

# Sexual Harassment and Sexual Misconduct

<b>Section:</b>	VI: Equal Opportunity
<b>Chapter:</b>	3
<b>Date Updated:</b>	August 30, 2017

## 3.1 General Policy Statement.

3.1.1 The University of Texas at El Paso (“University”) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct is a form of sex discrimination and will not be tolerated. As stated in the definition, sexual misconduct includes sexual harassment, sexual violence, sexual assault, stalking, domestic violence and/or dating violence. Individuals who engage in sexual misconduct and other inappropriate sexual conduct will be subject to disciplinary action.

3.1.2 The University will take prompt disciplinary action against any individuals or organizations within its control who violate this Policy. The University encourages any student, faculty, staff or visitor to promptly report violations of this Policy to an individual identified in Section 3.3.2.

## 3.2 Applicability.

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

## 3.3 Filing a Complaint and Reporting Violations.

3.3.1 All Members of the University Community, Third Party and Anonymous Complaints. All administrators, faculty, staff, students, and third parties are strongly encouraged to immediately report any incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct to the Title IX Coordinator or Deputy Coordinators.

- a. Anonymity. Individuals wishing to remain anonymous can file a complaint in any manner, including by telephone or written communication with the Title IX Coordinator or a Deputy Coordinator; however, electing to remain anonymous may greatly limit the University's ability to stop the harassment, collect evidence, or take effective action against individuals or organizations accused of violating the Policy.
- b. Confidentiality. The University has an obligation to maintain an environment free of sex discrimination, thus many University employees have mandatory reporting and response obligations and may not be able to honor a complainant's request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.3.5.
- c. Timeliness of Complaint. Complaints should be reported as soon as possible after the complainant becomes aware of the inappropriate conduct. Delays in reporting can greatly limit the University's ability to stop the harassment, collect evidence, and/or take effective action against individuals or organizations accused of violating the Policy.

### 3.3.2 Responsible Employees.

Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees. A Responsible Employee is a University employee who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or Deputy Coordinators or an employee whom an individual could reasonably believe has this duty. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.3.5.<sup>1</sup> Responsible Employees can find contact information for the Title IX Coordinator and Deputy Coordinators at the [Title IX website](http://www.utep.edu/titleix/) - [www.utep.edu/titleix/](http://www.utep.edu/titleix/)

### 3.3.3 Reporting to Law Enforcement.

Complaints of sexual misconduct may also be made to The University of Texas at El Paso Police Department at (915) 747-5611 (emergency and non-emergency), to the City of El Paso Police Department at (915) 832-4400 (non-emergency) or 911 (emergency), or to other local law enforcement authorities. The Title IX Deputy Coordinators can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

If a complaint of sexual misconduct is reported to the University Police Department, it shall advise the complainant of his or her right to file a complaint under this Policy. To the extent allowed by

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<sup>1</sup> For example, a student may make a complaint to an employee in the Dean of Students' Office, a faculty member or university police. Each of these individuals is considered a Responsible Employee and accordingly each is obligated to report the complaint to the Title IX Coordinator or other appropriate designee.

law and University policy, the University Police Department shall also notify the Title IX Coordinator and Deputy Coordinators of the complaint, and provide the Title IX Coordinator and Deputy Coordinators or the individual investigating the complaint access to any related University law enforcement records, so long as doing so does not compromise any criminal investigation.

#### 3.3.4 Reporting to Outside Entities.

An individual wishing to make a complaint may also contact the U.S. Department of Education, Office for Civil Rights (OCR) to complain of sex discrimination or sexual misconduct including sexual violence:

Office for Civil Rights  
U.S. Department of Education  
1999 Bryan Street, Suite 1620  
Dallas, TX 75201-6810  
Telephone: (214) 661-9600  
Facsimile: (214) 661-9587

Employees may also contact the U.S. Equal Employment Opportunity Commission to complain of sex discrimination or sexual harassment:

U.S. Equal Employment Opportunity Commission  
Dallas District Office  
207 S. Houston Street, 3<sup>rd</sup> Floor  
Dallas, TX 75202  
Telephone: (800) 669-4000  
Facsimile: (214) 253-2720

#### 3.3.5 Confidential Support and Resources.

Physical and mental health care professionals and pastoral counselors (including those who act in that role under the supervision of these individuals), are prohibited by confidentiality laws from reporting any information about an incident to anyone, in any way that identifies the victim, without the victim's permission. Thus, students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider in Health Services, the clergyperson of the student's choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Coordinator. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of the employee's choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Coordinator. The University and community resources that provide such services are:

UTEP Counseling and Psychological Services  
Union West 202  
<http://sa.utep.edu/counsel>

(915) 747-5302

UTEP Student Health Center  
Union East 100  
<http://chs.utep.edu/health>  
(915) 747-5624

UTEP Employee Assistance Program  
Deer Oaks  
24 hours a day, 7 days a week  
(866) 327-2400

### 3.3.6 Immunity.

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

### 3.3.7 Title IX Coordinator and Deputy Coordinators.

The Title IX Coordinator and Deputy Coordinators are:

Sandy Vasquez  
Title IX Coordinator (Investigation of concerns related to Faculty and Staff)  
Assistant Vice President for Equal Opportunity and Compliance Services  
Chief Compliance Officer, Ethics Officer  
Kelly Hall, Room 302  
(915) 747-5662  
Email: [svasquez@utep.edu](mailto:svasquez@utep.edu)

Dr. Charlie Gibbens  
Deputy Title IX Coordinator (Investigation of concerns related to Students)  
Interim Assistant Vice President for Student Support  
Union East Room 102  
(915) 747-5648  
Email: [cegibbens@utep.edu](mailto:cegibbens@utep.edu)

Dr. Catie McCorry-Andalis  
Deputy Title IX Coordinator (Education, Training and Outreach)  
Associate Vice President and Dean of Students  
Union West, Room 102  
(915) 747-5648  
Email: [cmandalis@utep.edu](mailto:cmandalis@utep.edu)

### **3.4 Parties' Rights Regarding Confidentiality.**

The University has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Coordinator and/or a Deputy Coordinator. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality.

In the course of the investigation, the University may share information only as necessary with people who need to know to fulfill the purposes of this Policy and applicable law, such as investigators, witnesses, and the respondent. The University will take all reasonable steps to ensure there is no retaliation against a complainant. The University will comply with the Family Educational Rights and Privacy Act (FERPA), with Texas Education Code Sec. 51.971 and other confidentiality laws as they apply to Title IX investigations. To the extent possible, the University will also protect the privacy of all parties to a report of sexual misconduct.

### **3.5 Victim Resources.**

#### 3.5.1 Immediate Assistance.

##### Health Care:

UTEP Student Health Center  
Union East Ste. 100  
(915)747-5624

Sierra Medical Center Emergency  
1625 Sierra Medical Drive  
(915)747-4000

##### Police:

UTEP Police Department  
3118 Sun Bowl Drive  
<http://admin.utep.edu/police>  
(915) 747-5611  
911 Emergency

El Paso Police Department  
Crimes Against Persons  
(915) 212-4000

##### Counseling:

Center Against Sexual and Family Violence  
710 North Campbell Street  
24/7 Crisis Hope Line  
(915) 593-7300  
(800) 727-0511

La Pinon Sexual Assault Recovery Services of Southern New Mexico  
(888) 595-7273

Casa Amiga  
Ciudad Juarez, Chihuahua Mexico  
011656-6-90-83-00 or 011656-6-90-83-01

Ft. Bliss-Family Advocacy Program  
915.568.9129  
Domestic Violence Hotline (24/7)  
(915) 269-2013

Sexual Assault Hotline  
(915) 245-8991

National Domestic Violence Hotline  
24 hours a day, 7 days a week  
(800) 799-7233 (TTY)

National Sexual Assault Hotline  
(800) 656-4673 (National)

#### 3.5.1.1 Healthcare.

An individual who experiences any form of sexual, domestic, or dating violence is encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of Sierra Medical Center located at 1625 Sierra Medical Drive, (915) 747-4000 or the nearest hospital that provides SAFE services.

For more information about the SAFE, see <http://hopelaws.org/> or <https://www.texasattorneygeneral.gov/victims/sapcs.shtml#survivors>. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

#### 3.5.1.2 Police Assistance.

The University encourages individuals who have experienced sexual misconduct to make a report to the police. It is important to note that a police department's geographic jurisdiction depends on where the sexual misconduct occurred. If the incident occurred on the University campus, a report may be filed with the UTEP Police Department by calling (915) 747-5611 or in person at UTEP Police Department headquarters at 3118 Sun Bowl Drive (the building is located in the University's Facilities Services Complex), even if time has passed since the assault occurred.

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

#### 3.5.1.3 Counseling and Other Services.

A person who has experienced sexual violence is strongly encouraged to seek medical and psychological care even if he or she does not plan to request a SAFE or report the assault to the police. He or she may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed.

Medical care can be provided at Student Health Services (for students only), at a local emergency room, or by a private physician. Psychological support can be

provided by UTEP Counseling and Psychological Services (students), Employee Assistance Program (employees), or a care provider of the individual's choosing.

Students desiring counseling should contact:

UTEP Counseling and Psychological Services  
Union West 202  
<http://sa.utep.edu/counsel>  
(915)747-5302

Faculty and staff should contact:

UTEP Employee Assistance Program  
Deer Oaks  
24 hours a day, 7 days a week  
(866) 327-2400

### 3.5.2 Interim Measures and Ongoing Assistance.

In addition to the services provided by on- and off-campus providers, the University will take immediate and interim measures to assure the safety and well-being of the complainant, to maintain an environment free from harassment, discrimination or retaliation, and to protect the safety and well-being of community members.

For example, if the accused is an employee, interim action may include reassignment and suspension. If the accused is a student, interim action may include suspension, no contact orders, changing living arrangements, modifying the course schedule, or modifying other aspects of the educational environment. Interim action may also include allowing the complainant to move to a new residence hall, change work schedules, alter academic schedules, and withdraw from or retake a class without penalty. Moreover, the University may be able to provide additional accommodations for a complainant while an investigation is pending.

## **3.6 Intake Procedures and Protocol.**

### 3.6.1 Key Officials in an Investigation.

#### 3.6.1.1 Title IX Coordinator.

The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for leading the administrative investigation of reports of sexual misconduct and is available to discuss options, provide support, explain University policies and

procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators.

Any member of the University community may contact the Title IX Coordinator with questions.

#### 3.6.1.2 Investigators.

The Title IX Coordinator will ensure that complaints are properly investigated under this Policy. The Title IX Coordinator will also ensure that investigators are properly trained at least annually to conduct investigations that occur under this Policy. The Title IX Deputy Coordinators shall supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary.

#### 3.6.2 Assessment of Complaint.

The Title IX Coordinator or other appropriate designee will conduct a preliminary assessment of the complaint and determine whether a formal resolution or an informal resolution should occur. Informal resolution may be appropriate:

- a. With a complaint solely of sexual harassment, not including sexual violence as defined in this Policy; and
- b. When both parties are categorically similar (i.e. employee/employee or student/student).

#### 3.6.3 Notification of University Offices Offering Assistance.

After receiving a complaint, the Title IX Coordinator or Deputy Coordinator shall direct the complainant to the Dean of Students for students, or the Equal Opportunity Office for employees, to inform the complainant of available resources and assistance. While taking into consideration requested confidentiality, the Dean of Students for students and the Equal Opportunity Office may serve as a liaison between the complainant and the Title IX Coordinator during the investigation.

#### 3.6.4 Informal Resolution of Certain Sexual Harassment Complaints.

A complainant may use this option instead of or before filing a formal complaint, but is not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that he or she has been subject to sexual misconduct may immediately file a formal complaint as described in Section 3.3 of this Policy. An individual wishing to use the informal resolution process should contact the Title IX Coordinator.

#### 3.6.4.1 Informal Assistance.

In certain sexual harassment complaints, an individual may not wish to file a formal complaint. If informal assistance is deemed appropriate by the Title IX Coordinator or other appropriate designee, then the individual will be provided assistance with informally resolving the alleged sexual harassment. Assistance may include providing the complainant with strategies for communicating with the offending party that his or her behavior is unwelcomed and should cease, directing a University official to inform the offending party to stop the unwelcomed conduct, or initiating mediation. However, the University may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.

#### 3.6.4.2 Timeframe.

Informal resolutions should be completed no later than 10 business days after the Title IX Coordinator receives the request for informal resolution.

#### 3.6.4.3 Confidentiality and Documentation.

The University will document and record informal resolutions. The Title IX Coordinator or Deputy Title IX Coordinator will retain the documentation. If the individual's wish is to remain anonymous, this may limit the University's ability to establish facts and eliminate the potential harassment. The University will attempt to find the right balance between the individual's desire for privacy and confidentiality and its responsibility to provide an environment free of sexual harassment.

### 3.6.5 Formal Complaint and Investigation.

#### 3.6.5.1 Formal Complaint.

To begin the investigation process, the complainant should submit a signed, written statement setting out the details of the conduct that is the subject of the complaint, including the complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or information that is relevant to the complaint. The University may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received

at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and ask the complainant to verify that statement. The University office receiving the complaint should refer the complaint to the Title IX Coordinator or Deputy Title IX Coordinator.

#### 3.6.5.2 Investigation.

- a. An investigator will be assigned to investigate the complaint.  
  
As part of the investigation process, the respondent will be provided notice of the complaint and allowed ten (10) working days to respond in writing, unless unusual circumstances warrant additional time.
- b. The complainant and the respondent may present any document or information that is believed to be relevant to the complaint.
- c. Persons thought to have information relevant to the complaint will be interviewed, and those interviews will be appropriately documented. Both the respondent and the complainant may recommend witnesses for interview and suggest questions that should be asked. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- d. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding 60 days, a justification for the delay will be presented to and reviewed by the Title IX Coordinator or his/her supervisor. The complainant, respondent, and supervisor should be provided updates on the progress of the investigation and issuance of the report.
- e. After the investigation is complete, a written report<sup>2</sup> will be issued to the Title IX Coordinator and the appropriate administrator. The appropriate administrator will depend on the status of the respondent (i.e., student, faculty or employee). The report shall include factual findings and a preliminary conclusion of whether a policy violation occurred (based on a “preponderance of the evidence” standard).

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

- f. After the written report is completed, the complainant and respondent will be allowed to inspect the report or, at the University's discretion, provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. If a letter is provided, it will contain enough detail to allow the complainant and respondent to comment on the adequacy of the investigation. Each will have 7 business days from the date of receipt (as indicated on the return receipt) to submit written comments regarding the investigation to the Title IX Coordinator.
- g. Within 7 business days after the deadline for receipt of comments from the complainant and respondent, the Title IX Coordinator or his or her designee will: (1) request further investigation into the complaint; (2) dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or (3) find that the Policy was violated. A decision that the Policy was violated shall be based on the record.
- h. If the Title IX Coordinator or his or her designee determines that the Policy was violated, he or she will refer the matter for disciplinary action under the applicable disciplinary policies and procedures, which depend on the status of the respondent (i.e., student, faculty or employee).
- i. The complainant and the respondent shall be informed concurrently in writing of the decision in accordance with section 3.6.5.2.g of this Policy.
- j. The appropriate administrator will impose disciplinary action or sanction(s) in accordance with the applicable policies and procedures dependent on the status of the respondent (i.e., student, faculty or employee).

### 3.6.6 Standard of Proof.

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

### 3.6.7 Timelines.

Barring any unforeseen and reasonable delays, the University will endeavor to resolve complaints under this Policy no later than 60 calendar days after the initial report was received by the Responsible Employee. If the investigation and resolution exceeds 60 calendar days, the University will notify all parties in writing of the reason for the delay and the expected time frame adjustment. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, the University may defer its fact-gathering until after the initial stages of a criminal investigation. The University will nevertheless communicate with the complainant regarding his/her Title IX rights, procedural options, the status of the investigation, and the implementation of interim measures to ensure his/her safety and well-being. The University will also communicate with the respondent regarding his/her Title IX rights, procedural options and information regarding the status of the investigation. The University will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time.

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

### 3.6.8 Remedies.

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

- a. Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- b. Ensuring the complainant and respondent do not share classes, working environments or extracurricular activities;
- c. Making modifications to the on campus living arrangements of the respondent or complainant (if the complainant requests to be moved);
- d. Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;

- e. Providing the complainant extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- f. Determining whether sexual misconduct adversely affected the complainant's University standing;
- g. Designating an individual specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist victims whenever needed;
- h. Conducting, in conjunction with University leaders, a University climate check to assess the effectiveness of efforts to ensure that the University is free from sexual misconduct, and using that information to inform future proactive steps that the University will take;
- i. Providing targeted training for a group of students if, for example, the sexual misconduct created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team. Bystander intervention and sexual misconduct prevention programs may be appropriate;
- j. Issuing policy statements or taking other steps to clearly communicate that the University does not tolerate sexual misconduct and will respond to any incidents and to any individual who reports such incidents.

These remedies are separate from, and in addition to, any interim measures that may have been provided before the end of the University's investigation. If the complainant did not take advantage of a specific service (e.g., counseling) when offered as an interim measure, the complainant should still be offered, and is still entitled to, appropriate final remedies that may include services the complainant declined as an interim measure. A refusal at the interim stage does not mean the refused service or set of services should not be offered as a remedy.

### 3.6.9 Sanctions and Discipline.

Disciplinary action against faculty and employees will be handled under the University's policies for discipline and dismissal of faculty and employees. Disciplinary actions may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. The Dean of Students or Assistant Vice President for Student Support will impose disciplinary action, if any, against a student

under the University's student disciplinary procedures. Student disciplinary actions may include, but are not limited to, probation, suspension, or expulsion.

Discipline and Dismissal of Staff Employees, Section V, Chapter 6,  
<http://admin.utep.edu/Default.aspx?tabid=30502>

Academic Policies and Faculty Personnel Matters, Section III, Chapter 4  
<http://admin.utep.edu/Default.aspx?tabid=30381>

Student Conduct and Discipline, Section II, Chapter 1  
<http://admin.utep.edu/Default.aspx?tabid=73922>

In accordance with federal law, when disciplinary action is commenced because of a violation of this Policy, the above policies will provide both parties equal opportunities in all aspects of the process including notices and advisor representation. Further, the standard of proof in determining the outcome will be the "preponderance of the evidence," as defined in this policy.

### **3.7 Provisions Applicable to the Investigation.**

#### **3.7.1 Assistance.**

During the investigation process, a complainant or respondent may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.

#### **3.7.2 Time Limitations.**

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

#### **3.7.3 Concurrent Criminal or Civil Proceedings.**

The University will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. The University has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 3.6.7).

**3.7.4 Documentation.** The University shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and University policy.

### **3.8. Dissemination of Policy and Educational Programs.**

3.8.1 This Policy will be made available to all University administrators, faculty, staff, and students online at: <http://admin.utep.edu/Default.aspx?alias=admin.utep.edu/hoop> and in University publications. Periodic notices will be sent to University administrators, faculty, staff and students about the University's Sexual Harassment and Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about University disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

#### **3.8.2 Ongoing Sexual Misconduct Training.**

The University's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained University personnel. The University will periodically educate and train employees and supervisors regarding the Policy and conduct that could constitute a violation of the Policy. Preventive education and training programs will be provided to University administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention. Training on sexual harassment and sexual violence policy and procedures will be provided to law enforcement personnel, including training on their obligation to advise University administrators, faculty, staff, and students of their rights to file a complaint under this Policy and their right to file a criminal complaint. EO Office, <http://admin.utep.edu/Default.aspx?tabid=3685>.

#### **3.8.3 Training of Coordinators, Investigators, Hearing and Appellate Authorities.**

All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each academic year about offenses, investigatory procedures, due process, and University policies related to sexual misconduct.

### **3.9. Additional Conduct Violations.**

#### **3.9.1 Retaliation.**

Any administrator, faculty member, student or employee who knowingly and intentionally retaliates in any way against an individual who has brought a complaint under this Policy, participated in an investigation or disciplinary process of such a

complaint, or opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.

### 3.9.2 False Complaints.

Any person who knowingly and intentionally files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. A finding of non-responsibility does not by itself indicate that a report was false.

### 3.9.3 Interference with an Investigation.

Any person who knowingly and intentionally interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an ongoing investigation includes, but is not limited to:

- a. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- b. Removing, destroying, or altering documentation relevant to the investigation; or
- c. Providing false or misleading information to the investigator, or encouraging others to do so.

### 3.9.4 No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint.

The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including: (1) any evaluation or disciplinary action relating to a complainant who is not performing up to acceptable standards or who has violated University rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a University employee. Nothing in this section shall limit the University's ability to take interim action.

## **3.10 Documentation.**

The University shall confidentially maintain information related to complaints under this Policy, as required by law. The Title IX Coordinator or other appropriate designee will document each complaint or request for assistance under this Policy, whether made by a victim, a third party, or anonymously, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law. Any

person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or otherwise related to the investigation of a complaint under this Policy is subject to disciplinary action.

### **3.11 Annual Reporting and Notice.**

The University's Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments. On an annual basis, and upon any updates to this Policy, the University will send notice of its compliance with Title IX as required by law. The annual notice shall designate the Title IX Coordinator and Deputy Coordinators, explain which offenses are prohibited and where to report violations of this Policy, provide information regarding victim resources, and provide a link to this Policy and other related University websites.

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

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

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

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

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

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

<sup>4</sup> Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate

**3.12.2 Dating Violence<sup>5</sup>** – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

The existence of such a relationship shall be determined by the victim with consideration of the following factors:

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

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

**3.12.3 Domestic (Family) Violence<sup>6</sup>** – includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person

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

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

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

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

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

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Texas.

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

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

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

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

First Amendment Considerations: this Policy does not impair the exercise of rights protected under the First Amendment. The University's sexual misconduct policy prohibits only sex-based harassment that creates a hostile environment. In this and other

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

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

ways, the University applies and enforces this Policy in a manner that respects the First Amendment rights of students, faculty, and others.

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

**3.12.6 Intimidation** – Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

**3.12.7 Other Inappropriate Sexual Conduct** – Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom.

**3.12.8 Preponderance of the Evidence** – The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**3.12.9 Responsible Employee** – A University employee who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.3.5. Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees.

**3.12.10 Retaliation** – Any adverse action threatened or taken against someone *because* the individual has filed, supported, provided information in connection with a complaint of sexual misconduct or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, witness or third party.

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

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

**3.12.12 Sexual Exploitation** – Occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

**3.12.13 Sexual Harassment** – Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when submission to such conduct is made either explicitly or implicitly a term or condition of a person's student status, employment, or participation in University activities; such conduct is sufficiently severe or pervasive that it interferes with an individual's education, employment, or participation in University activities, or creates an objectively hostile environment; or such conduct is intentionally

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

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

directed towards a specific individual and has the effect of unreasonably interfering with that individual's education, employment, or participation in University activities, or creating an intimidating, hostile, or offensive environment. Sexual harassment is a form of sex discrimination that includes:

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

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

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

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

- a. *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- b. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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

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