1. DEFINITIONS

1.1. **Actual Knowledge** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of alleged harassing, discriminatory, and/or retaliatory conduct. Actual knowledge compels the Texas Southern University (TSU) to initiate action.

1.2. **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if a hearing is held. This individual may be a TSU employee, a member of the community, or attorney (hired and paid for by a party).

1.3. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.

1.4. **Formal Complaint** means a document filed with the Title IX Coordinator/signed by a Complainant or signed by the Title IX Coordinator alleging against sexual harassment against a Respondent and requesting that TSU investigate the allegation.

1.5. **Confidential Resource** means an employee who is not a Mandatory Reporter or an Official with Authority (irrespective of Clery Act Campus Security Authority status). At TSU, the following constitute confidential resources.

1.6. **Day(s)** means a business day when TSU is in normal operation.

1.7. **Education program** or activity means locations, events, or circumstances where TSU exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by TSU.

1.8. **Final Determination of Responsibility** means a conclusion by preponderance of the evidence that the alleged conduct occurred, or did not occur, and whether it did, or did not violate policy.

1.9. **Formal Grievance Process** means a method of formal resolution designated by TSU to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.

1.10. **Grievance Process Pool** means any investigators, appeal officers, hearing administrators, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

1.11. **Hearing Decision-maker** means a person who has decision-making and sanctioning authority within TSU's Formal Title IX Grievance process.

1.12. **Investigator** means the person or persons charged by TSU with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and

compiling this information into an investigation report and file of directly related evidence.

1.13. **Mandatory Reporter** means an employee of TSU who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Mandatory reporters do not convey actual knowledge to TSU. Mandatory Reporters under this policy does not diminish the requirement under Texas state law to report alleged or suspected child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandatory reporter responsibility in this policy.

1.14. **Official with Authority (OWA)** means an employee of TSU explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of TSU. Notice to an OWA of an allegation of sexual harassment as defined in this policy conveys actual knowledge to TSU and triggers a responsibility to act.

1.15. **Parties** include the Complainant(s) and Respondent(s), collectively.

1.16. **Promptness** means the time period in which allegations are acted upon once TSU has received notice or a formal complaint. Typically, complaints can take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but TSU will avoid all undue delays within its control.

1.17. **Remedies** means post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to TSU's educational program.

1.18. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity. When the Respondent is a member of the TSU community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the TSU community.

1.19. **Resolution** means the result of an informal or formal grievance process.

1.20. **Sanction** means a consequence imposed by TSU on a Respondent who is found to have violated this policy.

1.21. **Sexual Harassment** means the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

1.22. **Title IX Coordinator** is the one official designated by TSU to ensure compliance with Title IX and TSU's Title IX program. References to the coordinator throughout this policy may also encompass a designee of the coordinator for specific tasks.

1.23. **Student** means any individual who is registered or enrolled for credit or noncredit bearing coursework, camps and other University-sponsored programs or activities, and who maintains an ongoing relationship with TSU, which means the student is on leave (medical, administrative, or other documented leave of absence), but is not registered or taking classes at the time of the complaint being filed.

1.24. **Title IX Team** refers to the Title IX Coordinator, Advisors, Decision-Makers and any member(s) of the Grievance Process Pool.

2. RATIONALE FOR POLICY

TSU is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment, discrimination on the basis of sex, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness in all aspects of the educational program or activity, TSU has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment, and for allegations of retaliation. TSU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

3. TITLE IX COORDINATOR

TSU has a designated Title IX Coordinator who oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating TSU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The name of the TSU Title IX Coordinator is:

Cynthia S. Buckley, Ed.D.

Title IX Coordinator

Interim Vice President Department of Human Resources and Payroll Services

Room HH127B, 3100 Cleburne Street, Houston, TX 77004

O (713) 313-7037 F (713) 313-4347

The Title IX Coordinator must act with independence and authority free from bias and conflicts of interest. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Compliance Office by emailing Compliance@tsu.edu. Concerns of bias or a potential conflict of interest by any other Title IX team member should be raised with the Title IX Coordinator or to the TSU Compliance Office.

4. OFFICIALS WITH AUTHORITY AND MANDATORY REPORTERS

OFFICIALS WITH AUTHORITY

TSU has determined that the following administrators are Officials with Authority under Title IX and can address and correct sexual harassment and/or retaliation. In addition to the Title IX team members listed in Section 1. Definitions, these Officials with Authority listed

below may also accept notice or complaints on behalf of TSU. Knowledge on the part of an Official with Authority conveys actual knowledge to TSU as prescribed under the Title IX regulations. These administrators are still bound under state mandatory reporting laws.

- President
- Provost
- General Counsel/Associate General Counsel
- Sr. Associate VP of Human Resources and Payroll Services
- Vice Presidents, Sr. Associate Vice Presidents, and Assistant Vice Presidents
- Police Officers and Security Officers
- Title IX Coordinator

MANDATORY REPORTERS

Texas state law requires all employees (both faculty and staff) at a public or private postsecondary institution to promptly report any knowledge of any incidents of sexual assault, sexual harassment, dating violence, or stalking "committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident." A Complainant who expects formal action in response to their allegations, but does not wish to contact the Title IX Coordinator should report their allegations to any mandatory reporter who can connect them with resources to report crimes and/or policy violations.

Mandatory reporters will, within twenty-four (24) hours, refer reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action. Mandatory reporters must promptly (within twenty-four (24) hours) share with the Title IX Coordinator all known details of a report made to them in the course of their employment. The persons occupying the following positions are mandatory reporters. Knowledge to a mandatory reporter does not convey actual knowledge to TSU under Title IX.

Anonymous Notice to Mandated Reporters

A Complainant may request that the mandatory reporter provide notice to the Title IX Coordinator anonymously, without identification of the Complainant. A mandatory reporter cannot remain anonymous themselves. TSU will investigate matters in which anonymous notice has been given to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits TSU's ability to investigate, respond, and provide remedies, depending on what information is shared. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a mandatory reporter (such as name, phone number, or email address), but all other details of the alleged incident(s) must be shared with the Title IX Coordinator. Supportive measures

must be offered to the Complainant as the result of such disclosures without formal TSU action.

Failure of a mandatory reporter to report an incident of harassment or discrimination of which they become aware is a violation of TSU policy and the mandatory reporter may be subject to disciplinary action, up to and including termination, for failure to report, as well as any penalties, as outlined under state law.

5. CONFIDENTIAL RESOURCES AND FEDERAL RESOURCES

- On-campus
- University Counseling Center – tsu.edu/ucc / 713.313.7804 main number / After Hours Crisis Number – 713.313.7863
- University Health Center – tsu.edu/health / 713.313.7173
- Off-campus (non-employees): • Houston Area Women's Center (HAWC) – hawc.org/resource-list
- Domestic Violence Hotline – 713.528.2121 / 800.256.0551
- Sexual Assault Hotline – 713.528.3691 / 800.256.0661 • Mercy House – https://mercyhousesite.org/get-help
- Love is Respect – www.loveisrespect.org/about
- Family Violence Program Center – https://hhs.texas.gov/services/safety/familyviolence-program
- Domestic Shelters in Houston – domesticshelters.org/help/tx/houston
- Daya Houston – dayahouston.org/gethelp
- Bay Area Turning Point – bayareaturningpoint.org
- The Bridge Over Troubled Waters – tbotw.org / 713.473.2801
- Clergy/Chaplains
- Attorneys

Additional resources may be found visiting this website: Prevention and Support

External Inquiries may also be made to the Office for Civil Rights, Dallas Office

Office for Civil Rights

U.S. Department of Education Renaissance Tower

1201 Elm Street, Suite 1000 Dallas, Texas 75270

Telephone: 214-661-9600

FAX: 214-661-9587; TDD: 800-877-8339

Email: OCR.Dallas@ed.gov

6. NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION

Notice or complaints of discrimination, harassment, and/or retaliation in violation of this policy may be made using any of the following options:

6.1. File a complaint with, or give verbal notice to the Title IX Coordinator or an Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, (TitleIX@tsu.edu), or by mail to the office address.

6.2. Report online, using the reporting form posted at TSU Title IX Reporting Anonymous reports are accepted, and can give rise to a need to investigate. TSU tries to provide supportive measures to all Complainants, which is impossible with an anonymous report when the name of the Complainant is not shared in the report. Since anonymous reporting carries no obligation to initiate a formal response and since TSU respects a Complainant's requests to dismiss complaints, unless there is a compelling threat to health and/or safety, the matter will be dismissed.

6.3. A formal complaint is a document filed and signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that TSU investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by TSU) that contains the Complainant's physical or digital signature, which can include the Complainant's name on the email, or otherwise indicates that the Complainant is the person filing the complaint.

6.4. The Title IX Coordinator will contact the Complainant regarding any notice that is submitted in a form that does not comply with these requirements to ensure that it is filed correctly.

7. SUPPORTIVE MEASURES

TSU will offer to the Parties and implement appropriate and reasonable supportive measures upon notice of alleged harassment, discrimination, and/or retaliation or upon receiving notice of allegations or a formal complaint, whichever comes first. The Title IX Coordinator will work with the Complainant and Respondent to ensure their wishes are considered with respect to supportive measures.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or

preserve access to TSU's education program or activity, including measures designed to protect the safety of all parties, TSU's educational environment, and/or deter sexual harassment, discrimination on the basis of sex, and/or retaliation.

TSU will maintain the privacy of the supportive measures, provided that maintaining privacy does not impair TSU's ability to implement such measures. TSU will act to ensure as minimal an academic impact on the parties as possible. TSU will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers • Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/ program- related adjustments, including attendance accommodations
- Trespass orders, when applicable
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator • Violations of no contact orders will be referred through the appropriate student or employee conduct process for investigation and further discipline, as is necessary.

8. EMERGENCY REMOVAL

TSU can act to remove a Respondent entirely or partially from its education program/activities or TSU employment on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the University Behavioral Intervention Team

(also known as BIT/BAT/TAT/CARE, etc.) using its standard objective violence risk assessment procedures.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include suspension or expulsion from TSU or termination from TSU employment.

In all cases where an emergency removal is imposed:

8.1. The Respondent will be given written notice of the action. In the written notice will be the option to request to meet with the Title IX Coordinator as soon as reasonably possible, to show cause as to why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the underlying Title IX allegations, but rather an administrative process intended to determine solely whether the emergency removal is appropriate.

8.2. The Respondent has three (3) days after the receipt of the emergency removal to request a Show Cause meeting with the Title IX Coordinator. If the Respondent does not make such a request within the three (3) day time period, objection to the emergency removal is deemed waived.

8.3. The Respondent may be accompanied by an Advisor of their choosing in the Show Cause administrative meeting with the Title IX Coordinator.

8.4. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. Such summary will be included in the notification letter regarding the emergency removal.

8.5. The Title IX Coordinator will issue a Show Cause Meeting Determination letter to the Respondent within two (2) days of the meeting taking place. A copy of the determination letter will be sent to the Complainant as well.

8.6. The show cause meeting determination is final.

8.7. A Complainant and their Advisor may be permitted to participate in the Show Cause meeting. 8.8 TSU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

9. PRIVACY

Every effort is made by TSU to preserve the privacy of a report under this policy.

10. JURISDICTION

This policy applies to all TSU educational programs and activities, and to conduct that takes place on the campus or on property owned or controlled by TSU, at TSU-sponsored events, or in buildings owned or controlled by TSU's recognized student organizations. The Respondent must be a member of TSU's community in order for its policies to apply and the Complainant—at the time of the alleged behavior—must be attempting to participate in

TSU's programs or activities. Nevertheless, even when the Respondent is not a member of TSU's community, supportive measures and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

This policy applies to the effects of off-campus misconduct that effectively deprive someone of access to TSU's educational programs. TSU may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial TSU interest.

Regardless of where the conduct occurred, TSU will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

A Title IX Coordinator may be able to provide guidance for a student or employee Complainant who experiences sexual harassment/discrimination in an externship, study abroad program, or other environment external to TSU under TSU's Student Conduct Code or employee conduct or nondiscrimination policies.

11. TIME LIMITS ON REPORTING

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to TSU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator (except in cases where mandatory dismissal is required), who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

TSU will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice of alleged misconduct or complaint of sexual harassment.

12. ONLINE HARASSMENT AND MISCONDUCT

This policy is written and should be interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on TSU's education programs and activities or use TSU networks, technology, or equipment.

When harassing communications made on websites, social media, and other venues not controlled by TSU are reported to TSU pursuant to this policy, TSU will attempt to address and mitigate the effects of such communications. Any online postings or other electronic communication by students and employees, including cyber-bullying, cyberstalking, cyber-harassment, etc., occurring completely outside of TSU's control (e.g., not on TSU networks,

websites, or between TSU email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption to the student's educational pursuit of TSU's educational programs and/or activities.

Off-campus harassing speech by employees, whether online or in person, may be regulated by TSU only when such speech is made in an employee's official or work related capacity, including where the speaker holds themselves out as employees of TSU. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech will not be subjected to discipline.

13. TITLE IX SEXUAL HARASSMENT

TSU has adopted the following definition of Title IX Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment/discrimination, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

13.1. **Quid Pro Quo**: An employee of TSU conditions the provision of an aid, benefit, or service of TSU on an individual's participation in unwelcome sexual conduct; and/or

13.2. **Sexual Harassment**: unwelcome conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to TSU's education program or activity. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

13.3. **Sexual assault**, defined as:

- Sex Offenses, Forcible:
    - Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
        - Forcible Rape:
            - Penetration, no matter how slight, of the vagina or anus

with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

- Forcible Sodomy:

- Oral or anal sexual intercourse with another person,

  - Forcibly and/or against that person's will (nonconsensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age (under the age of 18) or because of temporary or permanent mental or physical incapacity.

- Sexual Assault with an Object:

  - The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person,

  - forcibly, and/or against that person's will (nonconsensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- Forcible Fondling: • The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, • Forcibly, and/or against that person's will (nonconsensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

13.4. Sex Offenses, Non-forcible:

- Incest:

  - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Texas law.

- Statutory Rape:

  - Non-forcible sexual intercourse, with a person who is under the Texas statutory age of consent, which is the age of 18 years old.

13.5. **Dating Violence**, defined as:

- Violence,
    - on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition.
    - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
    - Dating violence does not include acts covered under the definition of domestic violence.

13.6. **Domestic Violence**, defined as:

- Violence,
    - on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Texas or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state of Texas.
    - To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

13.7. **Stalking**, defined as:

- engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.
- For the purposes of this definition—Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or

interferes with a person's property.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. TSU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

13.8. **Force, Coercion, Consent, and Incapacitation**: As used in the offenses above, the following definitions apply:

a) **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

i. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent

b) **Coercion**: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point may be coercive.

c) **Consent** is knowing, and voluntary, and clear permission by word or action to engage in sexual activity.

i. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. No one under the age of consent in Texas, specifically, 17 years old, can consent to sexual activity.

ii. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

iii. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual

conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

iv. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

v. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

vi. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on TSU to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

d) **Incapacitation:** Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

i. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent

ii. . It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

iii. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

14. RETALIATION

Protected activity under this policy includes reporting an incident that may implicate this

policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. TSU is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for TSU or any member of TSU's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for Student Code of Conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The following do not constitute retaliation under this policy:

- The exercise of rights protected under the First Amendment.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure. A determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

15. WHEN A COMPLAINANT DOES NOT WISH TO PROCEED

If a complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether TSU proceeds when the complainant does not wish to do so. The Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinators decision to sign a formal complaint should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires TSU to pursue formal action to protect the community.

When the Title IX Coordinator executes the written complaint, they do not become the

Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. The Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow TSU to honor that request, TSU will offer supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by TSU, and to have the incidents investigated and properly resolved through these procedures.

16. FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, TSU must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

TSU will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

17. FALSE ALLEGATIONS AND EVIDENCE

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be referred to either the Student Code of Conduct or employee conduct policies for appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator or hearing Decision-maker will be subject to discipline under the appropriate student or employee policy as well as under this policy for providing false testimony.

18. AMNESTY FOR COMPLAINANTS AND WITNESSES

TSU's community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to TSU officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of TSU's community that Complainants choose to report misconduct to TSU officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process. To encourage reporting and participation in the process, TSU maintains a policy of offering parties and witnesses amnesty from minor policy violations, such as underage consumption of alcohol or the use of illicit drugs related to the incident being reported.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. A decision not to offer amnesty to a Respondent should not be based on sex nor gender, but should take into account the rationale for amnesty. The incentive to report serious misconduct is rarely applicable to Respondents with respect to a Complainant.

TSU maintains a policy of amnesty for students who offer help to others in need via bystander intervention. While policy violations cannot be overlooked, TSU may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

19. FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

19.1. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

a) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;

b) VAWA based crimes, which include sexual assault, domestic violence, dating violence, and stalking (VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040); and

c) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations

All personally identifiable information is kept private, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

20. ALLEGED VIOLATIONS OF THE TITLE IX POLICY

20.1. Overview

TSU will act on any formal or informal notice/complaint of violation of the Title IX Sexual Harassment policy ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The procedures below apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in Section XIII) involving TSU students, staff, administrator, or faculty members.

Unionized/other categorized employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with this policy

20.2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of this Policy, TSU will initiate a prompt preliminary assessment to determine the next steps. The Title IX Coordinator (or designee) will initiate at least one of three responses:

a) Offering supportive measures because the Complainant does not want to proceed formally;

b) Offering supportive measures and initiating an informal resolution; or

c) Offering supportive measures and initiating a Formal Grievance Process including to determine whether or not the Policy has been violated.

20.3. Preliminary Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator (or designee) will engage in an initial assessment, which is typically one (1) to five (5) business days in duration.

20.4. Emergency Removal

In the event an emergency removal is considered, the Title IX Coordinator will follow the procedures outlined in Section VIII of this policy.

20.5. Dismissal (Mandatory and Discretionary)

Mandatory Dismissal: The Title IX Coordinator must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined

that:

a) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or

b) The conduct did not occur in an educational program or activity controlled by TSU (including buildings or property controlled by recognized student organizations), and/or TSU does not have control of the Respondent; and/or

c) The conduct did not occur against a person in the United States.

Any conduct alleged in the formal complaint that is dismissed under the #1 above will be referred by the Title IX Coordinator to the Student Code of Conduct administrator (for student Respondents) or the University Human Resources administrator (for employee/third party Respondents). Referrals shall take place within three (3) days of the date of the Dismissal Letter being mailed to the parties.

Discretionary Dismissal: The Title IX Coordinator may choose to dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

a) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it; or

b) The Respondent is no longer enrolled in or employed by TSU; or

c) Specific circumstances prevent TSU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, TSU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

Both mandatory and discretionary dismissal decisions are appealable by any party under the Appeal provisions below.

20.6. **Counterclaims**

TSU is obligated to ensure that the grievance process is not abused for retaliatory purposes. TSU permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims made with retaliatory intent will not be permitted and may constitute a violation of this policy or the Student Code of Conduct. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator.

20.7. Right to an Advisor

The parties may each have an Advisor of their choice. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of TSU's community.

The Advisor may be present with the Complainant or Respondent for all of their meetings and interviews within the resolution process, if they so choose.

The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. "Available" means the party agrees to act as Advisor and has no conflict of interest in doing so. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker.

If the parties choose an Advisor from the pool available from TSU, the Advisor will be trained by TSU and be familiar with TSU's resolution process. If the parties choose an Advisor from outside the pool of those identified by TSU, the Advisor may not have been trained by TSU and may not be familiar with TSU policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing. If either party chooses not to have an Advisor present in the initial stages of the resolution process, this choice will be documented in the record of the case.

20.8. Advisors in Hearings/TSU-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is permitted during the hearing, but must be conducted by the parties' Advisors. The parties are not allowed to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, TSU will appoint a trained Advisor for the limited purpose of conducting cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed with the hearing without an Advisor. If the party's Advisor will not conduct cross-examination, TSU will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decisionmaker during the hearing.

20.9. Advisor Violations of TSU Policy

All Advisors are subject to the same TSU policies and procedures, whether they are attorneys or not. Advisors are expected to advise without disrupting proceedings. Advisors may not address TSU officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not speak on behalf of their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-maker except during a hearing proceeding, during cross-examination.

The parties are expected to respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If an Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

20.10. Sharing Information with the Advisor

Parties may share documentation and evidentiary information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

TSU also provides a consent form (FERPA authorization to release) that authorizes TSU to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before TSU is able to share records with an Advisor.

TSU will not comply with any party's request that all communications be made through their attorney Advisor.

20.11. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by TSU. TSU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by TSU's privacy expectations.

20.12. Expectations of an Advisor

TSU expects an Advisor to adjust their schedule to allow them to attend TSU meetings when planned. At the sole discretion of the Title IX Coordinator, scheduled meetings may be changed to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. A Title IX Coordinator's decision as to whether to change meeting dates and times is final.

TSU may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

20.13. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

20.14. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with TSU policy. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. TSU encourages parties to discuss this topic with their Advisors before doing so.

20.15. Formal Grievance Process

The Formal Grievance Process relies on a pool of administrators ("the Pool") to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

20.16. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of allegations (the "NOA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOA is also copied to the Complainant, who is to be given

advance notice of when the NOA will be delivered to the Respondent.

The NOA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A statement of the potential sanctions/responsive actions that could result
- A statement that TSU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about TSU's policy on retaliation,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that TSU's policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A suggested date and time for an initial meeting (proper time will be given to allow for the selection of an Advisor)
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOA may be made as the investigation progresses and

more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and will be sent via electronic mail to the TSUissued email account and mailed via regular mail to the local or permanent address as indicated in official TSU records. Notice is presumed to have been given upon emailing the NOA to the Respondent's TSU-owned email address.

20.17. **Resolution Timeline**

TSU will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

20.18. **Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator shall appoint a team of at least one (1) investigator to investigate the allegations. Appointment of an investigator typically occurs within two (2) business days of determining that an investigation should proceed.

20.19. **Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. The Title IX Coordinator's decision regarding allegations of bias or conflict of interest is final.

The Formal Grievance Process involves an objective evaluation of all relevant inculpatory and exculpatory evidence obtained. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

A Respondent is presumed not to be responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable preponderance of the evidence standard.

20.20. **Delays in the Investigation Process and Interactions with Law Enforcement**

TSU may undertake a short delay in its investigation (several days) if the following

circumstances require: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions, or such circumstances as determined by the Title IX Coordinator in their sole discretion.

TSU will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. TSU will promptly resume its investigation and resolution process as soon as feasible. During such a delay, TSU will implement supportive measures, as deemed appropriate.

TSU's action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

20.21. The Investigation Process

All investigations should be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. Either party may submit a written statement to the Title IX Coordinator outlining their position on the allegations.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses (at their own expense), and to fully review and respond to all evidence on the record.

20.22. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees or students of TSU are expected to cooperate with and participate in TSU's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of this policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. TSU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in addition to being interviewed.

20.23. Recording of Interviews

No audio or video recording of any kind is permitted during investigation meetings.

20.24. **Evidentiary Considerations in the Investigation**

The investigation does not consider:

a) Incidents not directly related to the possible violation, unless they evidence a pattern;

b) the character of the parties; or

c) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

20.25. **Inspection and Review of Evidence**

The parties have two opportunities to inspect and review the evidence collected by the investigators.

a) **First Inspection Period:** At the end of the investigation, but prior to the drafting of the investigative report, the parties have 10 days to review all of the evidence collected during the investigation. The parties must be able to review the evidence the investigators are going to use as well as the evidence they are not going to use in drafting the investigative report. In that 10-day review period, both parties have equal opportunity to review and respond in writing to the evidence. The investigators will consider the responses before completing the investigative report.

b) **Second Inspection Period:** After the final investigative report is written, but prior to the scheduling of the hearing, the parties can review the final investigative report. This report does not have a determination as to the allegations. It is an outline of the investigation. In that 10-day review period, both parties have equal opportunity to review and respond in writing to the evidence.

20.26. **Referral for Hearing**

The Title IX Coordinator will refer the matter for a hearing, once the final investigative report is shared with the parties.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation, when the final investigation report is made available to the Parties and the Decision-maker for review and comment, unless all parties, and the Decision-maker

agrees to an expedited timeline. This agreement must be in writing.

The Title IX Coordinator will select a Decision-maker from its Title IX team for any hearing held under the Title IX policy. The Decision-maker will have had no previous involvement in the matter at hand.

20.27. **Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker determines is relevant and credible may be considered. The hearing does not consider:

a) incidents not directly related to the possible violation, unless they evidence a pattern;

i. the character of the parties; or

ii. questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties, if they so choose, may submit a written impact statement prior to the hearing for the consideration of the Decision-maker at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence--whether it is more likely than not that the Respondent violated the policy as alleged.

20.28. **Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties via email to the individual TSUissued email address. Once emailed, notice will be presumptively delivered.

The notice will contain:

a) A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.

b) The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities. Thoroughness and fairness are the primary foci of any Title IX hearing process. Hearings are generally scheduled for two (2) hours, but can be extended, as needed at the discretion of the Decision-maker, to ensure that both parties are able to present the information relevant to their position. (e.g., complicated fact pattern, numerous witnesses, etc.).

c) Any technology that will be used to facilitate the hearing.

d) A list of all those who will attend the hearing, along with an invitation to object to the Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

e) Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

f) A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-maker may reschedule the hearing.

g) Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and TSU will appoint one. Each party must have an Advisor present. There are no exceptions.

h) An invitation to each party to submit to the Decision-maker an impact statement. Pre-hearing that the Decision-maker will review during any sanction determination.

i) An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

j) Direction that the parties may not bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by TSU and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this policy is not in good standing to graduate.

20.29. **Virtual Hearings**

All hearings will occur virtually by use of technology, such as Teams or Zoom technology. Each party will be located in a separate room from the Decisionmaker, but all parties will be able to see and hear each other. Witnesses may testify in the same room as the Decision-maker, but not the room where the parties and their Advisors sit. The Title IX Coordinator will arrange to use technology to allow remote testimony without compromising the fairness of the hearing.

20.30. **Pre-Hearing Preparation**

The Decision-maker, or designee, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing. During the ten (10) business day period prior to the hearing, the parties have the opportunity to review and comment on the final investigation report and available evidence.

The Decision-maker, or designee will also provide the parties a copy of the prehearing preparation checklist/document.

20.31. **Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Title IX policy.

Participants at the hearing will include the Decision-maker, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

The Decision-maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision-maker will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker and the parties and will then be excused from attendance.

20.32. **Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the parties may agree to hear the allegations jointly. All parties must agree to a joint

hearing. If one party does not agree, the default will be to hold the hearings separately.

In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

20.33. Refusal to Submit to Cross-Examination and Inferences

The Decision-maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker may consider all evidence it deems relevant.

If a party's Advisor of choice refuses to comply with TSU's established rules of decorum for the hearing, TSU may require the party to use a different Advisor. If a TSU-provided Advisor refuses to comply with the rules of decorum, the Title IX Coordinator may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

20.34. Recording Hearings

Hearings (but not deliberations) are recorded by TSU for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker, the parties, their Advisors, and appropriate administrators of TSU will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given a copy or be allowed to make a copy of the recording.

20.35. Deliberation, Decision-making, and Standard of Proof

The Decision-maker will deliberate alone to determine, by a preponderance of the evidence, whether the Respondent is responsible or not responsible for the policy violation(s) in question. The deliberation period is not to exceed five (5) days. The Decision-maker may consider the previously submitted party impact statements in determining appropriate sanction(s), when there is a finding of responsibility as to one or more of the allegations.

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decisionmaker may--at their discretion--consider the statements, but they are not binding.

The Decision-maker will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any

sanctions. This report must be submitted electronically to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties in writing of the extension.

20.36. **Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will prepare a Notice of Outcome, which shall include the final determination, rationale, and any applicable sanction(s). The Title IX Coordinator will then provide the Notice of Outcome to the parties and their Advisors within five (5) business days of receiving the Decision-maker's deliberation statement. The Notice of Outcome must be shared with the parties simultaneously.

Notification will be made in writing and will be mailed to the local or permanent address of the parties as indicated in official TSU records, or emailed to the parties' TSU-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

20.37. **Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

a) The nature, severity of, and circumstances surrounding the violation(s)

- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- Any other information deemed relevant by the Decision-maker

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

20.38. **Student Sanctions**

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination:

a) *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any TSU policy, procedure, or directive will result in more severe sanctions/responsive actions.

b) *Required Counseling:* A mandate to meet with and engage in external counseling to better comprehend the misconduct and its effects.

c) *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

d) *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at TSU.

e) *Expulsion:* Permanent termination of student status and revocation of rights to be on any TSU campus for any reason or to attend TSU sponsored events.

f) *Withholding Diploma:* TSU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

g) *Revocation of Degree:* TSU reserves the right to revoke a degree previously awarded from TSU for fraud, misrepresentation, and/or other violation of TSU policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

h) *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including TSU registration) for a specified period of time.

i) *Other Actions:* In addition to or in place of the above sanctions, TSU may assign any other sanctions as deemed appropriate.

20.39. **Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination,

and/or retaliation include:

a) Warning – Verbal or Written

b) Performance Improvement/Management Process

c) Required Counseling

d) Required Training or Education

e) Probation

f) Loss of Annual Pay Increase

g) Loss of Oversight or Supervisory Responsibility

h) Demotion

i) Suspension with pay

j) Suspension without pay

k) Termination

l) Other Actions: In addition to or in place of the above sanctions, TSU may assign any other sanctions as deemed appropriate.

20.40. **Withdrawal or Resignation While Charges Pending**

Students: If a student is a Respondent in a pending matter alleging a violation of the Title IX policy, TSU may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from TSU, the resolution process ends, as TSU no longer has disciplinary jurisdiction over the withdrawn student. A student who withdraws or leaves while the process is pending may not return to TSU. Such exclusion applies to all campuses of TSU. A hold will be placed on their ability to be readmitted. They may also be barred from TSU property and/or events.

However, TSU will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

During the resolution process, TSU may put a hold on a responding student's educational record that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as TSU no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire with any TSU or any campus of TSU, and the records retained by the Title IX Coordinator will reflect that status. Human Resources should also be notified and make the appropriate notation on its list of people who are not permitted to be rehired.

However, TSU will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

All TSU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

20.41. **Appeals**

Any party may file a Request for Appeal by submitting such a request in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome Letter. Once the five (5) days have passed, the matter will be deemed closed.

The request for appeal will be forwarded to the Provost or Chief Academic Officer for TSU, acting as the Appeal Chair, for consideration to determine if the request meets the grounds for appeal.

20.42. **Grounds for Appeal**

Appeals are limited to the following grounds:

a) Procedural irregularity that affected the outcome of the matter;

b) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

c) An allegation that the Title IX Coordinator, Investigators, or Decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

The Appeal Chair will deny any request for appeal that does not meet the grounds in this policy and will notify the parties and their Advisors in writing of the denial and the rationale. Denials based on lack of grounds shall be communicated to the requesting party within five (5) days of the request for appeal being received by the Appeal Chair.

If any of the grounds in the Request for Appeal meet the grounds in this policy, then the

appeal chair will:

a) Notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original Decisionmaker.

b) Provide the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker a copy of the appeal request with the approved grounds outlined and five (5) days to submit a response.

c) Collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and render a decision in no more than fifteen (15) days from the date the Request for Appeal was filed, barring exigent circumstances. All decisions apply the preponderance of the evidence.

d) Prepare a Notice of Appeal Outcome letter and send it to all parties simultaneously, which includes the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome letter will also outline specific instructions for remand or reconsideration of any sanction imposed by the Decision-maker, which TSU is permitted to share according to state or federal law. The Notice of Appeal Outcome letter will be mailed to the local or permanent address of the parties as indicated in official institutional records and emailed to the parties' TSU-issued email or otherwise approved account.

Notice is presumed to have been made once the letter is emailed.

20.43. **Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be continued or reinstated, subject to the supportive measures procedure in Section VII of this policy.

TSU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

20.44. **Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

a) Referral to community services including counseling and health services

b) Referral to the Employee Assistance Program

c) Education to the individual and/or the community

d) Permanent alteration of work arrangements for employees

e) Provision of campus safety escorts f

f) Climate surveys

g) Policy modification and/or training

h) Implementation of long-term contact limitations between the parties

i) Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by TSU to the Respondent to ensure that the Respondent did not experience effective denial of educational access.

TSU will maintain the privacy of any Party subject to any long-term remedies/actions/measures, provided doing so does not impair TSU's ability to provide these services.

20.45. **Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from TSU.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

20.46. **Recordkeeping**

TSU will maintain for a period of seven (7) years records of:

a) Each sexual harassment investigation including any determination regarding

responsibility and any audio or audiovisual recording or transcript required under federal regulation;

i. Any disciplinary sanctions imposed on the Respondent;

ii. Any remedies provided to the Complainant designed to restore or preserve equal access to TSU's education program or activity;

iii. Any appeal and the result therefrom;

iv. Any Informal Resolution and the result therefrom;

v. All materials used to train Title IX Coordinators, investigators, Decision-makers, and any person who facilitates an Informal Resolution process. TSU will make these training materials publicly available on TSU's website. (Note: If TSU does not maintain a website, TSU must make these materials available upon request for inspection by members of the public.); and

vi. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:

1. The basis for all conclusions that the response was not deliberately indifferent;

2. Any measures designed to restore or preserve equal access to TSU's education program or activity; and

3. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances..

TSU will also maintain any and all records in accordance with state and federal laws. TSU will follow the destruction of records policy as outlined by the state of Texas.

20.47. **Disabilities Accommodations in the Resolution Process**

TSU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to TSU's resolution process. Anyone needing such accommodation should contact the Title IX Coordinator and request the accommodation. The Title IX Coordinator shall seek consultation from the University SASO office (for students) or Human Resources (for employees).

20.48. **Mandatory Training**

This policy requires that annual training for the Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process will include:

a) the definition of sexual harassment under this policy

i. the scope of TSUs education program or activity,

ii. how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and

iii. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers will receive annual training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators will receive annual training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

20.49. **Revision of this Policy and Procedures**

This policy and procedures supersede any previous policy(ies) addressing Title IX sexual harassment and discrimination. The policy (administrative regulation) will be reviewed and updated as needed by the Title IX Coordinator, in consultation with any other stakeholders deemed necessary by the Title IX Coordinator and upon approval by the University President. TSU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Office of the General Counsel may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.