Sexual Harassment and Misconduct Policy

Effective: October 13, 2022

Revised: August 28, 2026
(Personnel Changes)

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1. Overview

Hardin-Simmons University (“HSU”) is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community.

Hardin-Simmons University does not unlawfully discriminate on the basis of sex or gender in any of its education or employment programs and activities, and it does not tolerate unlawful discrimination or harassment on the basis of sex or gender. This Sexual Harassment and Misconduct (“Sexual Misconduct”) policy prohibits: 1) sexual harassment as defined by Title IX (“Title IX Sexual Harassment”); and 2) certain other forms of sexual and interpersonal misconduct not covered by Title IX (e.g., certain types of sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, retaliation, and complicity (“Non-Title IX Misconduct”)) (collectively referred to in this policy as Prohibited Conduct). These forms of Prohibited Conduct are harmful to the well-being of our community and its members, the learning and working environment, and collegial relationships among our students, faculty, and staff.

Finding of violations of Prohibited Conduct under this policy may result in discipline, including potential separation from the University and/or referral to separate procedures that could result in termination of employment. Some forms of Prohibited Conduct may also violate state and federal laws, and criminal prosecution may occur independently of any University process.

The University will comply with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in the University's programs and activities, and Title IX regulations issued in May 2020; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA); Title VII of the Civil Rights Act of 1964; Chapter 21 of the Texas Labor Code; Chapter 40, Section 819 of the Texas Administrative Code; pertinent provisions of the Texas Education Code, and other applicable law. As a religiously controlled institution of higher education, Hardin-Simmons is also entitled to statutory and constitutional protections for its religious liberty that exempts it from certain provisions of civil rights laws, including but not limited to the religious organization exemption under Title VII of the Civil Rights Act of 1964, the religious exemption of Title IX of the Education Amendments of 1972, and the Free Exercise of the First Amendment to the United States Constitution, among others.

This policy sets forth the procedures that will be used to investigate and respond to reports of Prohibited Conduct. The University will respond to reports about Prohibited Conduct with measures designed to eliminate the conduct, prevent its recurrence, and remedy any adverse effects of the conduct on individuals, members of the campus community, or University-related programs or activities. In addition, the University may implement supportive measures that are designed to restore or preserve equal access to University programs and activities and protect individual and campus safety.

Within the bounds of applicable law, the University will make reasonable efforts to investigate and address reports of Prohibited Conduct, regardless of how the information was brought to the University's attention or the extent to which the complainant wishes to participate or be involved. See Balancing Complainant Autonomy with University Responsibility to Investigate.

The University expects students to reflect Christ-like character, conducting themselves in a manner consistent with biblical principles. The University prioritizes the reporting of sexual assault, and will not pursue disciplinary action against a complainant, respondent, or witness for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or resolution process and the personal consumption did not place the health or safety of any other person at risk.

All HSU students and employees have access to Confidential Resources that they may use for support and guidance regardless of whether they make a report to the University or participate in a resolution process.

Retaliation against anyone who makes a good faith report or complaint under this policy, who opposes in a reasonable manner an act believed to constitute a violation of this policy, or because they have assisted, or participated or refused to participate in any manner in a resolution process under this policy, is prohibited. Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

2. The University's Title IX Coordinator

HSU designates on or more persons to act as the University's Title IX Coordinator, who individually or jointly coordinate (both situations hereinafter referred to solely as "Title IX Coordinator") the University's compliance with Title IX and related provisions of the Clery Act. The Title IX Coordinator oversees the University's centralized response to all reports of Prohibited Conduct to ensure consistent implementation of this policy and compliance with federal and state law. The Title IX Coordinator and designated staff will, among other steps:

- Communicate with all members of the University community regarding applicable law and policy and provide information about how individuals may access reporting and support options.

- Review applicable University policies to ensure institutional compliance with applicable federal and state law.

- Monitor the University's administration of its own applicable policies, including record keeping, adherence to timeframes, and other procedural requirements.

- Conduct or arrange for training regarding Title IX, related provisions of the Clery Act (as amended by VAWA), and Prohibited Conduct defined in this policy.

- Respond as appropriate and within the bounds of the law to any report regarding conduct that may violate this policy. In this capacity, one of the Title IX Co-Coordinators shall oversee the investigation and resolution of such alleged misconduct, direct the provision of any interim or supportive measures (including oversight of the failure to abide by an interim or supportive measure), and monitor the administration of any request for review of the finding.

The Title IX Coordinator may delegate responsibilities under this policy to designated administrators or external professionals, who will have appropriate training and/or experience. When used in this policy, the term Title IX Coordinator may include a Deputy Title IX Coordinator or appropriate designee.

The Title IX Coordinator's contact information is:

Tera Gibson
Co-Title IX Coordinator and
Director of Human Resources
(325) 670-1077
tera.gibson@hsutx.edu

Stacey Martin
Co-Title IX Coordinator and
Vice President for Student Life
(325) 670-1253
smartin@hsutx.edu

Concerns about the University's application of Title IX and the Clery Act may be addressed to the University's Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at clery@ed.gov); the United States Department of Education, Office for Civil Rights (at OCR@ed.gov or 800-421- 3481); and/or the Equal Employment Opportunity Commission (at info@eeoc.gov or 800-669-4000). Concerns related to employment or housing discrimination may also be addressed to the Texas Workforce Commission (at 888-452-2642 or www.twc.state.tx.us/programs/civil-rights-program-overview).

3. Scope of this Policy

A. Students and employees. This policy governs the conduct of HSU students, regardless of enrollment status, as well as faculty and staff.

B. Third parties

Third parties (i.e., non-members of the University community, such as vendors, alumni/ae, and visitors) are both protected by and subject to certain provisions of this policy for allegations constituting Title IX Sexual Harassment. In such cases, a third party may report potential policy violations committed by a member of the University community, and the University will take appropriate steps to investigate and respond to the conduct consistent with the authority granted by the University's jurisdiction, if any, over the respondent. Third parties may be subject to investigation and/or other actions for alleged violations of this policy; a third party who is accused of violating the Sexual Harassment and Misconduct policy may be permanently barred from areas and/or activities controlled by the University or be subject to other restrictions for failing to comply with this policy. The University may take such action against third parties without providing the full rights and processes afforded to Hardin-Simmons community members through the provisions of this policy.

Complaints by third parties constituting Non-Title IX Misconduct may be investigated at the University's discretion. If an investigation proceeds, the procedures for Non-Title IX Misconduct may apply.

C. Procedures

Various procedures provided in this policy may be used to address Prohibited Conduct that occurs:

- on campus or University property;
- in the context of any University-related or sponsored education program or activity, regardless of the location (including travel, research, or internship programs);

- by an HSU student, regardless of location, under the Student Conduct Code;
- by an HSU employee, regardless of location;
- through the use of University-owned or provided technology resources; or
- when the conduct has a nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

D. Determination of jurisdiction

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University will exercise jurisdiction over the allegations or disciplinary authority over the respondent or the conduct. In exercising jurisdiction over an HSU-affiliated respondent for reported conduct that occurs off campus and that has no nexus to the University or a University-related or sponsored education program or activity, the University's ability to investigate and impose disciplinary action may be limited by the University's authority and/or the amount of information available to the University through the exercise of reasonable diligence.

In instances where the University does not have disciplinary authority over the respondent, the University will still take reasonably available steps to support a complainant through interim or supportive measures and will assist a complainant in identifying external reporting mechanisms.

E. Definitions

This policy uses the terms complainant, respondent, party, third party, and witness as follows:

- The term **complainant** refers to an individual who is reported to have experienced conduct that could constitute Prohibited Conduct, even if they do not participate in any related process.
- The term **respondent** refers to an individual who has been reported to have engaged in conduct that could constitute Prohibited Conduct.
- The term **party** or **parties** may also be used to refer to a complainant or respondent participating in a resolution process.
- The term **third party** refers to an individual who is not a University student, faculty member, or staff member (e.g., vendors, alumni/ae, volunteers or visitors).
- The term **witness** refers to an individual who may have information relevant to a report of Prohibited Conduct. A witness may be a student, an employee, or a third party.

4. Coordination with Other Policies

This policy addresses discrimination on the basis of sex or gender as it relates to Title IX Sexual Harassment and Non-Title IX Misconduct as defined in more detail below.

Sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, age, disability, or other protected characteristic are governed by the University's Grievances policy in the Personnel Handbook.

In addition, the conduct of students, employees, and faculty is governed by the following:

- Student Handbook, includes Student Code of Conduct and Judicial Procedures
    - Applies to all other forms of student misconduct (e.g., alcohol or other drug use, threats or physical abuse, possession of firearms, Residential Policies, Sexual Misconduct, etc.)
    - Overseen by Dean of Students
    - May qualify for Amnesty

- HSU Personnel Handbook
    - Set the standards of personal conduct for all employees
    - Include staff and faculty disciplinary and grievance policies

- Faculty Policiesand Procedures (located in Personnel Handbook)
    - Sets specific standards of conduct for faculty members
    - Outlines the grounds and procedures for dismissal of tenured and non-tenured faculty
    - Includes Academic Freedom Policy
    - Includes the University's Faculty Grievance Policy

- Policy to Protect Children and Prevent Abuse
    - Provides for the screening, selection, and assessment of personnel
    - Includes information about recognizing, responding to, and reporting inappropriate or suspicious behavior, suspected abuse, and minor-to-minor sexual abuse

Where reported conduct involves the potential violation of both this policy and another University policy, the University may at its discretion choose to investigate other potential misconduct under the procedures set forth in this policy, instead of the procedures ordinarily used to address potential violations of such other University policies, so long as doing so does not or would not unduly delay a prompt, equitable resolution of the report.

5. Relationships with Individuals in Authority

Engaging in romantic relationships and/or sexual conduct is prohibited between:

- Faculty members and undergraduate students;

- University employees and undergraduate students;

- Graduate students and undergraduate students where the graduate student educates, advises, coaches, supervises, or evaluates the undergraduate in any way;

- Employees and any individual whom that person supervises or evaluates in anyway.

Because prohibited relationships often involve a power differential, the conduct may also constitute sexual harassment or other forms of prohibited conduct under this policy. The Vice-President of Finance, Director of Human Resources, and/or Office of the Provost are a part of enforcement as applicable.

6. Academic Freedom and Freedom of Expression

The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. The University is operated within the Christian-oriented aims and ideals of Baptists, and the University will therefore be protective of academic freedom in instruction, discussion, and expression among the members of its community, including speech pertaining to religious issues.

Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute Prohibited Conduct. To constitute Prohibited Conduct, conduct must be so severe, pervasive and objectively offensive from the perspective of a reasonable person that it effectively denies equal access to the University's education program or activity (including its academic programs and employment activities).

7. Prohibited Conduct

In determining whether reported conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Individuals of any sex or gender can commit any of the Prohibited Conduct defined in this policy, and it can occur between individuals of the same sex/gender or different sexes/genders. It can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships. In broad terms, this policy prohibits the following forms of conduct, collectively referred to throughout this policy as Prohibited Conduct, as well as attempts to commit such misconduct.

A. Title IX Sexual Harassment

"Title IX Sexual Harassment" is a subset of Prohibited Conduct. Under Department of Education regulations (*see* 34 C.F.R., Part 106) issued in 2020 to implement Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., the University is required to prohibit certain forms of sexual harassment as defined in those regulations. Title IX Sexual Harassment is Prohibited Conduct of the following types committed by or against Students and/or Employees in an education program or activity of the University, in the United States:

Prohibited Conduct meets the definition of Title IX Sexual Harassment when:

- An Employee conditions the provision of an aid, a benefit, or a service on another Employee's or a Student's participation in unwelcome sexual conduct (i.e., *Quid Pro Quo* sexual harassment); or

- A Student, Employee, or Third Party (to the extent applicable) engages in unwelcome conduct on the basis of sex that would be determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to the University's programs or activities; or

- A Student, Employee, or Third Party engages in Sexual Assault, Domestic Violence, Dating Violence, or Sexual and/or Gender-based Stalking as defined below; and

    - The alleged conduct was perpetrated against a person in the United States; and

    - The conduct took place within the University's programs and activities. Conduct takes place within the "University's programs and activities" when that conduct occurs:

        (1) in a location, at an event, or in a circumstance where the University exercises substantial control over both the respondent and the context in which the conduct occurs; or

        (2) in any building owned or controlled by a student organization recognized by the University. Events that occur off campus or in locations with no connection to the University are unlikely to be considered a University program or activity.

Conduct that does not meet the parameters above to constitute Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct as further defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

1. Title IX Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment is conduct on the basis of sex by which an employee of the University conditions the provision of an aid, benefit, or service of the University on a student's or employee's participation in unwelcome sexual conduct.

2. Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment

Severe, pervasive and objectively offensive sexual harassment is conduct on the basis of sex that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the University's education program or activity.

3. Title IX Sexual Assault

As required by the May 2020 Title IX regulations, the definition of Title IX Sexual Assault used in this policy incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program as follows:

a. Rape:
   i. The carnal knowledge of a person (i.e., penile-vaginal penetration,), without the consent of that person,
   ii. Oral or anal sexual intercourse (i.e., penile penetration) with another person without the consent of that person, and/or
   iii. To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person. An "object" or "instrument" is anything other than a penis.

b. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person (for purposes of this definition, "private body parts" means a person's breast(s), buttock(s), genitals, or other intimate parts, and prohibited fondling may be over or under clothing).

c. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

4. Title IX Domestic Violence

Title IX domestic violence is conduct that constitutes a felony or misdemeanor crime of violence 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;
- By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; 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 jurisdiction in which the crime of violence occurred.

5. Title IX Dating Violence

Title IX dating violence is conduct that constitutes violence committed by a person who is 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 parties' statements 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.

6. Title IX Stalking

Title IX Stalking for purposes of the Title IX Sexual Harassment definition is conduct on the basis of sex that constitutes a course of conduct 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.

B. Non-Title IX Misconduct

Non-Title IX Misconduct is Prohibited Conduct that falls within the Scope of this Policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of the University in the United States. Such conduct is defined for purposes of this policy as:

1. Non-Title IX Sexual Assault

Sexual Assault (i.e., rape, fondling, or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the University in the United States.

2. Non-Consensual Sexual Contact

Any intentional touching of a person's breast(s), buttock(s), groin, genitals, or other intimate parts without consent. Touching may be over or under clothing and may include the respondent touching the complainant, the respondent making the complainant touch the respondent or another person, or the respondent making the complainant touch the complainant's own body.

3. Sexual and Gender-Based Harassment

Sexual Harassment: Sexual harassment is any unwelcome sexual advance, request for sexual favors, and/or other unwelcome, verbal or physical conduct of a sexual nature when one of the conditions outlined in (a), (b), or (c), below, is present.

Gender-Based Harassment: Gender-based harassment includes harassment based on sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic,

physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the conditions outlined in (a), (b), or (c), below, is present.

a. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit, but which does not fit within the definition of Title IX *Quid Pro Quo.*

b. Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, in circumstances that do not fit within the definition of Title IX *Quid Pro Quo*.

c. Such conduct creates a hostile environment. Under Texas Education Code §51.281(4) a hostile environment exists:

   i. in the employment context, when it unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or

   ii. in the education context, when it is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute Prohibited Conduct. To constitute Prohibited Conduct, in the employment context, it must unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment; in the education context, conduct must be so severe, persistent, or pervasive that it interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. The perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment. In assessing the nature and impact of the alleged harassment, the Title IX Office will consider subjective (i.e., the complainant's experience of the conduct) and objective (i.e., how a reasonable person in the complainant's circumstances would have experienced the conduct) perspectives.

Sexual harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm or involve repeated incidents.
- May be committed by anyone, regardless of sex, gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, harassment can occur in any context.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.

- May be committed by or against an individual, organization, or group.
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
- May occur in the classroom, in the workplace, in residential settings, or in any other context.
- May be a one-time event or may be part of a pattern of behavior, if it meets the standard stated above.
- May be committed in the presence of others or when the parties are alone.
- May affect the complainant and/or third parties who witness or observe harassment.

4. Sexual Exploitation

Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another, but that does not fall within the definition of Title IX Sexual Harassment. Sexual exploitation may include but is not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved;
- providing alcohol or drugs to a complainant with the intent to facilitate Prohibited Conduct;
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances; or
- knowingly exposing someone to or transmitting a Sexually Transmitted Infection (STI) or Human Immunodeficiency Virus (HIV).

5. Non-Title IX Domestic Violence

Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the University in the United States.

6. Non-Title IX Dating Violence

Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the University in the United States.

7. Non-Title IX Stalking

Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the University in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the alleged victim on the basis of sex.

8. Retaliation

Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this 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 regarding Prohibited Conduct (including both Title IX Sexual Harassment and Non-Title IX Misconduct). Intimidation, threats, coercion, or discrimination, including charges against an individual for 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 formal complaint of sexual harassment, for the purpose of interfering with any

right or privilege secured by Title IX or its implementing regulations, constitutes retaliation, as does any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy.

Retaliation may include intimidation, threats, coercion, discrimination, harassment, or adverse employment or educational actions that would discourage a Reasonable Person from engaging in activity protected under this Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this Policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

Further, under Texas Education Code §51.254, the University will not discipline or otherwise discriminate against an employee because they have, in good faith, made a report of Prohibited Conduct to the Title IX Coordinator as provided below, or because they have cooperated with an investigation, or resolution process relating to such a report.

Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

9. Complicity

Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

8. Consent and Incapacitation

The following definitions clarify key terminology as used throughout the policy and apply to both Title IX Sexual Harassment and Non-Title IX Sexual Misconduct.

Consent: Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, threats, or coercion; whether the complainant had the capacity to give consent; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a

willingness to engage in a particular act.

Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not wish to participate in a particular activity or communicates by words or actions a decision to stop or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Consent cannot be obtained through physical force or where there is a reasonable belief of the threat of physical force, when one person overcomes the physical limitations of another person.

Important points determining the totality of the circumstances for consent include:

- Consent to one act does not necessarily constitute consent to another act.
- Consent on a prior occasion does not necessarily constitute consent on a subsequent occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent.
- Consent should not be inferred merely from silence, and passivity or lack of resistance alone do not confer consent.
- Once consent has been established, a person who changes his or her mind should communicate the withdrawal of consent through words or actions.
- Consent can be withdrawn or modified at any time, and the act must cease immediately once consent is withdrawn.

Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

Incapacitation: Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act. The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently and

determining whether an individual is incapacitated requires an individualized assessment.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know whom you are with?"

An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body

mass, and metabolism. Because the impact of alcohol and other drugs varies from person to person, the amount of alcohol and/or drugs a person consumes may not be sufficient, without other evidence, to prove that they were incapacitated under this Policy.

Another effect of alcohol consumption can be memory impairment or forgetting entire or partial events (sometimes referred to as "black- out" or "brown-out"). A person may experience this symptom while appearing to be functioning "normally," including communicating through actions or words that seem to express an interest in engaging in sexual conduct. Whether sexual conduct with a person who is "blacked-out" constitutes Prohibited Conduct depends on the presence or absence of the observable factors indicating that a person is also incapacitated, as described above. Total or partial loss of memory alone, may not be sufficient, without other evidence, to prove that a person was incapacitated under this policy.

In evaluating consent in cases of reported incapacitation, where the information is sufficient to raise the possibility that the complainant was incapacitated, the University asks two questions: (1) Did the respondent know that the complainant was incapacitated? and if not, (2) Should a sober, reasonable person in a similar set of circumstances as the respondent have known that the complainant was incapacitated? If the answer to either of these questions is "yes," the complainant could not consent; and the conduct is likely a violation of this policy.

A respondent's voluntary intoxication is never an excuse for or a defense to Prohibited Conduct, and it does not diminish the responsibility to determine that the other person has given consent and has the capacity to do so.

9. Confidentiality, Qualified Confidentiality, Privacy, and Reporting Responsibilities

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are defined below.

A. Confidentiality

Confidentiality refers to the protections provided to information disclosed in legally-protected or privileged relationships under Texas state law, including licensed

professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under Texas law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission or unless required by ethical or legal obligations that compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18. A person's medical and counseling records are privileged and confidential documents.

In accordance with May 2020 Title IX regulations, the University will not access, consider, disclose, or otherwise use a party's privileged records or require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Confidential resources submit non-personally-identifying information about Clery-reportable crimes to the HSU Police Department for purposes of anonymous statistical reporting under the Clery Act. Additionally, as required by Texas Education Code §51.252, Confidential Resources will report non-personally- identifiable information about incidents of sexual harassment, sexual assault, dating violence, and stalking to the Title IX Coordinator for purposes of statistical reporting.

Under Texas law, the identity of the following individuals is deemed confidential:

(1) alleged victims of sexual harassment, sexual assault, dating violence, or stalking reported to a university;

(2) a person who reports such conduct to a university, who sought guidance from the institution concerning such an incident, or who participated in the institution's investigation of such an incident; and

(3) a person who is alleged in such a report to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking if, after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

This means that unless waived in writing by the person, their identity may be disclosed only to:

(1) employees or contracted individuals, as necessary to conduct an investigation of the report or other related hearings;

(2) a law enforcement officer as necessary to conduct a criminal investigation of such report;

(3) a health care provider in an emergency situation, as determined to be necessary by the university;

(4) the respondent as necessary to conduct a resolution process; and/or

(5) potential witnesses as necessary to conduct an investigation of the report.

As noted above, information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking disclosed to a health care provider or other medical provider employed by a university is confidential and may be shared by the provider only with the alleged victim's consent except, as also noted above, that the provider must provide aggregate data or other non-identifying information regarding those incidents to the university's Title IX Coordinator.

B. Qualified Confidentiality and Privacy

May 2020 Title IX regulations contemplate that certain information will generally be treated confidentially, except as qualified by statements in those regulations. For example, the regulations provide that HSU must maintain as confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The regulations also provide that HSU must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy ("FERPA") statute referenced below, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

This means that discretion will be exercised by the University in the course of any investigation or other processes under this policy. Information related to a report of Prohibited Conduct will be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation

The privacy of student education records is governed by the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is governed by the Health Insurance Portability and Accountability Act (HIPAA) and Title 2, Chapter 81 and Title 4, Chapter 241, Subchapter G, of the Texas Health & Safety Code, and Chapter 144 of the Texas Civil Practice and Remedies Code, excepting health records protected by FERPA. Access to an employee's personnel records in Texas is governed by Chapter 103 of the Texas Labor Code.

C. Reporting Responsibilities

It is important to understand the different responsibilities of HSU employees under federal and state law and University policy. Every employee is designated as either a Confidential Resource or a Responsible Employee.

Confidential Resources: The University has designated limited categories of employees as Confidential Resources with whom students may speak confidentially concerning Prohibited Conduct. A Confidential Resource is any employee who is a

licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services.

Unless given permission to disclose more information by the complainant, Confidential Resources will only disclose the type of incident, date, and location if known, and not reasonably calculated to disclose personally identifiable information about the individual, but will not disclose the individual's name or other identifying details to the Title IX Coordinator. When individuals who otherwise may be Confidential Resources receive information outside of the provision of services, the Confidential Resource is required to share that information with the Title IX Coordinator.

Responsible Employees: Except for Confidential Resources, all University Employees are designated Responsible Employees and thereby mandatory reporters of potential Title IX violations. Responsible Employees include all staff (hourly and salary), faculty, instructors, teaching assistants, and student workers who have supervisory responsibility or responsibility for the welfare of other students and learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to Resident Assistants and Graduate Assistant Coaches. Responsible Employees ***must report immediately*** any information about suspected sexual or gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, or retaliation for reporting regardless of when (both prior to or during their time at HSU) or where (both on and off campus) the alleged misconduct occurred. Responsible employees must report retaliation when they are aware of acts consistent with the policy definition of retaliation, and they have reason to believe it is occurring because of a party's participation in a Title IX process, or in order to prevent either making a report to Title IX or participation in a Title IX process. Reports must include any known details such as identities of the parties and the date, time, and location of the incident.

Texas law requires any employee of a college or university in Texas to report to the Title IX Coordinator any information regarding an alleged incident of sexual harassment, sexual assault, dating violence, or stalking, committed by or against a person enrolled at or employed by the institution at the time of the incident. *The law requires colleges to terminate employment for employees who fail to report such matters and imposes criminal penalties of up to a year in jail.*

The obligation to report applies whenever an employee receives, in the course and scope of employment, information about an alleged incident which reasonably constitutes sexual harassment, sexual assault, dating violence, or stalking committed by or against a person who was a student or employee at the time of the incident. The report must include all information known to the employee which would be relevant to an investigation or redress of the incident, including whether the alleged victim has expressed a desire for confidentiality. A party's desire for confidentiality does not relieve the employee's obligation to report.

The law encourages but does not require student employees to report. HSU policy, however, requires student employees to report such instances.

Employees do not need to, and furthermore should not, investigate matters or make unnecessary judgments about the information they receive in order to determine whether the reported information meets the definitions of misconduct. All instances of alleged misconduct that could reasonably constitute sexual harassment, sexual assault, dating violence, or stalking must be reported to the Title IX Coordinator.

The Title IX Coordinators will share all reports alleging Clery-reportable events with the HSU Police Department to promote a coordinated institutional response. Responsible Employees may provide support and assistance to a complainant, witness, or respondent; but they cannot promise confidentiality or withhold information about Prohibited Conduct.

Responsible Employees are not required to report information disclosed at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs,") or other public forums in which students may disclose Prohibited Conduct. The University may however provide information about Title IX rights and available University and community resources and support at public awareness events.

A complainant may choose not to make a complaint or report in their own case, even if the complainant would otherwise have reporting obligations by virtue of being a faculty member, staff member, or student worker.

Students: With the exception of student workers who are designated as Responsible Employees, all other students **are *encouraged* to report** any suspected violation of this policy.

D. Clery Act Reporting

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally-identifying information of complainants when issuing timely warnings to the University community.

E. DFPS Reporting

Texas law requires that any person who suspects that a child, 17 years of age or younger, or a person 65 years of age or older, or an adult with disabilities is or was being abused, neglected or exploited must report immediately all known information to the Department of Family and Protective Services (DFPS). Moreover, a report will be filed if it is determined that the alleged perpetrator continues to have access to minors, even if the complainant has turned 18.

10. Resources and Reporting Options

All involved parties have many options, including seeking counseling or assistance from a Confidential Resource, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be

difficult and is an intensely personal decision. Individuals are encouraged to seek assistance and to explore all potential reporting and support options.

A. Emergency Resources and Law Enforcement

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being or following a potential criminal offense. Texas Education Code § 51.282 requires that HSU inform you that it is very important for victims of sexual harassment, sexual assault, dating violence, or stalking to go to a hospital for help with treatment and preservation of evidence, if applicable, as soon as practicable after an incident.

Contact law enforcement: **Hardin-Simmons University Police** (325-670-1461) or, if off campus, **Abilene Police Department** (325-673-8331). In an emergency, call 911.

Local hospitals can be contacted at:

Hendrick Medical Center Emergency Room
1900 Pine St., Abilene, TX
325-670-2000

Abilene Regional Victim Crisis Center
(325-677-7895-- 24 Hour Crisis Hotline)
The Abilene Regional Victim Crisis Center (RVCC) will arrange for a specific medical examination (SANE) at no charge.

To access crisis counseling and other community resources:

HSU Office of Counseling Services
325-670-1944

B. Campus Confidential Resources

Students can access confidential resources on campus through:

1. HSU Counseling Center

Hours of Operation: 8 a.m. until 5 p.m. Monday through Friday
In case of a crisis, an individual may come by the Counseling Center during regular office hours. Students are advised to contact other available mental health resources when the Counseling Center is closed during academic breaks.

In Abilene: If a student is having a psychological crisis and needs assistance, call: 911 or a local hospital

C. Reporting Options

The University encourages all individuals to report Prohibited Conduct or a potential violation of this policy to the Title IX Coordinator, the HSU Police Department, and/or to local law enforcement. A complainant has the right to report, or decline to report, potential criminal conduct to law enforcement, and/or to be assisted by the University in reporting potential criminal conduct to law enforcement at any time. Under limited circumstances deemed by the University to pose a threat to the health or safety of any University community member, the University may independently notify law enforcement.

An individual may make a report to the University, to law enforcement, to neither, or to both. Campus investigations of Prohibited Conduct and law enforcement investigations operate independently of one another, although the University will coordinate as appropriate. Anyone can make a report as follows:

- Make a report to the Title IX Coordinator in person, by telephone to Stacey Martin at (325) 670-1253 or Tera Gibson at (325) 670-1077, by email at titleix@hsutx.edu, or online at www.hsutx.edu/title-ix/.

- If on campus, contact the Hardin-Simmons University Police Department for assistance in filing a criminal complaint and preserving physical evidence at 325-670-1461.

- If off campus, contact local law enforcement to file a criminal complaint by calling 911.

An individual may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX report and a criminal complaint). When initiating any of the above options, an individual does not need to know whether they wish to request any particular course of action nor how to label what happened. As part of a report to the Title IX Coordinator, an individual can also request interim measures and support.

1. Anonymous Reporting

Anyone can make an anonymous report by submitting information on the Hardin-Simmons Title IX website: www.hsutx.edu/title-ix/. Based on the nature of the information submitted, the University's ability to respond to an anonymous report may be limited.

2. Requests for Anonymity

Once a report has been shared with the Title IX Coordinator, a complainant may also directly request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action be taken. The University will carefully balance this request with the University's commitment to provide a non- discriminatory environment, and the respondent's right to have specific notice of the allegation(s) if the University were to take action that affects the respondent. In such circumstances, the Title IX Coordinator may arrange for preliminary fact- finding by an investigator to gain a better understanding of the context of the complaint or take other appropriate steps, including consulting with the University's threat assessment team. See Balancing Complainant Autonomy with University Responsibility to Investigate.

3. Amnesty

The University wishes to encourage good faith reports of conduct prohibited under this policy. Therefore, the University will not pursue disciplinary action against a student enrolled at the University who makes a good faith report to the University as a complainant or a witness to an incident of Prohibited Conduct for a violation by the student of the University's Student Conduct Code. Similarly, the University will not pursue disciplinary action against a complainant, respondent, or witness for disclosure of a violation of Residence Life visitation policy or of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or resolution process and the personal consumption did not place the health or safety of any other person at risk, regardless of the outcome of the University's resolution process.

Additionally, the University will not pursue disciplinary action against students (complainants, respondents, or witnesses) for conduct in violation of the Sexual Conduct Policy. Under no circumstances will a complainant or witness who makes a report of sexual assault or other Prohibited Conduct, or a respondent who participates in a resolution process, be charged with violating the Sexual Conduct Policy, regardless of the outcome.

The University may investigate to determine whether a report of Prohibited Conduct was made in good faith. A student will not receive amnesty for reporting an incident involving their own commission or assistance in the commission of Prohibited Conduct. A student who makes a report, but is later found responsible for Prohibited Conduct at or near the time of the incident, may not be entitled to a determination that the report was made in good faith. Granting of amnesty is final and may not be revoked. Even when amnesty is extended, the University may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

4. Timeframe for Reporting

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. There is no time limit for reporting. Reports under this policy may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the respondent is no longer a student at the time of a report, the University may not be able to take disciplinary action against the respondent. The University's ability to take action would also be limited if a report involves alleged conduct by a former employee. However, in such circumstances, the University may still provide support for the complainant and take steps to restore or preserve the complainant's equal access to University education programs or activities. The University may also assist the complainant in identifying and contacting law enforcement and other external enforcement agencies.

D. Other Community Resources

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system. If accessing these

resources, individuals are encouraged to clarify whether the resources are confidential. For a comprehensive list of on- and off-campus resources and support services, see www.hsutx.edu/student-life/student-services/counseling-services/.

11. Interim and/or Supportive Measures

Upon receipt of a report of Prohibited Conduct, the University will consult initially with the complainant and provide reasonable and appropriate interim and/or supportive measures designed to preserve the parties' educational experiences; protect the parties during an investigation; address safety concerns for the broader University community; maintain the integrity of the resolution process; and/or deter retaliation. At the appropriate time, the University will also consult with the respondent regarding interim and/or supportive measures. Interim and/or supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Interim measures are services provided to a party while an investigation and resolution process is pending, while supportive measures may be provided at any time, regardless of whether an investigation and resolution process has been initiated or completed.

Interim and/or supportive measures may include:

- access to counseling;
- access to medical services;
- academic accommodations, such as extensions of deadlines or other course-related adjustments, course schedule changes, late drops, and the ability to transfer course sections (this would include the University's allowing either party to drop a course in which both are enrolled in the same class section without academic penalty);
- modifications of work schedules; change in work locations; changing working arrangements; or providing other employment accommodations as appropriate;
- mutual restrictions on contact between the parties (i.e., "no contact directives");
- residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
- leaves of absence;
- increased security and monitoring of certain areas of the campus;
- changing transportation arrangements;
- Assistance in accessing support services, including, as available, victim advocacy, academic support, counseling, disability, health or mental health services visa and immigration assistance, and student financial aid services, both on and off campus, as applicable;
- Assistance in obtaining a sexual assault forensic examination;

- Assistance in communications with faculty to request academic modifications;
- Assistance in requesting long-term academic accommodations through the Office of Disabilities Services, if the party qualifies as an individual with a disability;
- Assistance navigating off-campus housing concerns;
- Escort and other safety planning steps;
- Referral to resources that can assist in obtaining a protective order under Texas law;
- Changes to another party's schedule, housing, academic arrangements and/or participate in University education programs or activities that do not unreasonably burden that party; and/or
- Any other measure that can be used to achieve the goals of this policy.

The availability of interim and supportive measures will be determined by factors such as the specific circumstances of each report, the party's wishes regarding supportive measures, and an individualized assessment of the circumstances of each case. Making every effort to avoid depriving all parties of their education, the University will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking interim or supportive measures; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been imposed (e.g., protective orders). The University will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

The University will provide reasonable interim or supportive measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with the University.

Requests for interim or supportive measures may be made by either party to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of interim or supportive measures and coordinating the University's response with the appropriate offices on campus. The Title IX Coordinator has the discretion to impose and/or modify any interim or supportive measure based on all available information and is available to meet with a complainant or respondent to address any concerns about

the provision of interim or supportive measures. The University will maintain as confidential any interim or supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures, and will promptly address any violation of interim or supportive measures.

All individuals are encouraged to report to the Title IX Coordinator any concerns about the failure of another to abide by any restrictions imposed through an interim or supportive measure. In the event of an immediate health or safety concern, individuals should contact 911 or 325-670-1461 (on campus) immediately. The University will take action to enforce a previously implemented measure, which may include additional

interim or supportive measures and/or disciplinary penalties under this Sexual Harassment and Misconduct policy or other University policies.

In evaluating whether a party has violated the conditions of an interim or supportive measure, the Title IX Coordinator has the authority to conduct expedited fact- gathering (with appropriate notice and the opportunity to be heard), to impose separate disciplinary action for the violation based on the facts as gathered without conducting a hearing, to incorporate the failure to comply with the interim measure into the underlying investigation and charges of Prohibited Conduct, and/or refer the matter to the Assistant Dean for Student Conduct and Community Standards.

12. Overview of Resolution Options

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of Prohibited Conduct under this policy when a formal complaint has been filed by a complainant or signed by the Title IX Coordinator, as described below:

(1) Disciplinary Resolution, which involves an investigation and adjudication; and

(2) Adaptable Resolution, which includes informal or restorative options for resolving reports.

Also, in cases in which an investigation will not be conducted under this policy, the Title IX Coordinator may itself or in collaboration with or referral to other University offices, undertake efforts such as educational conversations with individuals, educational programs for departments or groups, or other efforts designed to improve the campus environment and/or address concerns about behavior that may implicate this policy. As example of such a case would include a situation where a complainant does not wish to participate in a formal investigation and resolution process and the University can respect that wish due to the nature and level of the reported conduct, but where some action is nonetheless deemed appropriate by the Title IX Coordinator.

The processes under this policy are separate and distinct from Texas' criminal process. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

13. Initial Steps and Determination of Appropriate Procedures

A. Initial Contact with Complainant by Title IX Coordinator

After receiving a report of Prohibited Conduct, the Title IX Coordinator will:

(1) promptly contact or attempt to contact the complainant to discuss the availability of supportive measures (unless deemed unnecessary because contact has already been made with the complainant regarding the conduct alleged in the report);

(2) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint;

(3) consider the complainant’s wishes with respect to supportive measures; and

(4) explain to the complainant the process for filing a formal complaint.

B. Initial Assessment

As part of or in addition to the initial contact with the complainant, the Title IX Coordinator will also gather information about the reported conduct and any immediate health or safety concerns raised by the report or the complainant. The Title IX Coordinator will assess the complainant's safety and well-being, offer the University's immediate support and assistance, and assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, and whether the reported conduct is within the scope of this policy. The Title IX Coordinator may consult with other University administrators as part of the initial assessment.

As part of the initial assessment, the Title IX Coordinator will:

- assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness, and/or any other individual with knowledge of the reported incident;
- address immediate physical safety and emotional well-being;
- notify the complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- notify the complainant of the right to seek medical treatment;
- notify the complainant of the importance of preservation of evidence and of visiting a hospital as necessary for help with doing so;
- communicate necessary details of the report to the HSU Police Department to enter the report into the University's daily crime log if required by the Clery Act; the HSU Police Department will assess the reported conduct and discern the need for a timely warning under the Clery Act;
- provide the complainant with written information about on- and off-campus resources; notify the complainant of the range of interim measures available, including the right to reasonable interim or supportive measures regardless of whether they choose to file a formal complaint or participate in a University or law enforcement investigation;
- provide the complainant with an explanation of their procedural options;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- notify the complainant of the right to be accompanied at any meeting by an advisor of choice;
- assess for any alleged pattern of conduct by the respondent;
- explain the University's policy prohibiting retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation; and

- determine age of the complainant; and if the complainant is a minor, or was a minor at the time of the alleged Prohibited Conduct, make the appropriate notifications under the Policy to Protect Children and Prevent Abuse.

In cases in which the Title IX Coordinator initiates an investigation or takes any other action that impacts a respondent, the Title IX Coordinator will also ensure that the respondent is notified and receives written information on available resources and options, consistent with the list outlined above, as applicable.

At the conclusion of the initial assessment, the University will proceed with one of the following options:

(1) Proceed with an investigation under the Disciplinary Resolution process. This will occur when a complainant requests an investigation and the Title IX Coordinator determines it is appropriate; when the Title IX Coordinator determines that an investigation must be pursued even when a complainant requests that no investigation be pursued; or when Adaptable Resolution is not appropriate or available.

(2) Proceed with Adaptable Resolution. This will always require the consent of the complainant. The consent of the respondent is also required when the form of resolution involves the respondent.

(3) If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.

(4) If the complainant requests that the University not pursue a resolution process and the University determines that it can respect that request, the University will close the report. This option could include notifying the respondent of the alleged misconduct. The level of detail shared with the respondent will be at the discretion of the Title IX Coordinator. The University may re-open the matter if the complainant subsequently requests resolution or if the University subsequently determines there is a need to re-open the matter.

C. Formal Complaints, Dismissals and Appeals of Dismissals

A formal complaint for purposes of this Sexual Misconduct policy is a document filed by a complainant or signed by the Title IX Coordinator alleging Prohibited Conduct committed by a respondent and requesting that the University investigate the allegation. When a complainant submits a formal complaint, the Title IX Coordinator will first promptly determine whether:

(1) the conduct alleged would, if proved, constitute Title IX Sexual Harassment (i.e., *Quid Pro Quo* Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, or sex-based Domestic Violence, Dating Violence or Stalking) as defined in the Sexual Misconduct Policy

(2) the conduct allegedly occurred in the University's education program or activity;

(3) the conduct allegedly occurred in the United States; and

(4) the complainant is participating in or attempting to participate in the University's education program or activity at the time the complaint is filed.

If the formal complaint satisfies all 4 of these elements, it will be investigated and resolved as a Title IX Sexual Harassment matter through the procedures outlined below.

If it appears based upon initial review or upon information gathered during an investigation that a formal complaint does not satisfy and/or no longer satisfies all 4 of these elements, the University will, as required by the May 2020 Title IX regulations, dismiss the formal complaint for purposes of the Title IX Sexual Harassment process. The Title IX Coordinator may upon such dismissal transfer the matter for handling under the Non-Title IX Misconduct process outlined below or other University procedures, as deemed appropriate by the University.

Even if the allegations of a formal complaint fall within the definition of Title IX Sexual Harassment, the Title IX Coordinator may (but is not required to) dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

- The respondent is no longer enrolled or employed by the University (unless the University is required by Texas law to finalize an investigation involving a student respondent who was enrolled at the University at the time the investigation was initiated); or

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint is dismissed by the University under the circumstances described above, the University will simultaneously provide to the parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and notice of the parties' opportunity to appeal such dismissal through the appeal procedures outlined below.

D. Formal Complaints Signed by Title IX Coordinator

In cases where it appears based on an initial report that the 4 elements stated above would be satisfied, but the complainant does not wish to file a formal complaint, the Title IX Coordinator may, in their discretion (*see* "Balancing Complainant Autonomy With University Decision to Investigate" immediately below), decide to sign a complaint of Title IX Sexual Harassment and initiate an investigation and resolution process under the Title IX Sexual Harassment formal resolution process outlined below. If this occurs, the Title IX Coordinator will not be a complainant or otherwise a party to the matter.

Further, if a formal complaint is dismissed as described above because it does not fit within the definition of Title IX Sexual Harassment, but the Title IX Coordinator determines that the allegations of the complaint may constitute Non-Title IX Misconduct, the Title IX Coordinator may (upon the resolution of, and to the extent consistent with the result of, any appeal of such dismissal), address the alleged Non-Title IX Misconduct through the resolution procedures provided below.

E. Balancing Complainant Autonomy with University Decision to Respond

In order to protect the safety of the campus community, the Title IX Coordinator may decide to proceed with an investigation of Prohibited Conduct (that is, either Title IX Sexual Harassment or Non-Title IX Misconduct) even if a complainant specifically requests that the matter not be pursued. The Title IX Coordinator may also initiate an investigation of potential violations of this policy even absent a formal complaint or identified complainant or respondent and even if a report has been withdrawn. If a complainant requests that the University not investigate the alleged incident, the University may gather facts about the alleged incident in a manner that complies with the confidentiality requirements described below. The Title IX Office may also look into potential violations of this policy absent a formal complaint or identified complainant or respondent. This process need not follow the Disciplinary Resolution or Adaptable Resolution procedures outlined in this policy, and may instead proceed as deemed appropriate in the discretion of the Title IX Office. In determining whether to investigate the alleged incident(s), the University will consider factors such as, for example:

(1) the seriousness of the alleged incident;

(2) whether the institution has received other reports of Prohibited Conduct committed by the respondent or respondents;

(3) whether the alleged incident poses a risk of harm to others; and

(4) any other factors the University determines are relevant.

A complainant may request that their name or other personally identifiable information not be shared with a respondent, or that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, a member of the Title IX Coordinator will discuss any concerns with the complainant and seek to address and remedy barriers to reporting and/or participation based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes.

The Title IX Coordinator will consider what steps may be possible or appropriate when a respondent is unknown or the complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate manner of resolution under the policy. The University will seek resolution consistent with the complainant's request, if it is possible to do so, based upon the facts and circumstances, while also promoting the health and safety of the complainant and the University community.

The Title IX Coordinator may request that a report be re-opened and pursued under this policy if any new or additional information becomes available, and/or if the complainant decides that they would like Disciplinary Resolution to occur.

In those instances when the Title IX Coordinator determines that the University will proceed with an investigation despite the complainant's request that it not occur, the Title IX Coordinator will notify the complainant of the University's decision whether to investigate the matter. The University is required by the May 2020 Title IX regulations to send certain notices to the complainant whether they wish to receive them or not, but the complainant will not be required to participate in the investigation or in any of the actions taken by the University if they choose not to do so.

The University's ability to investigate and respond fully to a report may be limited if the complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the potential Prohibited Conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation and whether other supportive or other measures will be taken in connection with a report of Prohibited Conduct will be made in a manner consistent with this policy.

F. Student/Employee Cases

If the respondent is both a student and an employee, the Title IX Coordinator will determine which procedures outlined below will apply based upon the facts and circumstances, such as whether the respondent's status as a student or an employee predominates in the context of the Prohibited Conduct. If a student-employee/employee-student is found to have engaged in Prohibited Conduct, the student-employee/employee-student may be subject to sanctions both in connection with their employment, and in connection with their student status, as appropriate under these and other applicable procedures.

G. Consolidation of Investigation

The Title IX Coordinator has the discretion to consolidate matters involving allegations of Prohibited Conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of such Prohibited Conduct arise out of the same facts or

circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

As noted in Coordination with Other Policies, investigations initiated under this Sexual Misconduct policy may also include investigation of other forms of conduct that would be a potential violation of other University policies, and those forms of conduct may be resolved under this policy, instead of the procedures ordinarily used to address potential violations of such other University policies.

H. Safeguarding the Privacy of Complainants and Respondents

The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, but all individuals involved in proceedings under this policy are encouraged to exercise discretion in sharing information about such allegations in order to safeguard the integrity of the process and to avoid potential retaliation-related concerns. More information about how the University will handle information about complainants and respondents is provided in the Confidentiality, Qualified Confidentiality, Privacy, and Related Reporting Responsibilities section of this policy above.

I. Advisors

Throughout any investigation or resolution, each party has the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the resolution of a report under this policy. While the advisor may provide support and advice to the party at any meeting and/or proceeding, the University has established restrictions regarding the extent to which the advisor may participate in the proceedings. An advisor may not speak on behalf of the party or otherwise participate

in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings, except as specifically permitted by the hearing procedures outlined below. Generally, the Title IX Coordinator and investigator will communicate directly with the complainant or respondent, and any communications with an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, in order to not unduly delay the scheduling of meetings or proceedings.

14. Emergency Removal and Administrative Leave

A. Emergency Removal

Where there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged Prohibited Conduct, the University can remove a student or employee respondent from its education program or activity (which may include removing an employee respondent from their employment at the University) and issue any necessary related no-trespass and no-contact orders. The Title IX Coordinator will make the decision to remove a respondent from its education program or activity based on an individualized assessment and risk analysis. The Title IX Coordinator may consult with other University personnel, departments, or teams to assist in the individualized assessment and risk analysis.

If the University makes such a decision, the respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

B. Employee Administrative Leave

The University always maintains the discretion to place an employee respondent on paid or unpaid administrative leave during the pendency of an investigation and resolution process.

15. Adaptable Resolution

Adaptable Resolution is a voluntary and remedies-based resolution option. Adaptable Resolution may be pursued instead of Disciplinary Resolution at the request and agreement of both parties and as deemed appropriate by the University. The Title IX Coordinator will assess the request for Adaptable Resolution in light of factors such as, but not limited to, the stated goals of the requesting party, the severity of the alleged violation, and the potential risks to campus community members posed by the reported misconduct. Parties engaged in Disciplinary Resolution may also request to end Disciplinary Resolution and begin Adaptable Resolution at any time prior to the Hearing Officer's written determination regarding responsibility being shared with the parties. The University will only proceed with Adaptable Resolution if both parties provide their voluntary written consent. Adaptable Resolution may include, but is not limited to, one or more of the following approaches: Restorative Justice Conference, Restorative Justice Circle, , Facilitated Conversation and Shuttle Communication.

Participation in Adaptable Resolution is voluntary and either (or any)party can request to end Adaptable Resolution at any time prior to signing a written Adaptive Resolution Agreement. Additionally, the Title IX Coordinator can end Adaptable Resolution if the Coordinator determines it is no longer the appropriate avenue for resolution of a given report. If Adaptable Resolution is stopped prior to completion, information that is shared with or documented by the facilitator of the Adaptable Resolution will not be shared with the investigator, in the event that Disciplinary Resolution is initiated or resumed. A party's willingness to participate in Adaptable Resolution will not be

considered as evidence in Disciplinary Resolution. The University will not compel a party to engage in any particular form of Adaptable Resolution.

Adaptable Resolution does not include an investigation or adjudication by the University under the Disciplinary Resolution process outlined in this policy, but may involve the respondent's agreement to appropriate and reasonable remedies, including supported direct conversation or interaction with the complainant, education, training, and/or other remedies agreed to by the parties.

The Title IX Coordinator will maintain records of all reports and conduct referred for Adaptable Resolution, which will typically be completed within 60 calendar days of the agreement to begin Adaptable Resolution. While the University will seek to honor confidentiality of the parties' communications with the facilitator during the Adaptable Resolution process to the extent necessary to facilitate the resolution, the University may share information discussed or, created during this process, for example, without limitation to a judicial subpoena or a FERPA educational record request. However, if the respondent is found responsible for any violations of this policy in the future, information regarding the prior report processed through Adaptable Resolution may be used in the sanctioning phase for the subsequent report, provided that the respondent is granted the opportunity to address the prior report as well. If Adaptable Resolution is stopped prior to completion, statements made by a party in Adaptable Resolution may not be used in a Disciplinary Resolution process related to that matter.

If a party requests the initiation of an Adaptable Resolution process and the Title IX Coordinator agrees that the matter is appropriate for Adaptable Resolution, the Title IX Coordinator will provide to each party a written notice that discloses:

- the allegations;
- the requirements of the Adaptable Resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
- the parties' right to withdraw from Adaptable Resolution and resume or initiate Disciplinary Resolution with respect to the formal complaint; and
- information about maintenance of records or how records could be shared.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them and which is approved by the Title IX Coordinator (in consultation with other appropriate University administrators as deemed necessary). A party may withdraw from the Adaptable Resolution process at any time prior to signing a written Adaptable Resolution Agreement. Upon signing a resolution agreement, neither party may initiate a Disciplinary Resolution process regarding the same factual allegations, and the parties agree to comply with the terms of the resolution agreement. Failure to comply with a resolution agreement, once signed and approved, may result in disciplinary consequences, which may include the University placing an appropriate hold on the student's account until the terms of the agreement are met or employment discipline up to and including termination.

The University will not offer or facilitate an Adaptable Resolution process to resolve allegations that an employee engaged in Prohibited Conduct against a student.

16. Timeframe for Investigation and Resolution

The University will seek to complete the fact-gathering portion of the investigation in approximately 90 calendar days following the issuance of the notice of the investigation. In some instances, the notice of investigation may be issued the same date as the date of the report of the incident; in other instances, based on information gathered in the initial assessment, the notice of investigation may be issued at a later date. This policy designates reasonably prompt timeframes for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any timeframe in this policy for good cause. An extension may be required for good cause to ensure, for example, the integrity and thoroughness of the investigation; to comply with a request by law enforcement; on account of the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this policy.

Reasonable requests for delays by the parties will serve to extend the 90-calendar-day time period for investigation of the report. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances. The University will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that doing so is not likely to interfere with the law enforcement investigation. The University will not, however, wait for the conclusion of a criminal proceeding or otherwise be unduly delayed in proceeding with its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures.

Investigations will proceed according to the timeframes in this policy to the extent possible during the summer and at other times when classes at the University are not in session. The Title IX Coordinator will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation. Meetings and interviews may be conducted by the use of remote video conferencing technology as deemed appropriate by the Title IX Coordinator and/or the investigator.

Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both the complainant and the respondent.

17. Expectations Regarding Participation in Investigations and Formal Resolutions

All University community members are expected to provide truthful information in any report or proceeding under this policy. Consistent with the University's Student Code of Conduct, submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts

alleged in the report are not later substantiated or no policy violation is found to have occurred.

HSU expects all members of the University community to cooperate fully with the investigation and resolution procedures. It is understood that there may be circumstances in which a complainant or respondent wishes to limit their participation, and the University will respect the choice of the complainant or respondent as to how to engage in proceedings under this policy. The University may, however, move forward with an investigation and disciplinary action without the participation of a party or parties. If a complainant or respondent chooses not to answer any or all questions, or otherwise participate in an investigation for any reason, the University will evaluate whether to continue the disciplinary process. The University will not draw any adverse inference from a complainant's or respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the complainant or respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the case.

The University also recognizes that witnesses may be reluctant to participate in the process, but they are strongly encouraged to participate as requested by the University.

The University will not retaliate against an individual because they refuse to participate in an investigation or hearing under this policy.

18. Administrative Holds and Continuation of Disciplinary Resolution

The University will place a temporary administrative hold on a respondent's transcript pending the completion of the Disciplinary Resolution process. If a respondent withdraws while the investigation is pending, Texas law requires that the University proceed with the investigation and resolution process.

19. Disciplinary Resolution When the Respondent is a Student

During the Disciplinary Resolution process, both parties have equal rights, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information as provided below; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the determination, rationale, and, as appropriate, any sanction; and to an appeal of the finding.

Determinations regarding responsibility by hearing officers, as described below, will be made by a preponderance of the evidence. A preponderance of the evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the alleged policy violation occurred. Evidence is relevant if it has a tendency to make a fact more or less likely than it would be without the evidence, and the fact is of consequence in the hearing officer's determination.

To the extent required by applicable law, the University's application of the procedures outlined below will be designed to ensure equal access for individuals with disabilities.

The following procedures will apply to Title IX Sexual Harassment matters and Non-Title IX Misconduct matters when the respondent is a student. The hearing procedure is different for Title IX Sexual Harassment matters and Non-Title IX Misconduct matters. If the formal complaint included allegations of Prohibited Conduct pertaining to Title IX Sexual Harassment and Non-Title IX Misconduct, the Title IX hearing procedures will be utilized.

A. Notice

If the University initiates an investigation under the Sexual Misconduct policy, it will provide to the parties a written notice (by electronic or other means) that includes:

- Information about the University's resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the University's presumption of good faith reporting and a summary of false complaint-related information outlined in this policy;
- Notification that parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notification that the parties will have the opportunity to inspect and review evidence during the investigation and resolution process, as provided in procedures detailed below;
- The name of the investigator and how to challenge participation by the investigator on the basis of a conflict of interest or bias;
- The importance of preserving any potentially relevant evidence in any format;
- The prohibition against retaliation; and
- A link to a copy of this policy.

If in the course of an investigation the University decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

When a Notice of Investigation is issued, appropriate campus departments such as Athletics and/or Human Resources may be notified, and Respondents may be subject to applicable policies under those offices, which are not under the purview of the Title IX Office.

B. Investigations

1. Investigators

In cases that will be investigated, the Title IX Coordinator will appoint one or more investigators (referred to in this policy as "the investigator") to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a University employee and/or an experienced external investigator. Any investigator used by the University will receive annual training on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of complainants while promoting accountability. In selecting the investigator for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The Title IX Coordinator will notify the parties of the identity of the investigator and parties may, within three business days of such notice, object to the service of the investigator by providing a written statement (which may be transmitted electronically) as to why the party believes that the investigator has a conflict of interest or bias. Objections after this three-day period must be based on newly acquired information. The Title IX Coordinator will make decisions regarding such objections and the appointment of an alternate investigator, as necessary.

2. Conduct of Investigations and Relevant Evidence

During an investigation, the investigator will seek to meet separately with the complainant, respondent, and relevant witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. The respondent is presumed not responsible for the alleged policy violation(s), and the investigator will not make a determination regarding responsibility.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties. Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Parties are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence. Parties whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Witnesses may not participate solely to speak about an individual's character. Where witnesses are interviewed as part of the investigation, the name of the witness and a summary of relevant information gathered in the interviews will be shared with the parties in the investigative report described below. The investigator will also gather other relevant information or evidence, including documents, photographs, and communications between the parties and witnesses, and other information, including electronic records, as appropriate.

All interviews may be audio recorded at the Title IX Coordinator's discretion.

While the investigator, not the parties, is responsible for gathering relevant evidence to the extent reasonably possible, both the complainant and the respondent are encouraged to submit any information they believe may be relevant, and both the complainant and respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to provide material information, the University's ability to gather and consider all facts may be impacted.

The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The Title IX Coordinator does not actively monitor social media or online sources, however, and as with all potentially relevant information, the complainant, respondent, or witness should bring online information to the attention of the investigator.

Similarly, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation and will also share any information about alleged retaliation or violation of the terms of a supportive measure with the Title IX Coordinator for further action.

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

If there is a concurrent criminal investigation, the University may contact the law enforcement agency that is conducting any investigation to inform that agency that a University investigation is also in progress, to attempt to ascertain the status of the criminal investigation, and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

In general, a person's medical and counseling records are confidential and are not accessible to the investigator unless the person voluntarily chooses to share those records with the investigator. The investigator will not access, consider, disclose or otherwise use a party's privileged records without the party's voluntary, written consent to do so, and such information will not be deemed relevant to an investigation or adjudication absent the voluntary, written consent of the party. In those instances,

the relevant information from the records must be shared with the other party; it should be noted, however, that irrelevant information may be redacted by the investigator from such records, as appropriate.

The investigator will review all information identified or provided by the parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the investigator will not consider as relevant statements of personal opinion or statements as to any party's general reputation for any character trait. The amount and type of evidence that may be relevant, including witnesses, may vary. The investigator has discretion to determine which witnesses to interview and will carefully consider requests or recommendations for witnesses made by the complainant and respondent. Not every complainant- or respondent-suggested witness may be interviewed, for example, if their knowledge is not relevant, is duplicative, or only pertains to facts that are not

contested, or if the witness is uncooperative or cannot reasonably be reached. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

The investigator will provide periodic updates to the parties about the status of the investigation.

C. Review of Directly Related Information and Parties' Written Response

In conjunction with the provision of a preliminary investigative report prepared by the investigator, the investigator or designee will provide each party with an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which the University may not rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Such evidence will include any statements made by the parties and witnesses, written or electronic communications, social media posts, videos, photographs and any other relevant documentary evidence gathered by the investigator, redacted as necessary to comply with any applicable federal or state law regarding confidentiality. Such evidence will not include privileged records or information that may have been gathered or received during the investigation, without written consent from the party holding the privilege (provided however that appropriately redacted otherwise-privileged records may be shared with consent).

The University will provide to each party and the party's advisor, if any, the evidence subject to review in an electronic format. Parties and advisors are not permitted to download, print or copy such evidence subject to inspection and review, and are not permitted to re-disclose such evidence without the University's permission. Violations of these prohibitions may subject parties to College discipline under applicable conduct codes.

The complainant and the respondent will have an opportunity to concurrently review such information and may, within 10 calendar days, submit a written response to the investigator. The parties' written responses will be considered by the investigator prior to completion of the investigative report, and some or all of the responses may be attached or otherwise incorporated into the investigative report. In the event that new, relevant information is provided or identified at this stage, the information will be incorporated into the investigative report as deemed appropriate by the investigator.

D. Final Investigative Report

When deemed appropriate by the investigator, the investigator will prepare a final investigative report, which will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator. The parties may provide a written response to the investigative report within ten calendar days of the issuance of the final investigative report.

The investigative report and the parties' written responses, if any, will be provided to the hearing officer in advance of the hearing.

E. Hearings

1. Scheduling of Hearings

Hearings will be scheduled no earlier than ten days after the issuance of the final investigative report.

2. Hearing Officers

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator. In selecting a hearing officer for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The University will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within 3 business days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary. Parties and their advisors are prohibited from contacting the hearing officer for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting the hearing officer about the resolution process after its completion.

3. Advisors

Advisors have different roles in the hearing process, depending upon whether the allegations involve Title IX Sexual Harassment or only Non-Title IX Misconduct. Some rules apply to hearings in both types of allegations:

a. Rules relating to all hearings

Throughout the entire proceeding, including any investigation or hearing, each party has the right to consult with an advisor of their choosing, and may be accompanied by their respective advisor at any stage, including interviews and the misconduct hearing. The advisor may be any person, including an attorney. The University will maintain a list of advisors who are available if the parties desire an advisor but are unable to identify one on their own.

Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing

b. Rules applicable only to Title IX Sexual Harassment hearings

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the University will without fee or charge to the party provide an advisor of the University's choice for the limited purpose of conducting cross-examination on behalf of that party. No later than ten calendar days before the hearing, parties should inform the Title IX Coordinator of the identity of any advisor whom they have chosen to accompany them to the hearing or that they will not be bringing an advisor, so that the University will know whether or not it needs to arrange for the presence of a University-provided advisor.

At a time and manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. If the advisor is determined by the hearing officer to be disruptive, the appointment of an alternate University-provided advisor may occur.

c. Rules applicable only to Non-Title IX Misconduct hearings

While the advisor may provide support or advice to the party at any interview, meeting, and/or the hearing, the advisor cannot directly communicate with or cross examine the opposing party. Parties should inform the Title IX Coordinator of the identity of the advisor, if any, they have chosen to accompany them to the hearing no later than five calendar days before the hearing.

4. Requests for Appearance of Witnesses

Witnesses present at the hearing are restricted to individuals already interviewed in the fact-gathering process. As noted above, the University will not retaliate against University students or employees for refusing to participate in a hearing.

5. Conduct of Hearings and Relevance

a. Procedures applicable to all hearings

Before the hearing, the hearing officer will receive a copy of the investigative report, any attachments thereto, and copies of the parties' written responses to the investigative report, if any, which will be part of the information of record to be considered by the hearing officer.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the facilitator, followed by opening statements from any party who wishes to provide one, followed by the hearing officer's asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

Only relevant questions may be asked of a party or witness. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), will not be admitted unless the person holding the privilege has waived theprivilege.

Regarding the evidence subject to inspection and review that was provided to the parties and their advisors as described above, a copy of such evidence will be made available at the hearing, and each party and/or their advisor (as applicable) will have an equal opportunity to refer to such evidence during the hearing.

This policy prohibits attempts to commit Prohibit Conduct. In assessing whether an individual attempted to commit Prohibited Conduct, the hearing officer will consider elements such as circumstances and context of the encounter, statements made by a party or the parties, and the actions of a party or the parties.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing. The respondent is presumed not responsible for violating this policy through the course of the hearing.

b. Procedures applicable only to Title IX Sexual Harassment hearings

At the request of either party, the University will provide for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility. Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant initial questions to each witness, then the parties' advisors will be permitted to ask relevant questions of witnesses. Cross-examination by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Before a complainant, respondent, or witness answers a cross-examination question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Neither advisors nor parties are permitted to object to hearing officer decisions regarding relevance during ahearing.

Parties and advisors may refer to the copy of evidence available in the hearing for

purposes of cross-examination.
Formal rules of evidence do not apply to hearings conducted by the University. The Hearing Officer may at their discretion consider statements of a party or witness made before or at a hearing and/or other information, regardless of whether the party or witness appears at or answers some or all cross-examination questions at a hearing. The Hearing Officer will determine the appropriate weight for such information based on the totality of available relevant evidence. Hearing Officers will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross- examination or other questions.

c. Procedures applicable only to Non-Title IX Misconduct hearings

Each party will have the opportunity to be heard and to respond to any questions of the hearing officer. The parties may not directly question one another, although they or their advisors may proffer questions for the hearing officer, who may choose, in their discretion, to pose appropriate and relevant questions.

The hearing officer has the discretion to determine the hearing format. A broad overview will be provided to both parties prior to the hearing. Both the complainant and the respondent have a right to be present at the hearing, but neither party is required to participate in the hearing in order for the hearing to proceed. Either party may request alternative methods for participating in the hearing that do not require physical proximity to the other party, including participating through electronic means. The University has the discretion as well to choose whether the hearing occurs with all parties physically present in the same geographic location or, whether any or all parties or witnesses may appear at the live hearing virtually.

Although as a general rule the University expects that the parties will participate in the hearing, the hearing officer may proceed without either party after considering the party's stated reason for not participating. The hearing officer maintains discretion to require any witness to appear and give testimony.

6. Record of Hearings

The University will create a transcript of any live hearing and make it available to the parties for review.

F. Determinations Regarding Responsibility

Within 15 business days after the hearing process, the hearing officer will prepare and issue a written determination regarding responsibility and any sanctions. In determining responsibility, the hearing officer will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the Prohibited Conduct section(s) of this policy, and of any other University policy sections considered in the investigation, alleged to have been violated;

- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;

- Conclusions regarding the application of the University's definitions of Prohibited Conduct to the facts;

- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and

- Identification of the University's procedures and permissible bases for the complainant and respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

If sanctions are deemed appropriate, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination and, as appropriate, any sanctions as determined through the procedures outlined below.

20. Imposition of Sanctions

A. Imposition of Sanctions

If the hearing officer under either hearing process finds that the respondent engaged in behavior that violates this Sexual Misconduct policy (or other University policies under investigation, as applicable), the hearing officer will subsequently determine an appropriate sanction or sanctions, and other actions as appropriate. The hearing officer will issue a written determination that will include a statement and rationale regarding responsibility as described in more detail above, a statement of and rationale for any sanction(s) the University is imposing on the respondent, and whether remedies designed to restore or preserve equal access to the educational program or activity of the University will be provided by the University to the complainant.

Sanctions may include any of the sanctions that are listed below or set forth for violations of the University's Student Code of Conduct.

This policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the hearing officer has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the complainant and surrounding community, and accountability for the respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, remedy its effects and restore or preserve the complainant's equal access to University education programs or activities, while supporting the University's educational mission. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, and/or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion. In determining the appropriate sanction, the hearing officer may consider factors including but not limited to the following:

- the nature and violence of the conduct at issue;

- the impact of the conduct on the complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the respondent, including the respondent's relevant prior discipline or criminal history (if available);
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case. Sanctions may be imposed individually or in combination. For violations of this policy, the following sanctions, listed in ascending order of severity, may be imposed:

Warning: A formal admonition, which appears in an individual's disciplinary record at the University.

Disciplinary Probation: A more serious admonition may be assigned for a definite period of time. Findings of misconduct that resulted in disciplinary probation may be considered in determining subsequent sanctions, even if the probation period has ended. Any future violation may be grounds for more severe sanctions, including suspension, suspension with conditions, or, in especially serious cases, expulsion from the University.

Restitution: Requirement to reimburse or otherwise compensate another and/or the University for damage or loss of property resulting from a student's misconduct. Common assessment or group billing may be made to students in a residence hall for damages occurring in common areas shared by groups of residents (determinations about whether and to what extent that will occur are made by the University's Associate Dean for Student Services, not through the procedures provided in the Student Code of Conduct).

Residential or Other Facilities Restrictions or Removal: Restriction or removal from residence halls or other campus facilities as designated in the written notification.

Withholding of Degree: In cases involving seniors or graduate students in their final semester, the University may withhold a student's HSU degree for a specified period of time. This penalty is imposed instead of suspension at the end of senior year or final year of graduate study when all other degree requirements have been met. Degrees may also be withheld indefinitely when all other degree requirements have been met. The sanction of withholding a degree may also occur if an expulsion-level offense occurs after all other degree requirements have been met but before the degree is conferred.

Suspension: Student status at the University may be terminated for a specified period of time.

Suspension with Conditions: Student status at the University may be terminated for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the officer or panel applying this penalty, have been fulfilled. These conditions may include, but are not limited to, restitution of damages and formal apology.

Expulsion: This is permanent termination of student status at the University, without any opportunity for readmission. Relevant information remains in the student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required or permitted by law.

Transcript notations: The university generally follows the guidelines for notations on transcripts promulgated by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). However, the university may vary from such standards as it deems necessary or as required by law.

If a student becomes ineligible to reenroll at HSU for other than academic or financial reasons, the university is required by Texas law to include a notation on the student's transcript of such ineligibility pursuant to *Texas Education Code section 51.9364*. “Ineligible to enroll” for reasons other than financial or academic is based on the sanction resulting in the ineligibility, either Suspension, Expulsion, or Dismissal: 1) if based on Suspension, ineligibility to reenroll is temporary, and exists for the specified period of the Suspension; 2) if based on Expulsion, ineligibility to enroll exists for at least two years, with eligibility to be considered for reenrollment after a re-application process (but eligibility is not automatic); or, 3) if based on Dismissal, ineligibility to reenroll is permanent.

Students may submit written requests to remove a transcript notation on two grounds: 1) the student has become eligible to reenroll at HSU; or, 2) good cause. Reasons constituting good cause will be considered very broadly, and can consist of one reason or an accumulation of various reasons that the student believes HSU should consider. HSU will make the determination on whether good cause exists in the university’s sole discretion, considering the grounds submitted by the student, the nature of the conduct giving rise to the ineligibility, the passage of time since such conduct occurred, and other relevant information.

Written requests shall be addressed to the Assistant Dean for Student Conduct and Community Standards. The Dean will determine if additional evidence or clarification is needed, and then render a written decision whether the notation will be removed. Appeal of the Dean of Student’s decision must be made in writing, and received by the Vice President for Student Life no later than three business days after receipt of the Dean of Student’s decision. The Vice President for Student Life will review the grounds contained in the initial written request made to the Assistant Dean for Student Conduct and Community Standards, and render a written decision whether the notation will be removed. The decision of the Vice President for Student Life is final.

Requests to reconsider a decision denying removal of a transcript notation may not occur more frequently than annually, i.e., not less than 365 days from the date of the last final decision, except for requests based on a new ground which could not reasonably have been known at the time of a prior determination or a substantial change in facts or circumstances. In such cases, the new ground or substantial change in facts or circumstances must be set forth in writing and in sufficient detail pursuant to the same requirements of an initial request as set forth above. Requests for reconsideration under this section are granted or denied at the sole discretion of the university, and are not appealable.

The following outcomes may accompany the preceding sanctions, as appropriate:
Community Service: Community service up to 10 hours per week may be added to disciplinary probation for a portion or duration of the probationary period or following a warning.

Restriction of Access to Space, Resources, and Activities: When appropriate, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact between the parties.

Educational Programs: In addition to any of the sanctions listed above, a student may be required to participate in educational programs.

No Contact Directives: No contact directives may be imposed as an administrative matter (but not necessarily a sanction) when the University determines that doing so is in the best interests of an affected individual or individuals, and/or the best interests of the University.

The fact that these additional outcomes are listed here as examples does not limit the University's ability to issue interim or administrative measures such as restriction of access to space, resources and activities, and/or no contact directives at its discretion even where no policy violation has been investigated or charged, and/or where no policy violation has been found.

B. Other Information About Sanctions

Sanctions will be suspended during the period of any appeal, in a manner that preserves both the respondent's rights and the University's ability to carry out the sanctions as determined by the hearing officer. In cases adjudicated prior to the last day of classes, if the final sanction is separation from the University (i.e., suspension, suspension with conditions, or expulsion), the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the hearing officer.

A student who is suspended or expelled for a violation of this policy will have the notation "Ineligible to Reenroll" placed on his or her academic transcript. On request by the student, the University may remove the notation from the academic transcript if (1) the student is eligible to reenroll, or (2) the University determines that good cause exists to remove the notation. Such requests should be directed to the Title IX Coordinator in writing. The removal of the notation from the academic transcript shall not require the University to make any modification to the student's disciplinary records at the University.

C. Additional Remedies

Regardless of the outcome, the hearing officer may recommend additional remedies for the complainant to address the effects of the conduct on the complainant, restore or preserve the complainant's equal access to University programs and activities, and restore to the complainant, to the extent possible, benefits and opportunities lost as a result of the alleged Prohibited Conduct. The hearing officer may also identify remedies to address the effects of the conduct on the University community.

The Title IX Coordinator will review the remedies recommended by the hearing officer and will consider the appropriateness of continuing supportive measures on an ongoing basis. Extended supportive or other measures may be included in the sanctions.

D. Administrative Measures

Regardless of whether a policy violation is found to have occurred in a particular case, the University may implement non-punitive, non-disciplinary administrative measure such as, for example, no contact directives and/or reasonable restrictions from certain University premises, at any time after a matter is reported, if the University determines that doing so is in the best interests of a party, both parties and/or the University.

21. Disciplinary Resolution When the Respondent is an Employee

When the Title IX Coordinator receives a report that a member of the faculty or staff violated this policy, the Title IX Coordinator will work with the Provost's Office and/or Human Resources to investigate in a manner consistent with the Sexual Misconduct policy, HSU personnel policies, and all applicable law. The resolution process will follow the procedures for student respondent cases outlined above based on the type of Prohibited Conduct (Title IX Sexual Harassment or Non-Title IX Misconduct). The Title IX Coordinator will have the authority to exercise oversight of the resolution process.

For staff members of the institution, the sanction will be determined by the Vice-President for Finance or his/her designee. For faculty members, the sanction will be determined under the process outlined by the appropriate disciplinary policy outlined in the Personnel Handbook, or if none exists, the Provost or his/her designee. The Sanction may include (in accordance with the employment policies governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension, demotion, reassignment of duties, referral to other staff or faculty procedure (for the determination of sanction only), or termination. Complainants will only receive information about such disciplinary action when appropriate and/or required by law.

Sanctions will be determined based on the seriousness of the misconduct and on the individual's prior disciplinary history, if any. Sanctions will be communicated to the parties, as appropriate, in writing by the hearing officer and the Provost and/or the VP for Finance or that person's designee, through the joint written determination preparation process described above. The notification will include the parties' rights of appeal within the bounds of this process. In all cases involving sex harassment or sexual misconduct, the file will be archived by the Title IX Coordinator as provided below.

22. Appeals

Either party to a matter covered by this Sexual Misconduct policy may file an appeal from: 1) a determination regarding responsibility; and/or 2) the Title IX Coordinator's dismissal of a formal complaint or any allegations therein from the Title IX Sexual Harassment process, on 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;

c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and/or

d. The decision of the decision-maker was arbitrary or capricious.

An appeal must be submitted in writing to the Title IX Coordinator.

Appeals must be filed no later than seven calendar days after the date on which the University transmitted the hearing officer's written determination to the parties or the

Title IX Coordinator's decision to dismiss the matter for purposes of Title IX. The Title IX Coordinator may extend this deadline if warranted by the circumstances.

The appellate officer will be appointed by the Title IX Coordinator or designee. In selecting an appellate officer for a particular matter, the Title IX Coordinator or designee will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The Title IX Coordinator or designee will notify the parties of the identity of the appellate officer and parties may, within three calendar days of such notice, object to the service of the appellate officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the appellate officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate appellate officer, as necessary. The appellate officer will not be the same person as the hearing officer, the investigator, the Title IX Coordinator, or a person who made a decision to dismiss a formal complaint.

The University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The other party may then have a period of five business days to submit a statement in support of the written determination and/or in opposition to the appeal. Any such statement will be shared with the party who filed the appeal and their advisor.

The appellate officer will issue a written decision describing the result of the appeal and the rationale for the result, and the University will provide the written decision simultaneously to both parties. The appellate officer's decision on any appeal is the final step in the adjudication process, except as provided in such decision.

The appellate officer may deny the appeal, or if one or more of the appeal grounds have been met, may:

- return the case to the original hearing officer for reconsideration;
- appoint an alternate hearing officer to review the case; or
- change or modify the decision.

It is the responsibility of the appellate officer to determine which if any aspects of the case merit a new review, and to direct the Title IX Coordinator accordingly.

Absent extenuating circumstances, the appellate officer will notify the complainant and respondent of the appeal decision simultaneously in writing within 20 business days of the appeal receipt deadline, and will notify the Title IX Coordinator in writing of any instructions for further action. This deadline may be extended if warranted by the circumstances. If this deadline is extended, the parties will be notified in writing at the time the extension is determined.

The decision made by the appellate officer to grant or deny the appeal is final. If an appeal is granted, the subsequent determination and/or sanction is/are final.

23. Records Retention

In accordance with the Title IX Office's record retention policy, the office will maintain, mor example, records of all reports. Disciplinary Resolution, Adaptable Resolution, and steps taken to eliminate prohibited conduct, prevent its recurrence, and address its effects. Findings of responsibility will also be included in a student's disciplinary record maintained by Student Conduct Administration and/or an employee's personnel records.

24. Violations of Law

Conduct that violates this policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a respondent to criminal prosecution by the presiding authority. More information about violations of Texas criminal law can be found in the University's Annual Campus Safety Report. Conduct that violates this policy also may subject a respondent to civil liability.

Students and employees studying, working, or engaging in other activities at locations outside of Texas are governed by the applicable laws regarding sexual assault and other criminal offenses implicated by this policy. Where the University has jurisdiction to investigate and address reported conduct that would constitute conduct prohibited by this policy, the definitions and standards in this policy will apply for purposes of University discipline, regardless of the definitions of various crimes used in the laws of the locality where the conduct reportedly occurred.

25. Prevention and Awareness Programs

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming and returning students and current employees receive ongoing training and related programs. The University provides coordinated programming and training through multiple areas, including the Title IX Coordinator, Student Life, HSU Police Department, Human Resources, the Provost's Office, Counseling Center, and other University departments.

26. Annual Review

This policy is maintained by the Title IX Coordinator. The University will review this policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution processes (including the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review may incorporate feedback from parties and an aggregate view of reports, resolution, and climate.