting of sexual misconduct, UTRGV will grant immunity from student or employee disciplinary action to a person who acts in good faith in reporting an incident, filing a formal complaint, or participating in a grievance process (e.g. investigation, hearing, appeal). This immunity does not extend to the person's own violations of this policy.
2. *Parties' Rights Regarding Confidentiality, Requests to Not Investigate, and Requests to Dismiss Formal Complaints*
- a. UTRGV has great respect for the privacy of the parties identified in a report or formal complaint. Under federal and state law, however, responsible employees (defined below) who receive information of alleged sexual misconduct must share that information with the Title IX Coordinator. UTRGV, through the Title IX Coordinator, may need to act to maintain campus safety and must determine whether to investigate further, regardless of the complainant's request for confidentiality or request to not investigate a report.
  - b. In making determinations regarding requests for confidentiality, complainant's requests to not investigate, complainants' requests to dismiss formal complaints, or requests to not disclose identifying information to respondents, the Title IX Coordinator must deliberately weigh the rights, interests, and safety of the Complainant, the respondent and the campus community. Factors UTRGV must consider when determining whether to investigate an alleged incident of sexual misconduct include, but are not limited to:
    - i. The seriousness of the alleged incident;
    - ii. Whether UTRGV has received other reports of alleged sexual misconduct by the alleged respondent;
    - iii. Whether the alleged incident poses a risk or harm to others; and
    - iv. Any other factors UTRGV determines relevant.
  - c. If the Complainant requests in writing that UTRGV not investigate a report, the Title IX Office will decide whether to comply with the request and inform the complainant of the decision.
  - d. If UTRGV dismisses a formal complaint (as outlined in Section D.4.c of this policy), UTRGV must provide the complainant and respondent a written notice of the dismissal and the reason(s) for the dismissal.

- e. In the course of the grievance process, UTRGV may share information only as necessary with people who need to know in compliance with the law, which may include, but is not limited to, the investigators, witnesses, complainant, respondent, parties' advisors, hearing officer, and the appellate officer, if applicable. UTRGV will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation or in any other part of the grievance process.

### 3. *Resources and Assistance*

#### a. Immediate Assistance

**Police Assistance:** If you experienced or witnessed sexual misconduct, UTRGV encourages you to make a report to the police. The police may, in turn, share your report with the Title IX Office, with the exception of when you use a pseudonym form under the Texas Code of Criminal Procedure for incidents of sexual assault, stalking, family violence, and human trafficking. In those instances, where a pseudonym form is used, the police will only report the type of incident to the Title IX Coordinator but not any information identifying you. A police department's geographic jurisdiction depends on where the incident 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 incident occurred.

UTRGV can also assist with applying for any protective orders. Reporting an incident to law enforcement does not mean the case will automatically go to criminal trial or go through a grievance process. If the University Police are called, a police officer will be sent to the scene to take a detailed statement. A police officer or a victim services coordinator 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 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 incident occurred. If a report is made to the police, a police officer will usually be dispatched to the location to take a written report. A sexual assault victim will also have an opportunity to have a crime victim liaison, counselor, advocate, or police officer with specialized training be present with the victim during police investigative interviews.

Emergency Phone: 911

[University Police](#)

Phone: (956) 882 - 4911

[City of Edinburg Police Department](#)

Phone: (956) 289 - 7700

[City of Harlingen Police Department](#)

Phone: (956) 216 - 5940

[City of Brownsville Police Department](#)

Phone: (956) 548 - 7000

[City of Weslaco Police Department](#)

Phone: (956) 968 – 8591

[City of Rio Grande City Police Department](#)

Phone: (956) 487 - 8892

**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 such cases. 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 five (5) days (120 hours) 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](#)

Harlingen, Texas  
(956) 389-1100

or to the nearest hospital that provides SAFE services.

For more information about the SAFE, visit [OAVP](#) or review the information on the [Attorney General of Texas, Crime Victims](#). 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.

**Counseling and Other Medical Services:** If you experience sexual misconduct, you are strongly encouraged to seek counseling, medical or psychological care even if you do

not plan to request a SAFE or report the incident 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, other individuals impacted or affected by an incident are encouraged to seek counseling or psychological care.

Services are available as follows:

*Students can contact:*

[Health Services](#)

UTRGV Edinburg and Brownsville Campuses

Phone: (956) 665-2511 (E)

Phone: (956) 882-3896 (B)

[UTRGV Counseling Center](#)

UTRGV Edinburg and Brownsville Campuses

Phone: (956) 665-2574 (E)

Phone: (956) 882-7641 (B)

*Faculty and staff can contact:*

[UT Employee Assistance Program](#)

Phone: (800) 346-3549

b. Supportive Measures

UTRGV will offer reasonably available individualized services, without any fee or charge, to the parties involved in a reported incident of sexual misconduct whether or not a formal complaint is filed, when applicable.

Supportive measures may include, but are not limited to, housing reassignment, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, mutual 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 measures tailored to the individualized needs of the parties.

Supportive measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other party. Any disciplinary or punitive measures may only be implemented following the conclusion of the grievance process unless an emergency removal (as outlined in Section D.4.I) is appropriate.



UTRGV will maintain the confidentiality of supportive measures provided to the parties to the extent that maintaining such confidentiality does not impair the ability of UTRGV to provide the supportive measures.

#### 4. *The Grievance Process*

##### a. Key Officials in the Grievance Process

- i. Title IX Coordinator - The Title IX Coordinator is the senior UTRGV administrator who oversees UTRGV's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and formal complaints of sexual misconduct, retaliation, and other conduct prohibited under this policy. The Title IX Coordinator is available to discuss options available under this policy, the grievance process, coordinate supportive measures, explain UTRGV policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities. Any member of the UTRGV community may contact the Title IX Coordinator with questions.
- ii. Investigator(s) - UTRGV will ensure that formal complaints are properly investigated under this policy by investigators assigned to the formal complaint. The investigators are neutral and impartial fact-finders and gather evidence during the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Title IX Deputy Coordinators may supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary to ensure compliance with Title IX.
- iii. Hearing Officer(s) - The hearing officer(s) is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner. UTRGV may, at its discretion, utilize a hearing panel.

##### b. Assessment of Complaint

- i. Upon receipt of a formal complaint, the Title IX Coordinator will, within three (3) days, review it to determine whether the complaint constitutes a Sexual Harassment complaint (as defined in this policy), determine the appropriate grievance process (Section D.4.i or D.4.k), if applicable, and provide the applicable notice(s).

##### c. Mandatory and Discretionary Dismissals of Sexual Harassment Complaints

- i. Mandatory Dismissal - UTRGV will dismiss a formal complaint or the part of the allegations in a formal complaint, if applicable, where Sexual Harassment is alleged and where:
  1. the conduct alleged does not meet the definition of Sexual Harassment;
  2. the alleged conduct did not occur in UTRGV's education program or activity; or
  3. the alleged conduct did not occur against a person in the United States.
- ii. Discretionary Dismissal - UTRGV may, at its discretion, dismiss a formal complaint:
  1. if the complainant requests in writing to dismiss a formal complaint (e.g. withdraws the formal complaint or any allegations therein), as outlined in Section D.2. of this policy.
  2. if the respondent is an employee and no longer employed by UTRGV at the time the formal complaint is filed;
  3. if there are any specific circumstances that prevent UTRGV from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations therein; or
  4. the conduct alleged does not meet the definition of any prohibited conduct under this policy.
- iii. Notice of Dismissal of Sexual Harassment Complaints and Appeal - If UTRGV dismisses a formal complaint of Sexual Harassment, UTRGV will provide both parties a written notice stating the reason(s) for the dismissal, and informing the complainant that they have five (5) days from the date on the dismissal notification to appeal the decision to the Vice President for Administrative Support Services. The written appeal must explain why the decision to dismiss the complaint was in error. The Vice President for Administrative Support Services will respond within seven (7) days of receipt of the appeal. The Vice President's decision is final.
- iv. Implications of Dismissal - A dismissal under this provision only applies to allegations of Sexual Harassment "under Title IX." UTRGV may still investigate a formal complaint for allegations of Sexual Harassment under this policy under the Sexual Harassment Complaint Hearing process described in Section D.4.i or the alternative grievance process described in Section D.4.k, as applicable. UTRGV may investigate allegations of prohibited conduct under this policy but it will not technically be "under Title IX."

d. Concurrent Criminal or Civil Proceedings

- i. UTRGV will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to act on a formal complaint in a UTRGV Grievance Process. UTRGV has an independent duty to respond to formal complaints of Sexual Misconduct. At UTRGV's discretion, UTRGV may delay the investigation or grievance process for a brief period due to concurrent criminal or civil proceedings on a case-by-case basis.

e. Written Notice of the Formal Complaint, and Notification of UTRGV Offices Offering Assistance

- i. After receiving a formal complaint, the Title IX Office will provide a written notice to the parties of the formal complaint and will inform the parties of available resources and assistance. The written notice of the formal complaint will include the following:
  1. A notice of the grievance process, as outlined in this policy;
  2. A notice of the allegations that potentially constitute prohibited conduct under this policy, including sufficient details about the alleged conduct, including the identity of the parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by UTRGV at the time of the formal complaint;
  3. A statement of the potential policy violations being investigated;
  4. A statement that the respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the grievance process;
  5. A notice that both parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
  6. A statement that the parties may review evidence gathered as part of any investigation;
  7. A notice regarding the provision of this policy that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited and subject to disciplinary action; and
  8. Any other relevant information for the written notice.

- f. Informal Resolution Option of Certain Formal Complaints. (OPTIONAL)
- i. Agreement To Use Informal Resolution In Cases Where Sexual Harassment Is Not Alleged - The informal resolution entails the parties forgoing the grievance process (including the investigation and hearing, depending on when the parties agree to engage in an informal resolution) and attempting to reach an agreement about the outcome of the dispute. The informal resolution process is not permitted in cases where Sexual Harassment is alleged in the formal complaint. Informal resolution is also not available where the respondent has previously participated in the informal resolution process and where that process resulted in a mutual agreement. In other sexual misconduct cases, however, after the parties have been provided a copy of the written notice of a formal complaint, both parties may, in writing, voluntarily agree to use this informal resolution option at any point prior to reaching a determination regarding responsibility. The informal resolution may include a mediation process.
  - ii. Withdrawal from Informal Resolution Process - At any point prior to agreeing to an informal resolution, each party has a right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
  - iii. Informal Resolution Timeframe - If both parties consent to proceed with the informal resolution process, the time for completing the applicable grievance process will “pause” for 45 days. The Title IX Coordinator or designee will attempt to facilitate an informal resolution of a formal complaint for no more than 45 days. If the informal resolution process fails or either party withdraws from the informal resolution process, the Title IX Coordinator or designee will ensure that the Grievance Process resumes.
  - iv. Informal Resolution Documentation - Any final resolution pursuant to the informal resolution process will be documented and kept for seven (7) years as required by law (and see Section D.4.m of this policy for additional information on Grievance Process Documentation). However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will be kept confidential and may not be used for or against either party (and the Hearing Officer and Appellate Officer may not consider any such statement made during informal resolution) should the parties resume the Grievance Process. Failure to comply with an informal resolution agreement may result in disciplinary action.
- g. Investigation of the Formal Complaint – Gathering of Evidence
- i. Response by Respondent - After UTRGV provides written notice of a formal complaint to the parties, the respondent will be allowed three (3) days to

respond in writing and also to schedule an interview with the investigator within the five (5) days following receipt of the notice.

- ii. Notice of Meetings - The investigator or designee will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the grievance process.
- iii. Evidence - The parties in the investigation may present any information and evidence that may be relevant to the formal complaint, and may have an advisor of their choice attend any related interview, meeting, or proceeding in the grievance process. Advisors are not permitted to actively participate in meetings or proceedings in the grievance process, unless explicitly authorized by this policy. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the formal complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.
- iv. Witness Interviews - The investigators will interview relevant and available witnesses and collect and review other evidence. Neither the complainant nor the respondent will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.
- v. Investigation Timeframe - Witness interviews and the collection of evidence will be concluded within 60 days of the filing of a Formal Complaint. The parties should be provided updates on the progress of the investigation, as needed.
- vi. Access to Evidence - Prior to the completion of the investigation report, the investigator will notify both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice) that they have 10 days to inspect, review, and respond to the evidence obtained as part of the investigation (whether relevant or not). All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.
- vii. Completed Investigation Report - The investigator will have 14 days after receipt of all comments to complete the investigation report.
  1. Sexual Harassment under Title IX and student Sexual Harassment cases - Investigative Report

The completed investigation report will outline each of the allegations that potentially constitutes prohibited conduct under this policy, provide the timeline (e.g. procedural steps) of the investigation, and fairly summarize relevant evidence, participant statements, and responses to questions. The investigator will provide a completed investigation report concurrently to both parties (and each party's advisor, if any, upon a party's signed information release for their advisor of choice) at least 10 days prior to the date of the scheduled hearing to review and provide a written response at the hearing. A copy of the completed investigation report will be issued to the Title IX Coordinator, and to the hearing officer assigned to a hearing, if applicable.

2. All other cases except Sexual Harassment under Title IX or student Sexual Harassment cases – Investigative Report
  - a. The completed investigation report will outline each of the allegations that potentially constitutes prohibited conduct under this policy, provide the timeline (e.g. procedural steps) of the investigation, fairly summarize relevant evidence, participant statements, and responses to questions and include a preliminary determination regarding the responsibility of the respondent for each allegation, the findings of fact supporting the investigator's determination, and the rationale for the determination for each allegation.
  - b. The investigator will provide the preliminary investigation report concurrently to both parties and each party's advisor, if any, upon a party's signed information release for their advisor of choice. Each party has five (5) days to provide comments to the report. The investigation report and any comments will also be referred to the Office of Student Rights and Responsibilities, the Human Resources Officer (for staff, visitors, volunteers) and the Dean of the College (for faculty) (Administrative Official).
  - c. The applicable Administrative Official will conduct an independent review of the investigation report in consultation with the supervisor(s), if applicable, and 10 days from receipt of comments, will:
    - i. Accept the preliminary determination regarding responsibility of the respondent and either dismiss the case or proceed to adjudication (if applicable);
    - ii. Amend the preliminary determination regarding responsibility of the Respondent and proceed to adjudication (if applicable); or

iii. Remand the process back to the investigation stage to address an investigation concern.

h. Standard of Evidence & Presumption of Not Responsible

All grievances processes will use the preponderance of the evidence standard, as defined in this policy. By law, it is presumed that the respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the grievance process.

i. Sexual Harassment Complaint Hearing - Determination of Responsibility

i. Applicability - The Sexual Harassment Complaint Hearing process outlined herein is applicable in the following situations:

1. **Students** - When the respondent is a student (including student employees whose employment is conditioned on student status)<sup>1</sup> at UTRGV at the time of the alleged conduct and when the conduct alleged includes Sexual Harassment. The alternative grievance process in Section D.4.k(i) of this policy applies in instances where the respondent is a student at the time of the alleged conduct and where the conduct alleged does not include Sexual Harassment.
2. **Employees (Faculty and Staff)** - When the respondent is an employee and all of the conditions below are met; in all other instances, allegations of Sexual Misconduct will be handled in accordance with Section D.4.k(ii).
  - a. The respondent is an employee at UTRGV at the time of the alleged conduct;
  - b. The conduct alleged includes Sexual Harassment under this policy;
  - c. The alleged conduct occurred against a person in the United States; and
  - d. Where the complainant was participating or attempting to participate in an education program or activity at UTRGV. This element is met if the conduct occurred in any of the following: on any University property; during any University activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University

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<sup>1</sup> Respondents who are both students and employees are treated as students under this policy.

exercised substantial control over the respondent and the context in which the alleged conduct occurred.

- ii. University Representative Role and Written Notice of the Hearing The University representative will present information regarding the case at the hearing and will have the ability to present information and witnesses, question witnesses, and provide opening and closing statements at the hearing. The Title IX Office will provide at least 10 days written notice to participants of the hearing (and the participant's advisor, if any, upon a participant's signed information release for their advisor of choice), including the date, time, location, names of all participants of the hearing (including the hearing officer, and all parties and participants in the investigation report), purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered. The hearing notice may also provide a deadline by which the University representative and the parties have an opportunity to disclose (1) the names of any witnesses they intend to call to testify at the hearing, if any, and (2) a copy of any documents they intend to use as exhibits at the hearing, not already included in the investigation report, if any.
- iii. Challenges to the Hearing Officer - Either party may challenge the fairness, impartiality or objectivity of a hearing officer. The challenge must be submitted in writing to the hearing officer with a copy to the Title IX Office within three (3) days after notice of the identity of the hearing officer and must state the reasons for the challenge. The hearing officer will be the sole judge of whether he or she can serve with fairness, impartiality, and objectivity. The hearing officer will decide whether they will serve as the hearing officer and will inform both parties and the Title IX Office within two (2) days of the date of the challenge. In the event that the hearing officer recuses themselves, an alternative hearing officer will be assigned in accordance with the institution's procedures.
- iv. Hearing Officer Duties at the Hearing - The hearing will ensure, with the assistance of the Title IX Office, that the hearing is recorded in audio or audiovisual format. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

The hearing officer will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question participants who testify at the hearing, and is entitled to have the advice and assistance of legal counsel from the Office of General Counsel of the UT System.



- v. Access to Evidence - Each party will have access to all the evidence from the investigation, including a copy of the completed investigation report, as outlined in Section D.4.g(vi) in this policy.
- vi. Separate Rooms and Virtual Participation - At the request of either party, UTRGV will provide the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.
- vii. Opening and Closing Arguments - Each party may make opening and closing statements.
- viii. Privileged Information Excluded - No person will be required to disclose information protected under a legally recognized privilege. The hearing officer must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- ix. Advisor of Choice - Each party may have an advisor of their choice at the hearing. If a party does not have an advisor, UTRGV will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.
- x. Questioning of the Participants in the Hearing - The hearing officer may, at the hearing officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The University representative and the advisors may ask questions under the following procedure:
  - 1. The questioner will ask a question of the applicable participant.
  - 2. Before the participant answers a question, the hearing officer will rule as to whether the question is relevant to the alleged conduct charges.

3. If the hearing officer rules that question is not relevant, then the hearing officer must explain any decision to exclude a question as not relevant. If the hearing officer allows the question as relevant, the participant will answer it.
- xi. Prior Sexual History - A complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct charged by the complainant or if the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove the complainant's consent of the alleged conduct.
  - xii. Hearing Officer Determination - Within 20 days after the conclusion of the hearing, the hearing officer will issue a written determination and will email a copy of the written determination concurrently to the parties, to Student Rights and Responsibilities (for student Respondents), to the Office of Human Resources and appropriate supervisor (for staff, visitors or volunteer Respondents), to the College Dean (for faculty Respondents) and the Title IX Coordinator. The determination must include the following:
    1. The allegations that potentially constitutes prohibited conduct under this policy;
    2. A description of all of the procedural steps of the grievance process under this policy (from receipt of a formal complaint to the determination regarding responsibility of the respondent, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
    3. The findings of fact supporting the hearing officer's determination;
    4. The conclusion(s) and a rationale as to whether the respondent is responsible for each allegation;
    5. The disciplinary sanctions and remedies designed to restore the complainant's access to the education program or activity, if applicable; and
    6. If applicable, possible sanctions and remedies for student respondents:
      - a. Educational training;
      - b. No shared classes or extra-curricular activities;

- c. Disciplinary probation;
  - d. Withholding of grades, official transcript, or degree;
  - e. Bar against readmission, bar against enrollment, drop from one or more classes, or withdrawal from UTRGV;
  - f. Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities;
  - g. Denial of degree;
  - h. Suspension from UTRGV for a specific period of time. Suspension is noted on the academic transcript with the term "Disciplinary Suspension." The notation can be removed upon the request of the student in accordance with the UTRGV's procedures when all conditions of the suspension are met;
  - i. Expulsion (permanent separation from UTRGV). Expulsion creates a permanent notation on the student's academic transcript;
  - j. Revocation of degree and withdrawal of diploma; or
  - k. Other sanction(s) or remedies as deemed appropriate under the circumstances.
7. If applicable, possible sanctions and remedies for employee Respondents:
- a. Employment probation;
  - b. Job demotion or reassignment;
  - c. Suspension with or without pay for a specific period of time;
  - d. Dismissal or termination;
  - e. Ineligible for rehire; or
  - f. Other sanction(s) or remedies as deemed appropriate under the circumstances.
8. Whether additional remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and

9. UTRGV's procedures and permissible bases for the parties to appeal, if applicable.
- j. Appeals and Additional Processes Provided to Students and Employees as to Formal Sexual Harassment Complaints under Title IX and Cases involving Students alleged of Sexual Harassment under this Policy.
  - i. Student Appeals

Within 10 days of notice of the determination, either party may appeal in writing the hearing officer's determination regarding a respondent's responsibility, on the following bases:

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

Any non-appealing party (or UTRGV) will have five (5) days from the notification of an appeal to submit a written statement in support of the outcome.

Written notice of appeal and all supporting information must be emailed to the Senior Vice President for Strategic Enrollment and Student Affairs within 10 days after the appealing party has been notified of the decision of the Hearing Officer.

The appeal of the decision of the Hearing Officer will be reviewed solely on the basis of the record from the hearing. The record from the hearing shall consist of the recording of the hearing, the documents admitted in evidence, and the written decision of the Hearing Officer. An appeal regarding procedural irregularity or bias may include review of a response by the appropriate UTRGV official(s).

The Senior Vice President may approve, reject, or modify the decision in question or may require that the hearing be reopened for the presentation of additional evidence and reconsideration of the decision.

The Senior Vice President shall communicate his or her decision to the accused student, the other party, the Dean of Students, and the Title IX Office in writing within 20 days after the appeal and related documents have been received.

The decision of the Senior Vice President is the final appellate review.

ii. Staff Appeals

Within 10 days of notice of the determination, either party may appeal in writing the hearing officer's determination regarding a Respondent's responsibility, on the following bases:

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

Any non-appealing party (or UTRGV) will have five (5) days from the notification of an appeal to submit a written statement in support of the outcome.

Written notice of appeal must be emailed to the Executive Vice President or the applicable Vice President over the department or unit ("Division Executive") within 10 days after the appealing party has been notified of the decision of the Hearing Officer.

The appeal of the decision of the Hearing Officer will be reviewed solely on the basis of the record from the hearing. The record from the hearing shall consist of the recording of the hearing, the documents admitted in evidence, and the written decision of the Hearing Officer. An appeal regarding procedural irregularity or bias may include review of a response by the appropriate UTRGV official(s).

The employee will also deliver a copy of the appeal and all attachments to the Office of Human Resources.

The Division Executive may approve, reject, or modify the decision in question or may require that the hearing be reopened for the presentation of additional evidence and reconsideration of the decision.

The Division Executive shall communicate his or her decision to the accused employee, the other party, Office of Human Resources and the Title IX Office in writing within 20 days after the appeal and related documents have been received.

The decision of the Division Executive is the final appellate review.

iii. Faculty Appeals

Within 10 days of notice of the determination, either party may appeal in writing the hearing officer's determination regarding a Respondent's responsibility, on the following bases:

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

Any non-appealing party (or UTRGV) will have five (5) days from the notification of an appeal to submit a written statement in support of the outcome.

Written notice of appeal must be emailed to the Chief Academic Officer within 10 days after the appealing party has been notified of the decision of the Hearing Officer.

The appeal of the decision of the Hearing Officer will be reviewed solely on the basis of the record from the hearing. The record from the hearing shall consist of the recording of the hearing, the documents admitted in evidence, and the written decision of the Hearing Officer. An appeal regarding procedural irregularity or bias may include review of a response by the appropriate UTRGV official(s).

The employee will also deliver a copy of the appeal and all attachments to the Title IX Office.

The Chief Academic Officer may approve, reject, or modify the decision in question or may require that the hearing be reopened for the presentation of additional evidence and reconsideration of the decision.

The Chief Academic Officer shall communicate his or her decision to the accused faculty member, the other party, and the Title IX Office in writing within 20 days after the appeal and related documents have been received.

The decision of the Division Executive is the final appellate review.

k. Alternative Grievance Process for Sexual Misconduct Complaints

- i. Student Alternative Grievance Process - For formal complaints where the respondent is a student at the time of the alleged conduct (including student employees in positions that require student status). Where responsibility finding(s) proceed to the adjudication stage, the respondent and complainant must notify the Title IX Office within five (5) days of receipt of the determination to elect one of the following options:

1. *Option 1.* Agree to the determination of responsibility for each of the applicable allegations, the sanctions, and remedies outlined in an administrative disposition, and waive the option of a hearing;

If both parties select this option, then the administrative disposition will be final and there will not be any subsequent adjudication proceedings regarding the allegations.

2. *Option 2.* Agree to the determination of responsibility for each of the applicable allegations, appeal (in writing) the sanctions or remedies outlined in the administrative disposition, and waive the option of a hearing;

If either party chooses this option, and neither selects Option 3, then any party may appeal the sanctions or remedies outlined in the administrative disposition, using the Appeals process in Section D.4.j(i) of this Policy.

The finding of responsibility may not be appealed by either party.

3. *Option 3.* Select a live hearing where the determination regarding responsibility of the respondent will be made by a hearing officer. If either party chooses this third option, then a live hearing must be initiated for the adjudication of the conduct allegations, as outlined in Section D.4.i. If a live hearing is selected for adjudication, the hearing procedures in Section D.4.i of this policy will apply, with the following exceptions:

- a. **Advisor of Choice.** Each party may have an advisor of their choice at the hearing. Upon request from either party, UTRGV will provide an advisor to that party. Advisors are not permitted to actively participate in the hearing. In addition, witnesses may have an advisor of their choice at the hearing.
  - b. **Questioning of the participants in the hearing.** The hearing officer may, at the hearing officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party may ask relevant questions of any witness at the hearing, except that cross-examination questions of the other party must be submitted in writing to the hearing officer. The hearing officer will then ask relevant cross-examination questions of the other party and allow for relevant follow-up questions (if applicable). Advisors are not permitted to ask any questions at the hearing.
  - c. **Prior Sexual History:** A complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the alleged conduct charged by the complainant or if the questions or evidence concern specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove the complainant's consent of the alleged conduct.
- ii. Alternative Grievance Process for Staff and Faculty - If the Administrative Official, concludes that the policy was violated, in cases not involving Sexual Harassment under Title IX, the matter of disciplinary action will be heard in accordance with the applicable disciplinary policies. UTRGV will strive to ensure that the steps it takes to provide due process to the respondent will not restrict or delay the supportive measures provided to the alleged victim. The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.
- I. Emergency Removal and Employee Administrative Leave
    - i. Emergency Removal - A student respondent may be removed from UTRGV's education program or activity on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal is justified because the respondent poses an immediate threat to the physical health or safety of an individual arising from the allegations of sexual misconduct. Under these circumstances, the Respondent will be notified in writing of the emergency removal from UTRGV's education program or activity by the Dean of Students, and the respondent will have an opportunity



to challenge the decision following the emergency removal by directing the challenge within 1 day of receipt of the notification to the Dean of Students. The Dean of Students will respond within 2 days. The Dean of Students decision is final.

- ii. Employee Administrative Leave - An employee respondent may be placed on administrative leave, in accordance with UTRGV's policy and procedures on employee administrative leave, during the pendency of a grievance process, as outlined in this policy.

m. Grievance Process Documentation

UTRGV through the Title IX Office will retain all of the documentation included in the grievance process (outlined in Section D.4.m of this Policy) for seven (7) years, in accordance with state and federal records laws and UTRGV policy. All documentation of records is private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under FERPA. Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA) and included in the employee's official employment record.

n. Grievance Process Timeframe

The entire grievance process (outlined in Section D.4 of this Policy, including any appeal) will be completed in no more than 150 days from the filing of the formal complaint if it is a Sexual Harassment complaint.

However, the circumstances may require a temporary delay in this timeframe and UTRGV may extend this timeframe for good cause. In such an instance, UTRGV will provide written notice to the parties of the delay or extension and the reason(s) for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The time period in this section does not include the period the parties attempted but failed to reach an agreement in the Informal Resolution Process, if applicable, and in such a case, the grievance process timeframe will be extended by the period the parties attempted to reach an Informal Resolution (outlined in Section D.4.f of this Policy).

5. *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, retaliation, and other conduct prohibited under this policy, including the formal complaint procedure,

UTRGV grievance process, and available resources, such as support services, health, and mental health services, including, but not limited to, at the beginning of each fall and spring semester. 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 or behavioral 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 primary prevention, risk reduction, and 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 applicable prohibited conduct, grievance processes, due process, and UTRGV policies related to Sexual Misconduct. All training materials used to train Title IX-related personnel (e.g. Title IX Coordinators, deputies, investigators, hearing officers, and appellate officers, among others, will be made available on UTRGV's website.
- d. Annual Reporting and Notice - UTRGV's Title IX general policy statement will be made available to all students, faculty, and employees [online](#) in required publications and in specified departments.

#### 6. *Additional Conduct Violations*

- a. Retaliation - Any person who retaliates (a) anyone filing a report of sexual misconduct or formal complaint, (b) the parties or any other participants (including any witnesses or any UTRGV employee) in a grievance process relating to a formal complaint, (c) any person who refuses to participate in a grievance process, or (d) 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. If any participant in a grievance process believes they have been subject to retaliation (as defined in this policy), they should immediately report the alleged retaliatory conduct to the Title IX Coordinator. A [complaint of retaliation](#) should be immediately reported to the Title IX Officer.
- b. False Information and False Complaints - Any person, who in bad faith, knowingly files a false complaint under this policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from UTRGV. A determination that a respondent is not responsible for allegations of sexual misconduct does not imply a report, formal complaint, or information provided was

false. Similarly, a determination that a respondent is responsible for a policy violation does not imply that a respondent's statements disclaiming responsibility were false.

- c. Interference with the Grievance Process - Any person who interferes with the grievance process (outlined in Section D.4 of this Policy) is subject to disciplinary action up to and including dismissal or separation from UTRGV. Interference with a grievance process 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 grievance process; or
  - iii. Knowingly providing false or misleading information to Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.
- d. Failure to Report for Responsible Employees - If a responsible employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

For purposes of Failure to Report, the definition of sexual harassment, as defined under state law, is broader than the definition of Sexual Harassment and is defined as: unwelcome, sex-based verbal or physical conduct that

- (a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
  - (b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary institution.
- e. 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 formal 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.

## E. Definitions and Examples<sup>2</sup>

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, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person's words or conduct are sufficient to constitute coercion if they eliminate a reasonable person's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to "out" someone based on sexual orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; threatening to disclose someone's highly personal images; threatening to disclose sensitive details about one's sexual preferences, habits, and/or experiences; and threatening to expose someone's prior sexual activity to another person.
2. Complainant - The individual who is alleged to be the victim of any prohibited conduct under this policy.
3. Confidential Employees - Confidential Employees include advocates with OAVP, counselors in Counseling Services, a health care provider in Health Services, researchers conducting IRB approved research studies involving student participants, an employee serving as an advisor for a student respondent or student complainant under this policy, or clergypersons. Additionally, employees who receive information regarding an incident of sexual misconduct under circumstances that render the employee's communications confidential or privileged under other law (such as attorneys) are also considered "Confidential Employees."

Note: Under state law, Confidential Employees who receive information regarding incidents of sexual harassment, sexual assault, dating violence or stalking committed by or against a student or an employee of UTRGV, are required to report the **type of incident** to the Title IX Coordinator (or Deputy Coordinators). Confidential Employees may not include any information that would violate a student's expectation of privacy. The Confidential Employee's duty to report an incident under any other law also applies.

4. Consent - A voluntary, mutually understandable agreement that clearly indicates a willingness 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. 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, whether through words or actions, 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

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<sup>2</sup> 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.

eliminate an individual's ability to exercise his or 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>3</sup>

5. Dating Violence<sup>4</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 shall 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

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<sup>3</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>4</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.

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.

6. Day(s) – business day(s) occurring Monday through Friday, excluding any day that is an official holiday recognized by the institution or when regularly scheduled classes are suspended due to emergent situations.
7. Domestic (Family) Violence<sup>5</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.
8. Hostile Environment - exists when sexual misconduct is sufficiently severe or pervasive to deny or limit the individual’s ability to participate in or benefit from an education program or activity or an employee’s terms and conditions of employment. A hostile environment can be created by anyone (e.g., administrators, faculty members, employees, students, and UTRGV visitors) involved in an education program or activity or work environment. In determining whether sexual misconduct 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 mistreated. 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:

- the type, frequency, and duration of the conduct;
- the identity and relationships of the persons involved;
- the number of individuals involved;

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<sup>5</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.

- the location of the conduct and the context in which it occurred; and
- the degree to which the conduct affected an individual's education or employment.

The more severe the sexual misconduct, 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 sexual misconduct is not particularly severe.

The type of verbal conduct (if all other elements are met) may include:

- Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- Requests for sexual favors (including overt or subtle pressure);
- Gratuitous comments about an individual's sexual activities or speculation about an individual's sexual experiences;
- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Persistent, unwanted sexual or romantic attention;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
- Deliberate, repeated humiliation or intimidation.

The type of physical conduct, may include:

- Sexual exploitation, as defined in this policy;
- Unwelcome intentional touching of a sexual nature;
- Deliberate physical interference with or restriction of movement; or
- Sexual violence as defined in this policy.

9. Incapacitation - Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally 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 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.

A respondent will be found to have violated policy only if the respondent knew or should have known that the person was incapacitated.

10. *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.
11. *Other Inappropriate Sexual Conduct* - Conduct on the basis of sex that does not meet the definition of “sexual harassment” under this Policy, but is unwelcome conduct of a sexual nature when, either of these two elements are met:
  - i. Element 1: 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; or
  - ii. Element 2: such conduct is sufficiently severe or pervasive that it creates a hostile environment as defined in this policy.

The type of conduct (if either of the two elements above are met) may include:

- a) Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- b) Requests for sexual favors (including overt or subtle pressure);
- c) Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences;
- d) Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- e) Persistent, unwanted sexual or romantic attention;



- f) Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials;
  - g) Deliberate, repeated humiliation or intimidation;
  - h) Unwelcome intentional touching; or
  - i) Deliberate physical interference with or restriction of movement.
12. Participants - The term “participants” includes the University representative, complainant, respondent, and any witnesses.
13. Parties - The term “parties” refers to the “complainant” and the “respondent” under this policy.
14. 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.
15. Respondent - The individual who has been reported to be the perpetrator of prohibited conduct under this policy. (For UT-affiliated K-12 schools (e.g. charter schools), a parent or legal guardian of a respondent may act on behalf of the respondent.)
16. Responsible Employee - A UTRGV employee who has the duty to report incidents of and information reasonably believed to be Sexual Misconduct to the Title IX Office. All employees are Responsible Employees except Confidential Employees or police officers when a victim uses a pseudonym form as described within this policy). Responsible Employees include all administrators, faculty, staff, police officers, resident life directors and advisors, and graduate teaching assistants. Responsible Employees must report all known information concerning the incident to the Title IX Office and must include whether a Complainant has expressed a desire for confidentiality in reporting the incident.
17. Retaliation - Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a formal complaint; or who has supported or provided information in connection with a report or a formal complaint; participated or refused to participate in a grievance process under this policy; or engaged in other legally protected activities.
18. Sex Discrimination – Occurs when an individual is treated less favorably on the basis of that person’s sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype. Sexual harassment, as defined in this policy, is a form of sex discrimination.

19. Sexual Assault<sup>6</sup> - An offense that meets the definition of rape, fondling, incest, or statutory rape:
- a. *Rape*: the penetration by cisgender or non-cisgender, 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 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.
20. 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.
21. Sexual Harassment - Conduct on the basis of sex that satisfies one or more of the following:
- a. *Quid pro quo*: An employee of the institution conditioning the provision of an aid, benefit, or service of UTRGV on an individual's participation in unwelcome sexual conduct;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to UTRGV's education program or activity; or
  - c. Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in this Policy.

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<sup>6</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.

Subsections (a) and (c) in this definition are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of quid pro quo sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this policy.

22. Sexual Misconduct - This term is broadly defined to encompass sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence, stalking, sexual exploitation, sexual violence, other inappropriate sexual conduct or unprofessional sexual conduct.
23. 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.
24. Stalking<sup>7</sup> - 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.
  - 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.

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<sup>7</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.

25. Unprofessional Sexual Conduct - Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual in the workplace, classroom or learning environment that does not rise to the level of sexual harassment or other inappropriate sexual conduct under this policy, but to a reasonable person is unprofessional or inappropriate for that situation and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace, classroom, or learning environment.

**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.](#)

[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](#)

Texas Labor Code, [Chapter 21](#)

[Texas Education Code, Subchapter E-2: Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.251-51.259](#)

[Texas Education Code, Subchapter E-3: Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.281-51.291](#)

[Texas Code of Criminal Procedure, Chapter 56A, Request for Forensic Medical Examination Art. 56A.251](#)

[Texas Code of Criminal Procedure, Chapter 56A, Presence of Sexual Assault Program Advocate Art. 56A.351](#)

University of Texas 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 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

UTRGV *Handbook of Operating Procedures*, [ADM 02-300](#) Speech, Expression, and Assembly

UTRGV *Handbook of Operating Procedures*, [ADM 04-303](#) Discipline and Dismissal of Classified Employees

UTRGV *Handbook of Operating Procedures*, [ADM 06-507](#), Termination of a Faculty Member During Term of Appointment

**G. Dates Reviewed or Amended**

Reviewed and Amended - August 23, 2017

October, 2018

Reviewed and Amended – January 17, 2019

Reviewed and Amended – January 22, 2020

Reviewed and Amended (non-substantive changes) – January 24, 2020

Reviewed and Amended – July 24, 2020

Reviewed and Amended – October 1, 2021

Reviewed and amended (non-substantive: updated responsible executive) - May 2, 2022.