

**TEXAS STATE UNIVERSITY SYSTEM
SEXUAL MISCONDUCT POLICY AND PROCEDURES**

1. Introduction

1.1 Institutional Values. The Texas State University System, its colleges, and universities (collectively referred to as “System” and/or “Components” and used interchangeably herein) are committed to creating and maintaining educational communities in which each individual is respected, appreciated and valued. The System diligently strives to foster an environment that permits and encourages everyone to perform at their highest levels in academia. The System’s focus on tolerance, openness, and respect is key in providing every member of the TSUS community with basic human dignity free from harassment, exploitation, intimidation or other sexual misconduct. Any report of behavior that threatens our institutional values, and breaches this Policy shall be promptly investigated and remediated in accordance with principles of law, fairness and equity to all parties involved.

1.2 Purpose of Policy. The Texas State University System and its Components are firmly committed to maintaining an educational environment free from all forms of sex discrimination. Sexual Misconduct, as defined in this Policy, is a form of sex discrimination and will not be tolerated. The System and Components will maintain an environment that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of Sexual Misconduct complaints. The Components will take prompt and appropriate action to eliminate Sexual Misconduct when such is committed, prevent its recurrence, and remedy its effects. This Policy defines and describes prohibited sexual conduct, establishes procedures for processing complaints of sexual misconduct, permits appropriate sanctions, and identifies available resources.

- 1.3 Notice of Nondiscrimination. The System complies 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. Sexual misconduct, as defined in this Policy, constitutes a form of sex discrimination prohibited by Title IX and Title VII.
- 1.4 Applicability of this Policy. This Policy applies to all students, faculty, staff, and third parties within the System's or its Components' control. This Policy prohibits sexual misconduct committed by or against a student, faculty, staff, or third parties. This Policy applies to sexual misconduct:
- 1.41 on Component premises;
 - 1.42 at Component-affiliated educational, athletic, or extracurricular programs or activities;
 - 1.43 that has an adverse impact on the education or employment of a member of the Component community; or
 - 1.44 that otherwise threatens the health and/or safety of a member of the Component community.
- 1.5 Extent of Authority. While the Texas State University System is committed to investigating all complaints of sexual misconduct and there is no geographical limitation to invoking this Policy, sexual misconduct that is alleged to have occurred at a significant distance from the Component and/or outside the Component property may be difficult for the Component to investigate. Additionally, the Component's disciplinary authority may not extend to third parties who are not students or employees of the Component.

- 1.6 Effect of Criminal Prosecution. Proceedings under this Policy will not be dismissed or delayed because criminal investigation or prosecution is pending or charges have been reduced or dismissed. Proceedings may also continue if a party is no longer employed with or currently enrolled as a student of the Component.
- 1.7 Supersedes Existing Policies. In the case of allegations of sexual misconduct, this Policy supersedes any conflicting procedures and policies set forth in other Component documents.
- 1.8 Campus Sexual Assault Policy. This Policy shall be adopted by each Component as its campus sexual assault policy. It shall be made available to students, faculty and staff by including it in the Component's student, faculty and personnel handbooks and by creating and maintaining a web page on the Component's website dedicated solely to the Policy.

2. DEFINITIONS

- 2.1 Complainant refers to the person making a complaint of sexual misconduct, and shall be referred to herein as either Complainant, Survivor, or Victim, and these terms may be used interchangeably throughout this Policy.
- 2.2 Component refers to all member institutions of the Texas State University System, including but not limited to, Lamar University, Lamar Institute of Technology, Lamar State College - Orange, Lamar State College - Port Arthur, Sam Houston State University, Sul Ross State University, Sul Ross State University Rio Grande College and Texas State University.
- 2.3 Component Affiliated Program or Activity refers to any program or activity, on or off campus, that is initiated, aided, authorized or

supervised by the Component or by an officially-recognized organization of, or within, the Component.

2.4 Component Premises. Buildings or grounds owned, leased, operated, controlled or supervised by the Component including property that is within or reasonably contiguous to the premises owned by the Component but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

2.5 Consent is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to ensure that s/he has the consent of the other to engage in each instance of sexual activity. (The definition of consent for the crime of sexual assault in Texas can be found at *Texas Penal Code Section 22.011.*)

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm#22.011>

2.51 The Component will consider the following factors in determining whether consent was provided:

2.511 consent is a voluntary agreement or assent to engage in sexual activity;

2.512 someone who is incapacitated cannot consent;

2.513 consent can be withdrawn at any time;

2.514 past consent does not imply future consent;

2.515 silence or an absence of resistance does not imply consent;

- 2.516 consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;
- 2.517 coercion, force, or threat invalidates consent; and,
- 2.518 being intoxicated or under the influence of alcohol, drugs, or any other substance is never an excuse for engaging in sexual misconduct.

2.6 Dating Violence is violence committed by a person:

- 2.61 who is or has been in a social relationship of a romantic or intimate nature with the Victim; and
- 2.62 where the existence of such a relationship shall be determined by the Victim with consideration of the following factors:
 - 2.621 the length of the relationship;
 - 2.622 the type of relationship; and
 - 2.623 the frequency of interaction between the persons involved in the relationship (Texas *Family Code Section 71.0021*).

<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.71.htm#71.0021>

2.7 Dean of Student's Office includes the Student Affairs Office, the Student Services Office and the Dean of Student Life Office.

2.8 Family (Domestic) Violence 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 or roommate, 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 (*Texas Family Code Section 71.004*).

<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.71.htm#71.004>

- 2.9 Incoming Student refers to a student in their first semester of enrollment.
- 2.10 New Employee refers to a faculty or staff member who has not been previously employed by the Component or whose previous employment with the Component was more than one year from his or her latest date of hire with the Component.
- 2.11 Parties refers to the Complainant and Respondent.
- 2.12 Preponderance of the Evidence means the greater weight and degree of credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. Preponderance of the evidence is satisfied if the action is more likely to have occurred than not.
- 2.13 Respondent refers to the person accused of sexual misconduct and shall be referred to herein as either Respondent, Alleged Perpetrator, Accused, or Perpetrator, and these terms may be used interchangeably throughout this Policy.
- 2.14 Responsible Employee refers to a campus employee who has the authority to redress sexual misconduct; who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or whom a student could reasonably believe has this authority or duty. Responsible employees shall include all administrators, faculty, staff, student workers, except:

- 2.141 any employee with confidentiality obligations as described in Section 3 below;
- 2.142 cafeteria staff who are not assigned administrative duties;
- 2.143 custodial staff who are not assigned administrative duties;
- 2.144 groundskeeper staff who are not assigned administrative duties;
- 2.145 maintenance staff who are not assigned administrative duties;
- 2.146 ranch/agricultural staff who are not assigned administrative duties; or
- 2.147 staff of campus physical plant who are not assigned administrative duties.

2.15 Retaliation means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

2.16 Sexual Assault means any form of *non-consensual* sexual activity representing a continuum of conduct from forcible rape to non-physical forms of pressure designed to compel individuals to engage in sexual activity against their will (Texas *Penal Code Section 22.011*).
<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm#22.011>

- 2.161 Examples of sexual assault include, but are not limited to, the following non-consensual sexual activity:
- 2.1611 sexual intercourse (vaginal or anal);
 - 2.1612 oral sex;
 - 2.1613 rape or attempted rape;
 - 2.1614 penetration of an orifice (anal, vaginal, oral) with the penis, finger or other object;
 - 2.1615 unwanted touching of a sexual nature;

- 2.1616 use of coercion, manipulation or force to make someone else engage in sexual touching, including touching of breasts, chest, buttocks and genitalia;
- 2.1617 engaging in sexual activity with a person who is unable to provide consent; or
- 2.1618 knowingly transmitting a sexually-transmitted disease to another.

2.17 Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

2.171 Examples can include, but are not limited to, the following behaviors:

- 2.1711 prostituting another;
- 2.1712 non-consensual electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images without the knowledge and consent of all parties involved;
- 2.1713 voyeurism (spying on others who are in intimate or sexual situations);
- 2.1714 going beyond the boundaries of consent (such as letting friends hide in a closet to watch another friend having consensual sex); or
- 2.1715 distributing intimate or sexual information about another person without that person's consent.

2.18 Sexual Harassment is any unwelcome verbal, nonverbal, written, electronic or physical behavior of a sexual nature directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, severe or pervasive, and where it meets either of the following criteria:

2.181 Submission, consent, or rejection of the behavior is believed to carry consequences for the individual's education, employment, on-campus living environment or participation in a Component affiliated activity.

2.1811 Examples of this type of sexual harassment include, but are not limited to:

2.18111 pressuring another to engage in sexual behavior for some educational or employment benefit; or

2.18112 making a real or perceived threat that rejecting sexual behavior will result in a negative tangible employment or academic consequence.

2.182 The behavior has the purpose or effect of substantially interfering with another's work or educational performance by creating an intimidating or hostile environment for employment, education, on-campus living or participation in a Component affiliated activity.

Examples of this type of sexual harassment can include, but are not limited to:

2.1821 persistent unwelcome efforts to develop a romantic or sexual relationship;

2.1822 unwelcome commentary about an individual's body or sexual activities;

2.1823 unwanted sexual attention;

2.1824 repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom,

even if such conduct is not objected to by those present; or

2.1825 gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting even if not objected to by those present.

2.19 Sexual Intimidation includes but is not limited to:

2.191 threatening another with a non-consensual sex act;

2.192 stalking or cyber-stalking; or

2.193 engaging in indecent exposure as defined in Texas *Penal Code* 21.08.

<http://www.statutes.legis.state.tx.us/docs/pe/htm/pe.21.htm#21.08>

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

2.21 Sexual Violence Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. All such acts are forms of Sexual Misconduct.

2.22 Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

2.221 fear for his or her safety or the safety of others; or

2.222 suffer substantial emotional distress (Texas *Penal Code* Section 42.072).

<http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.42.htm#42.072>

- 2.23 Student refers to any person who has been accepted for admission, or who is currently or was previously enrolled in the Component on either a full-time or part-time basis.
- 2.24 Third party refers to any person who is not a current student or employee of the Component, including but not limited to vendors and invited and uninvited visitors.
- 2.25 Third-Party Reporting refers to the submission of a complaint of sexual misconduct by a person on behalf of another person.
- 2.26 Title IX Coordinator is the person who has been designated by each Component to coordinate efforts to comply with and implement this Policy. The Title IX Coordinator is responsible for conducting the administrative investigation of reports of sexual misconduct and is available to discuss options, provide support, explain Component policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. Each Component will identify and provide complete contact information for their Title IX Coordinator and all Deputy Coordinators in various locations, including but not limited to the Component's website; the student's handbook; the Dean of Student's Office; Human Resources; and Campus Police or Security; or their equivalents.
- 2.27 Title IX Investigator refers to the person who conducts the Title IX investigation.

3. Confidentiality

- 3.1 Limited Confidentiality of Reports to Employees. When considering reporting options, Victims should be aware that certain Component personnel can maintain strict confidentiality, while others have mandatory reporting and response obligations. Component

personnel that are not confidential reporters as described in 3.4 and who receive a report of alleged sexual misconduct are required to share the information with appropriate administrative authorities for investigation and follow up. The Component will protect a Complainant's confidentiality by refusing to disclose his or her information to anyone outside the Component to the maximum extent permitted by law. As for confidentiality of information within the Component, the Component must balance a Victim's request for confidentiality with its responsibility to provide a safe and non-discriminatory environment for the Component community.

3.2 Confidentiality Requests and Interim Measures. The Component's inability to take disciplinary action against an alleged discriminator or harasser because of a Complainant's insistence of confidentiality, will not restrict the Component's ability to provide appropriate measures for the reasonable safety of the Component community. The Complaint may also be used as an anonymous report for data collection purposes under the Clery Act.

3.3 Victim Identity Protected from Open Records. The Texas Public Information Act permits the identity of Victims of sexual assault to be withheld from those seeking records under the Act (Texas *Attorney General Open Records Decision 339 (1982)*).
<https://www.texasattorneygeneral.gov/opinions/openrecords/46white/ord/1982/pdf/ORD19820339.pdf>

3.4 Employees Required to Maintain Confidentiality. The following individuals are required to maintain confidentiality and shall not report any information about an incident to the Title IX Coordinator without a Victim's permission:

3.41 physical and mental health professionals, including licensed counselors who provide mental health counseling to members

of the school community, and those who act under the supervision of a health care employee; and

- 3.42 individuals whose scope of employment include confidentiality requirements under Texas law.
- 3.43 Each Component will identify and provide complete contact information of such individuals in various locations, including but not limited to the Component's website; the student's handbook; the Dean of Student's Office; and Campus Police or Security.
- 3.44 These individuals will maintain confidentiality in accordance with the law and their professional rules of conduct. They will assist in a crisis situation and provide information about possible resources, some of which may include law enforcement, medical assistance, psychological counseling, victim advocacy assistance, legal assistance, Component disciplinary action, immigration services and criminal prosecution. They will not reveal the Victim's identity to anyone without the Victim's permission except under very limited exceptions (e.g., if an immediate threat to the Victim or others is present, or if the Victim is a minor). Victims need not reveal their names if calling these individuals for information.

- 3.5 Employees Who Must Report – Responsible Employees. A responsible employee who receives a report of sexual misconduct must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the Victim. A responsible employee should not share information with law enforcement without the Victim's consent, or unless the Victim has also reported the incident to law enforcement.

- 3.51 Before a Victim reveals any information to a responsible employee, the employee should ensure that the Victim

understands the employee's reporting obligations - and, if the Victim wants to maintain confidentiality, direct the Victim to confidential resources.

- 3.52 If the Victim chooses to tell the responsible employee what happened but also states that she or he wants to maintain confidentiality or does not want the matter investigated, the employee should tell the Victim that the Component will consider the request but cannot guarantee that the Component will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Title IX Coordinator of the Victim's request for confidentiality.
- 3.53 When weighing a Victim's request for confidentiality or that no investigation or discipline be pursued, the Component will consider a range of factors, including the following:
- 3.531 the increased risk that the Alleged Perpetrator will commit additional acts of sexual or other violence, such as:
 - 3.532 whether there have been other sexual misconduct complaints about the same Alleged Perpetrator;
 - 3.533 whether the Alleged Perpetrator has a history of arrests or records from a prior school indicating a history of violence;
 - 3.534 whether the Alleged Perpetrator threatened further sexual misconduct or other violence against the Victim or others;
 - 3.535 whether the alleged sexual misconduct was committed by multiple Perpetrators;
 - 3.536 whether the alleged sexual misconduct was perpetrated with a weapon;
 - 3.537 whether the Victim was a minor at the time of the alleged conduct;

3.538 whether the Component possesses other means to obtain relevant evidence of the alleged sexual misconduct (e.g., security cameras or personnel, physical evidence); or

3.539 whether the Victim's report reveals a pattern of conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

3.6 Breaches of Confidentiality. Breaches of confidentiality or privacy committed by anyone receiving a report of alleged sexual misconduct or investigating the report of alleged sexual misconduct, may be considered a separate violation of this Policy and may result in disciplinary sanctions.

4. Reporting Policies and Protocols

4.1 Reporting Options. A Victim of sexual misconduct is encouraged to report to any of the sources below. Although the Victim of sexual misconduct may decline to report the incident, the Component supports, encourages and will assist those who have been the Victim of sexual misconduct to report the incident to any individual or entity listed in 3.4, 3.5 above and/or in this Section.

4.11 **Local Law Enforcement**. An individual may report an incident of sexual misconduct directly with local law enforcement agencies by dialing 911. Individuals who make a criminal complaint may also choose to pursue a complaint through the Title IX Coordinator.

4.12 A criminal investigation into the matter does not preclude the Component from conducting its own investigation. The result of a criminal investigation does not determine whether sexual misconduct, for purposes of this Policy, has occurred.

4.13 **Component Police or Security**. An individual may also report an incident of sexual misconduct to the Component police or security. Reporting to such officials helps protect others from

future victimization; apprehend the alleged assailant; and maintain future options regarding criminal prosecution, Component disciplinary action and/or civil action against the alleged wrongdoer. For Components that employ sworn peace officers, a Victim may request that his or her identity be kept confidential when reporting sexual misconduct to a sworn peace officer. Filing a police report does not obligate the Victim to continue with criminal proceedings or Component disciplinary action. Components shall provide the Victim contact information for their campus police or security personnel.

- 4.14 Title IX Coordinator. Any incident of sexual misconduct can be brought to the attention of the Title IX Coordinator. Although the Component strongly encourages reporting sexual misconduct to the police, a Victim may request administrative action by the Component with or without filing a police report.
- 4.15 Dean of Student's Office. Any incident of sexual misconduct can be brought to the attention of the Dean of Student's Office. Although the Component strongly encourages reporting sexual misconduct to the police, a Victim may request administrative action by the Component with or without filing a police report. The Dean of Students Office will promptly inform the Title IX Coordinator of the complaint.
- 4.16 Campus Security Authority. A complaint of sexual misconduct can be brought to a Campus Security Authority (CSA) as defined in each Component's Annual Security Report. The CSA will promptly inform the Title IX Coordinator of the complaint. Each Component will identify and provide complete contact information for their CSA in various locations, including but not limited to the Component's web page; the student's handbook; the annual security report; and the Dean of Student's Office.

- 4.17 Human Resources. A complaint of sexual misconduct may be brought to the Human Resources Department, which will promptly inform the Title IX Coordinator of the complaint.
- 4.18 Responsible Employee. An individual may report alleged sexual misconduct to a Responsible Employee, as that term is defined in 2.14 above. A faculty or staff member with any knowledge (including firsthand observation) about a known or suspected incident of sexual misconduct (other than those individuals identified in section 3.4 above) must report the incident to the Component police or security or the Component's Title IX Coordinator. No employee is authorized to investigate or resolve Complaints without the involvement of the Component's Title IX Coordinator.
- 4.19 Individuals may also file anonymous reports. Each Component shall provide the phone number and web address available for anonymous reports. Individuals who choose to file anonymous reports are advised that it may be very difficult for the Component to follow up and/or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

4.2 Preservation of Evidence. Preservation of evidence is critical in instances of sexual misconduct. Prompt reporting may preserve options that delayed reporting does not, including the preservation of physical evidence (which may be necessary to prove sexual misconduct or to obtain a judicial order of protection), the support of crisis counseling, and immediate police response.

4.3 Interim Measures. When an incident of sexual misconduct is formally reported, the Component will consider interim measures to protect the Alleged Victim while the incident is investigated and adjudicated through this Policy. The Title IX Coordinator and other

appropriate Component administrators cooperate together to identify alternative arrangements to preserve the rights of both the Alleged Victim and the Accused, as well as provide a safe overall educational or working environment until (and perhaps after) the conclusion of the process.

- 4.31 Interim measures may include changing academic, living, transportation or working situations; and, any interim disciplinary action must comply with *System Rules and Regulations Chapters IV § 2.2(14), V § 2.141, and VI § 5.(14)*.
- 4.32 Failure to adhere to the parameters of any interim measures may be considered a separate violation of this Policy and may result in disciplinary sanctions.
- 4.33 Component will honor any order of protection, no contact order, restraining order or similar lawful order issued by any criminal, civil or tribal court.

5. Retaliation

The Component takes reports of sexual misconduct very seriously and will not tolerate retaliation against those who make such reports or participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of sexual misconduct, or otherwise participating under this Policy. Any actual or threatened retaliation, or any act of intimidation to prevent or otherwise obstruct the reporting of sexual misconduct, or the participation in proceedings relating to sexual misconduct may be considered a separate violation of this Policy and may result in disciplinary sanctions. Any person who believes that she or he has been subjected to retaliation should immediately report this concern to their Title IX Coordinator.

6. Immunity

The Component considers the reporting and adjudication of sexual misconduct cases of paramount importance. The Component does not

condone underage drinking, illegal use of drugs or other criminal behavior; however, the Component may extend limited immunity from punitive sanctions when appropriate for those reporting incidents and/ or assisting Victims of sexual misconduct, provided they are acting in good faith in reporting or participating in an investigation.

7. Prohibition on Providing False Information

Any individual who knowingly files a false Complaint under this Policy, or knowingly provides false information to Component officials, or who intentionally misleads Component officials who are involved in the investigation or resolution of a Complaint shall be subject to disciplinary action.

8. Risk Reduction Strategies

8.1 Purpose. The Component will engage in the risk reduction strategies outlined below to limit the risk of sexual misconduct for the campus community.

8.2 Training.

8.21 Primary Prevention Training. Every incoming student, including undergraduate transfer students, and new employee shall attend prevention and education training or orientation regarding sexual misconduct and the campus sexual assault policy during the first semester or term of enrollment or employment. The Component shall establish the format and content of the training or orientation. Primary prevention training programs shall be designed to promote awareness of sexual offenses and to incorporate risk reduction strategies to enable community members to take a role in preventing and interrupting incidents of sexual misconduct. The Component training will be based upon research and will be assessed periodically for effectiveness. Specifically, training will include:

- 8.211 awareness and prevention of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking;
- 8.212 definitions of sexual misconduct offenses which are prohibited by the Component as defined by Texas law;
- 8.213 definition of consent as defined by Texas law;
- 8.214 risk reduction, such as recognition of warning signs of possible sexual misconduct, situational awareness and safety planning;
- 8.215 bystander intervention to encourage identification of situations that might lead to sexual misconduct and promote safe intervention as a means to prevent the misconduct - bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene;
- 8.216 procedures for reporting, investigating, and accessing possible sanctions for sexual misconduct as described in this Policy;
- 8.217 options for reporting sexual misconduct and the confidentiality that may attach to such reporting;
- 8.218 campus and community resources available to Complainants or Respondents;
- 8.219 interim safety measures available for Complainants; and,
- 8.21(10) descriptions of additional and ongoing sexual misconduct training.

8.3 Ongoing Sexual Misconduct Training. The Component's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education in the form of annual training, lectures by

faculty, staff, mental health professionals, and/or trained non-Component personnel. Ongoing training may include dissemination of informational materials regarding the awareness and prevention of sexual misconduct.

- 8.4 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 including, knowledge of offenses, investigatory procedures, due process, and Component policy and procedures related to sexual misconduct.

9. Informal Resolution (Mediation)

- 9.1 Eligibility for Mediation. Informal resolution is available and appropriate for claims of Sexual Harassment, only if:
- 9.12 both parties are both willing to engage in mediation and consent to do so in writing;
 - 9.13 the Complainant and the Respondent are both students or are both employees of the Component;
 - 9.14 the Title IX Coordinator agrees that informal resolution is an appropriate mechanism for resolving the Complaint; and
 - 9.15 the Complaint involves only Sexual Harassment as described in this Policy and does not involve any other sexual offense.
- 9.2 Mediation and Agreements. When the Title IX Coordinator determines informal resolution is appropriate and the parties consent in writing, the Title IX Coordinator will arrange or facilitate mediation in attempt to resolve the complaint. Agreements reached in mediation will be reduced to writing and signed by both parties. Agreements will be maintained by the Coordinator and shared only

as necessary to implement the agreed resolution or as required by law.

9.3 Referral for Investigation. When mediation is not successful, or, if in the course of facilitating informal resolution the Title IX Coordinator learns of sexual offenses beyond sexual harassment, the informal resolution process will immediately terminate. The matter will then be referred for investigation in accordance with the procedures outlined below.

10. Investigation Procedures and Protocols

10.1 Actions Upon Receiving Report. Upon Component's receipt of a report of sexual misconduct:

10.11 Assignment. The Title IX Coordinator will review the complaint and investigate the matter. Alternatively, the Title IX Coordinator may assign the investigation to a Deputy Coordinator or Investigator and advise the Complainant of the name and contact information of the individual assigned. Subsequent references to Investigator in this section refers to the individual investigating the complaint, whether a Title IX Coordinator, Deputy Coordinator, or Investigator.

10.12 Initial Meeting with Complainant. As soon as is practicable, the Investigator shall contact the Complainant (subsequent references to Complainant in this section include the Alleged Victim if the original Complainant was not the Victim) and schedule an initial meeting. At the initial meeting the Investigator will:

10.121 provide an electronic and/or hard copy of this Policy which explains the process and rights of all parties;

10.122 request additional information regarding the reported incident;

- 10.123 explain the investigatory process;
- 10.124 explain the options for reporting to law enforcement authorities, whether on campus or local police;
- 10.125 discuss confidentiality standards and concerns with the Complainant and advise that confidentiality may impact the Component's ability to investigate fully;
- 10.126 determine whether the Complainant wishes to pursue a resolution (formal or informal) through the Component or seeks no resolution;
- 10.127 refer the Complainant, as appropriate, to the Counseling Center or other resources which may include law enforcement, medical assistance, psychological counseling, victim advocacy resources, legal resources, Component disciplinary action, immigration services, and criminal prosecution; and
- 10.128 discuss with the Complainant, as appropriate, possible interim measures as described herein.

10.13 Interim Measures. The Investigator will determine and implement interim measures as appropriate and necessary for the Complainant's safety and to limit potential retaliation.

Such measures may include, but are not limited to:

- 10.131 campus no-contact orders;
- 10.132 reassignment of housing or work assignments;
- 10.133 temporary withdrawal or suspension from the Component, in accordance with *System Rules and Regulations Chapters IV § 2.2(14), V § 2.141, and VI § 5.(14)*;
- 10.134 escort or transportation assistance;
- 10.135 modification of class schedules; or
- 10.136 restrictions from specific activities or facilities.

The Component shall maintain as confidential any measures provided to the Victim, to the extent allowed by law and to the extent that maintaining such confidentiality will not impair the ability to provide the measures.

Failure of any party to adhere to the parameters of any interim measure may be considered a separate violation of this Policy and may result in disciplinary sanctions.

10.2 Prompt, Fair, and Equitable Investigation.

10.21 Timing of Investigation and Resolution. The Component shall make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as efficient a manner as possible, with an expectation that the process (exclusive of any appeal procedures) will generally be completed within sixty (60) calendar days of the Complaint, absent extenuating circumstances. The Title IX Coordinator may modify this and any other deadlines contained in this Policy as necessary to accomplish the purposes stated and for good cause, including, but not limited to, the complexity of the investigation and semester breaks.

10.22 Notice of Allegations to Respondent. At the outset of an investigation, the Investigator will provide the Respondent prompt notice of the allegations against him or her in writing together with a copy of this Policy. Written Notice of Allegations will be provided to the Complainant concurrently with Respondent.

10.23 Equitable Treatment.

10.231 Investigator will remain neutral throughout the investigation and provide both the Complainant and Respondent opportunities to respond in person and in

writing, to submit relevant documents, and to produce relevant witnesses.

10.232 The Complainant and Respondent will receive a minimum of forty-eight hours' notice of any sanction meeting, due process hearing, or appellate meeting, if any.

10.233 Both Complainant and Respondent may have one representative and/or one advisor present at all meetings a party has with the Investigator, Title IX Coordinator, Deputy Coordinator or other Component administrator related to a complaint. The representative or advisor may provide support, guidance or advice to the Complainant or Respondent, but may not otherwise directly participate in the meetings.

10.234 The Complainant, Respondent, and appropriate officials will, at least forty-eight hours' in advance, be provided access to any information that will be used after the investigation but during disciplinary meetings.

10.24 Investigation Activities. Investigator will gather and review information from Complainant, Respondent, and Witnesses. Investigator shall conduct site inspection, if necessary, and obtain other information from sources as appropriate given the nature of the complaint.

10.25 Report of Investigation. The Investigator will complete a written Investigative Report that includes summaries of interviews conducted; photographs, if any; documents and materials received; descriptions of relevant evidence; summaries of relevant electronic records; and a detailed report of the events related to the incident. When the

Investigator is not the Title IX Coordinator the Investigative Report will be submitted to the Title IX Coordinator for review and finding.

11. Standard of Review and Finding

11.1 **Review.** The Title IX Coordinator will review the Report of Investigation under the “preponderance of the evidence” standard as defined in Section 2.12 of this Policy.

11.2 **Finding.** The Title IX Coordinator will make a written finding as to whether:

11.21 no reasonable grounds exist that the Sexual Misconduct Policy was violated and the matter is closed, or

11.22 it is more likely than not that Respondent violated the Sexual Misconduct Policy, and which specific sections of the Policy were violated.

11.3 **Rationale and Recommended Sanctions.** The finding shall include the Title IX Coordinator’s basis for the decision and recommended sanctions, if any. The Title IX Coordinator will communicate the Finding in writing simultaneously to the Complainant, Respondent, and Component Administrator (as defined in 12.2 below) with authority to determine and issue appropriate sanctions, if any.

12. Sanctions

12.1. **Possible Sanctions.** Sanctions for a Finding of a Policy violation will depend upon the nature and gravity of the misconduct and/or any record of prior discipline for sexual misconduct. Sanctions may include:

12.11 withholding a promotion or pay increase;

12.12 reassigning employment;

12.13 terminating employment;

12.14 barring future employment;

- 12.15 temporary suspension without pay;
- 12.16 compensation adjustments;
- 12.17 expulsion or suspension from the Component and/or System;
- 12.18 no-contact orders,
- 12.19 probation (including disciplinary and academic probation);
- 12.20 expulsion from campus housing;
- 12.21 restricted access to activities or facilities;
- 12.22 mandated counseling (e.g. educational programs such as batterer's intervention);
- 12.23 disqualification from student employment positions;
- 12.24 revocation of admission and/or degree;
- 12.25 withholding of official transcript or degree;
- 12.26 bar against readmission;
- 12.27 monetary restitution; or
- 12.28 withdrawing from a course with a grade of *W*, *F*, or *WF*.

12.2 Sanction Decision. The responsible Component Administrator will issue a decision regarding sanctions simultaneously to the Complainant, Respondent, and Title IX Coordinator in writing within seven (7) class days of receipt of the Finding. Administrators responsible for imposing sanctions are:

12.21 Student Respondent Sanctions. The Dean of Students will issue sanctions for students.

12.211 Student Employees. Where the Respondent is both a student and an employee, the Title IX Coordinator will determine whether the Respondent's status is that of student, staff, or faculty for disciplinary purposes. When the Respondent's status is determined to be that of a student employed by the Component, the Dean of Students will consult with the AVP of Human Resources or their equivalent prior to issuing sanctions.

- 12.212 Due Process Hearing. Complainant or Student Respondent may elect to dispute the Finding and/or the sanction through a due process hearing. Procedures for the hearing are outlined in the *System Rules and Regulations, Chapter VI §§ 5.7-5.9* and the Component's Student Discipline Procedures, with exceptions as follows:
- 12.2121 The Component Representative for student due process hearings related to Sexual Misconduct shall be the Component's Title IX Coordinator or his or her designee;
 - 12.2122 The role of the hearing adjudicator(s) is to review the investigation and the appropriateness of the sanction for significant procedural errors or omissions;
 - 12.2123 Parties may question their own witnesses, but they shall not ask questions of each other or the other party's witnesses;
 - 12.2124 Each party shall receive notice of the hearing and has a right to be present; however, neither party shall be compelled to attend any hearing; and
 - 12.2125 When a finding of sexual misconduct is upheld, sanctions listed in section 12.1 of this policy shall be imposed.
- 12.213 Staff Employee Respondents. The Respondent's supervisor, or other authority within the Respondent's chain of command, will issue sanctions in consultation with Human Resources.
- 12.214 Faculty Employee Respondents. The Dean, who may consult with the Department Chair as appropriate, will issue sanctions in consultation with the Provost.

- 12.2141 Tenured Faculty Due Process Hearing.
Tenured faculty receiving a sanction that impacts the faculty member's continued employment, full-time salary (not including administrative positions or summer teaching) or demotion in rank may elect to dispute the Finding and the sanction through a due process hearing.
- 12.2142 Non-Tenured Faculty Due Process Hearing. A non-tenured faculty member receiving a sanction impacting the faculty member's continued employment, full-time salary (not including possible summer teaching) or demotion in rank termination sanction before the expiration of the stated period of his or her appointment may elect to dispute the Finding and sanction through a due process hearing.
- 12.2143 Procedures for Faculty Due Process Hearing. Hearing procedures are outlined in the *System Rules and Regulations, Chapter V, § 4.54* and the Component's Faculty Grievance Procedures or its equivalent with the following exceptions:
- 12.21431 The role of the hearing adjudicator(s) is to review the investigations and the appropriateness of the sanction for significant procedural errors or omissions; and

12.21432 Complainant shall receive notice of the hearing and has a right to be present. Complainant shall neither be compelled to attend any hearing, nor be questioned by the Respondent.

12.215 In any situation where the responsible administrator has a conflict, the employee next in line in authority will impose sanctions.

13. Appeal of Finding or Sanctions

13.1 Right to Appeal. If either Complainant or the Respondent is dissatisfied with the Title IX Coordinator's Finding, sanction, and/or determination of a due process hearing, either party may appeal to the appropriate Component Appellate Authority as indicated below. References to "parties" in this section and in the *System Rules and Regulations* refer to the Respondent, Component Representative (Title IX Coordinator or designee), Component Administrator who imposed sanctions, and Complainant.

13.2 Grounds for Appeal. The grounds for any appeal are limited to the following:

13.21 previously unavailable relevant evidence;

13.22 substantive procedural error in the investigation or hearing; or

13.23 sanction is substantially disproportionate to the Finding;

13.24 the finding was not supported by the evidence.

13.3 Procedure for Appeal.

13.31 An administrator receiving notice of appeal will provide a copy of the notice to the parties concurrently with receipt.

13.32 Students. Any appeal of the finding, sanction or determination of a due process hearing is governed by the procedures outlined in the Student Conduct and Discipline Procedures in the *System Rules and Regulations, Chapter VI, § 5.(10)* and the Component's Student Code of Conduct. However, the appeal officer (Component Appellate Authority) may only approve, reject, or modify the decision and the appeal officer's decision is final.

13.33 Staff Employees. Any appeal of the Finding or sanction against a staff employee is governed by the procedures outlined in the *System Rules and Regulations, Chapter V, § 2.15* and the Component's Staff/Employee Grievance Procedures or its equivalent.

13.34 Non-Tenured Faculty.

13.341 Should the sanction against a non-tenured faculty member result in the termination of the faculty member during his/her contract period, the faculty member is entitled to a due process hearing pursuant to section 12.2152, and the faculty member may appeal the findings and/or sanctions resulting from such due process hearing. Such appeal is governed by the *System Rules and Regulations, Chapter V, § 4.5*.

13.342 Should the sanction against a non-tenured faculty member result in the non-reappointment or termination of the faculty member after expiration of his/her contract period, the faculty member is not entitled to a due process hearing pursuant to section 12.2152. However, the faculty member may appeal the findings and/or sanctions and such appeal is governed by the *System Rules and Regulations, Chapter V, § 4.4*.

13.343 All other appeals of the finding or sanction against a non-tenured faculty member is governed by the procedures outlined in the *System Rules and Regulations, Chapter V, § 2.15* and the Component's Staff/Employee Grievance Procedures or its equivalent.

13.35 Tenured Faculty

13.351 Should the sanction against a tenured faculty member result in revocation of tenure, termination of employment, and/or reduction of his/her academic year base salary (not including possible administrative roles or summer teaching) or demotion in rank, the faculty member shall be entitled to a due process hearing under the *System Rules and Regulations, Chapter V, § 4.5*.

13.352 All other appeals of a finding or sanction against a tenured faculty member are governed by the procedures outlined in the *System Rules and Regulations, Chapter V, § 2.15* and the Component's Staff/Employee Grievance Procedures or its equivalent.

13.4 Sanctions Pending Appeal. Any sanction(s) imposed will remain in place while any appeal is pending, unless, in the discretion of the Component Administrator imposing the sanction, good cause exists to stay the sanction.

14. Final Decision

14.1 No Appeal. Decisions and sanctions imposed under this Policy are final when the period for appeal under the rules and policies referenced in paragraph 13 above have expired without initiation of an appeal by either party.

14.2 Conclusion of Appeal. An appealed decision is final as outlined in the rules and polices referenced in section 13 above.

14.3. Notification of Outcomes.

14.31 The Title IX Coordinator will simultaneously notify the Complainant and the Respondent in writing of the outcome of the following stages of the process:

14.311 the Finding;

14.312 the sanction;

14.313 the outcome of a due process hearing, if any; and

14.314 the outcome of due process appeal, if any.

14.32 Any notice of outcome must include:

14.321 whether the alleged conduct occurred;

14.322 any sanctions imposed on the respondent that directly relate to the complainant,

14.323 and other steps the school has taken to eliminate the hostile environment, if the school finds one to exist, and prevent recurrence.

14.33 The Respondent should not be notified of the individual remedies offered or provided to the Complainant.

15. Biennial Policy Review

Each biennium, this Policy shall be reviewed. Any revisions determined necessary shall be brought before the System's Board of Regents for approval.