

Sexual Harassment Policy

1. Introduction

This policy provides information regarding Texas Health and Science University's ("The University") education efforts to prevent sex discrimination, sexual harassment, sexual assault, sexual misconduct, interpersonal violence and stalking. The policy also explains the procedures for reporting prohibited conduct and how the University will proceed once allegations are made in order to meet the legal obligations of Title VI of the Civil Rights Act of 1964, the Title IX and education amendments of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act of 2013 ("VAWA"), and similar states and federal statutes.

The policy applies to all students, University employees, visitors, University affiliates, and others conducting business on campus. The University may also investigate and take disciplinary action in response to incidents that occur during official University sanctioned events regardless of the location of the incident.

The University does not condone and will not tolerate sexual misconduct, sexual harassment or sexual violence of any kind. The University prohibits rape, domestic violence, dating violence, sexual assault, stalking, and cyber-stalking, as well as discrimination or harassment based on sex.

The University strongly encourages students, University employees, and third party affiliates to promptly report all incidents of prohibited conduct that is contained in this policy. All **responsible employees** are required to report incidents of prohibited conduct contained in this policy. The University will promptly respond to all reports of prohibited conduct, and will engage in a fair and impartial investigation and resolution for complaints, and as necessary, will issue "sanctions" or report incidents to local law enforcement. A "sanction" is defined as the primary outcome of an alleged violation.

Pursuant to Title IX, a **responsible employee** is a University employee who has the authority to take action and redress alleged violation of this policy; who has been given the duty of reporting allegations to the Title IX Coordinator; or an individual assumed to have authority or duty. At Texas Health and Science University, **Responsible Employees**, include, but are not limited to:

- administrators
- registrar
- dean
- financial aid
- faculty members (including adjuncts)
- vice presidents

In an effort to promote a safe and secure campus environment and prevent acts of sexual misconduct from occurring, the University engages in ongoing prevention and awareness education programs. All incoming students and employees are required to participate in these programs. **Responsible employees** are not confidential reporting resources.

Students wishing to remain anonymous can file a complaint (by telephone or in writing) with the University Title IX Coordinator. The Title IX Coordinator at THSU is Antonio Holloway, Director of Financial Aid. Electing to remain anonymous slows down the investigation process and the ability for the Title IX Coordinator to collect evidence against those who are accused of violating the sexual misconduct policy.

2. Definitions

Rape The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by sex organ of another person, without the consent of the victim

Associate A faculty member, staff member, or University personnel

Consent

Consent is

- the equal approval, given freely, willingly, and knowingly of each participant to desired sexual involvement
- an affirmative, conscious decision –indicated clearly by words or actions to engage in mutually accepted contact.

Non-Consent is

- forced to engage in sexual contact by force, threat of force, or coercion

Coercion

Coercion includes unreasonably pressuring another to engage in sexual activity. Lack of mutual consent is the crucial factor in any sexual misconduct. **Consent** to some form of sexual activity does not necessarily constitute consent to another form of sexual activity. Silence without demonstrating permission does not constitute consent.

Consent is not valid when a person is **incapacitated**, or when an intellectual or other disability prevents a person from having the capacity to give consent. A person is **incapacitated** if they lack the capacity to consent to sexual activity because the person is asleep, unconscious, mentally and/or physically helpless, or otherwise unaware that sexual activity is occurring.

The legal Age of Consent in Texas is 17. The definition of “**Age of Consent**” in Texas is when a person may legally consent to engage in sexual activity with another person. Texas Penal Code states that once a person becomes 17 years of age they are capable to give consent for sexual activity with another person.

"Dating Violence" includes violence committed by a person:

Dating Violence

1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. the length of the relationship.
 - b. the type of relationship.
 - c. the frequency of interaction between the persons involved in the relationship.

Family violence means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or

Family Violence

sexual assault. "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other. "Member of a household" includes a person who previously lived in a household.

Incapacity

Incapacitation is not necessarily the same as legal intoxication. Where alcohol or other drugs are involved, evaluating **Incapacitation** requires an assessment of how the consumption of alcohol and/or drugs affects a person's: decision-making ability; awareness of consequences; ability to make informed, rational judgments; capacity to appreciate the nature and quality of the act; or level of consciousness. The assessment is based on objectively and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person or level of consciousness.

Treating an individual differently in the terms or conditions of his or her employment or education on the basis of his or her race, color, religion, sex, ethnicity, national origin or ancestry, age, physical or mental disability, sexual orientation, gender identity, gender expression, genetic information, veteran or military status, and all other categories protected by applicable state and federal laws.

Discrimination

Sexual assault is a very serious criminal offense throughout the United States. In the state of Texas, it's also considered a serious criminal violation of the law. Sexual assault, more commonly known as rape, occurs when a person knowingly and intentionally forcibly commits a number of sexual activities that are prohibited as per Texas's sexual assault law against the will of another person and without their consent.

Sexual Assault

There are several specific acts that are considered sexual assault. A person commits sex assault offense if the person:

- intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
- causes the penetration of the mouth of another person by the sexual organ of the perpetrator, without that person's consent; or
- causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the perpetrator.

A sub-section of the Texas Sexual Assault law deals with Child Sexual Assault.

Child Sexual Assault occurs if person intentionally or knowingly:

- causes the penetration of the anus or sexual organ of a child by any means;
- causes the penetration of the mouth of a child by the sexual organ of the perpetrator;
- causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the perpetrator;
- causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the perpetrator; or
- causes the mouth of a child to contact the anus or sexual organ of another person, including the perpetrator.

(references: SAPUTO Law Firm and Eric Harron Law Firm)

Sexual contact that occurs without consent.

“Sexual exploitation” occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include:

Sexual Battery

- Prostituting another person;
- Recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent;

Sexual Exploitation

- Distributing images (e.g., video, photograph) or audio
- Viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, and for the purpose of arousing or gratifying sexual desire.
of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and,

Sexual Harassment

As defined in the 1980 Equal Employment Opportunity Commission’s Guidelines On Sexual Harassment, sexual harassment encompasses “unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature” such as intentional patting, pinching, touching or other sexually suggestive behavior that is sufficiently serious to deny or limit a student’s ability to participate in or benefit from the education program. Sexual harassment occurs when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or educational experience, creating an intimidating or hostile employment, educational or living environment for an individual; or
- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment or of a student’s status in a course, program or activity; or
- Submission to or rejection of such conduct is the basis for academic or employment decisions affecting an individual; or
- Such conduct is directed against an individual persists despite requests for its cessation and/or when a claim of sexual harassment has resulted in retaliation against Associates/students for complaining about such behavior.

Gender-Based Harassment

“Gender-based harassment” is unwelcome conduct of a nonsexual nature based on a student’s actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

Hostile Environment

A hostile environment can be created by anyone involved in a University's program or activity (e.g., administrators, faculty members, students, and campus visitors).

In determining whether sex-based harassment has created a hostile environment, the University considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was unwelcome to the student who was harassed. But the University will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment.

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

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

Any sex discrimination that can include discrimination, sex-based harassment, sexual battery, gender-based harassment, sexual harassment, sexual violence or assault, rape, sexual coercion or exploitation, sexual threats or intimidation, domestic violence, dating violence, stalking, and cyber-stalking.

Sexual Misconduct

According to [Section 42.072 of the Texas Penal Code](#), stalking is defined as a behavior which:

- Occurs on more than one occasion
- Is specifically directed at one person
- Places that person in fear of death or [bodily injury](#)
- Places that person in fear of death or bodily injury to a family member or romantic partner
- Causes that person to feel harassed, annoyed, embarrassed or in fear that their property will be damaged

Stalking

Essentially, a person who repeatedly targets someone else and engages in **behavior that could threaten or frighten another person** may be charged with stalking.

(Reference: Matthew Sharp Law Office)

As defined in the 1980 Equal Employment Opportunity Commission's Guidelines On Sexual Harassment, sexual harassment encompasses "unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature" such as intentional patting, pinching, touching or other sexually suggestive behavior that is sufficiently serious to

Unwelcome Conduct

deny or limit a student's ability to participate in or benefit from the education program. Sexual harassment occurs when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience, creating an intimidating or hostile employment, educational or living environment for an individual;
- Such conduct has the purpose or effect of abusing, threatening, or intimidating an Associate or student through insulting or degrading sexual remarks or conduct;
- Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or of a student's status in a course, program or activity;
- Submission to or rejection of such conduct is the basis for academic or employment decisions affecting an individual;
- Such conduct is directed against an individual persists despite requests for its cessation and/or when a claim of sexual harassment has resulted in retaliation against Associates/students for complaining about such behavior. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience, creating an intimidating or hostile employment, educational or living environment for an individual.
- interfering with an individual's work performance or educational experience, creating an intimidating or hostile employment, educational or living environment for an individual.

3. Policy

Scope

This policy applies to all members of the University Community including all students, faculty, staff, and other university officials, whether full or part-time and guest lecturers, as well as to conduct by third parties (i.e.,

individuals who are neither students nor employees, including but not limited to guests and consultants) directed toward, University students, faculty, or staff members. The policy applies to these parties regardless of sexual orientation or gender identity or expression. The policy governs the conduct of all faculty, staff, administration, Associates, students, volunteers and visitors at off-campus University sponsored events, including, but not limited to academic and educational programming, internships, study abroad programs, athletic events, and all other University programming, as well as to the conduct of all faculty, staff, administration, Associates, students, volunteers and visitors occurring off-campus but having an effect on the University's educational environment or a victim's educational experience.

Purpose

To define, prevent, and respond to Sexual Misconduct.

Prohibited Conduct

The University strictly prohibits all forms of Sexual Misconduct. As defined above, this includes discrimination, sex-based harassment, sexual battery, gender-based harassment, sexual harassment, sexual violence or assault, rape, sexual coercion or exploitation, sexual threats or intimidation, domestic violence, dating violence, stalking, and cyber-stalking. Sexual Misconduct is prohibited whether occurring on or off campus and whether directed against a member of the University community or outside the University.

Reporting Policy

The University encourages community members to report incidents of sexual harassment, sexual assault or any other sexual misconduct immediately to the University. A report may be made by the victim of a violation of this Policy or by any other person having knowledge of the violation. Confidentiality concerns are addressed below.

Employee Reporting

The University takes the position that all employees not having a legal duty of confidentiality (e.g. a licensed counselor, doctor, or nurse) are "Responsible Employees". A Responsible Employee is a University employee who has the duty to report incidents of sexual misconduct. A Responsible Employee who witnesses or has knowledge of sexual misconduct against a student must immediately contact the Title IX Coordinator for advice and assistance and to ensure the University responds appropriately. A failure by a Responsible Employee to report a violation of this policy perpetrated against a student may warrant disciplinary action.

Bystander Policy

The University encourages all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention where it is safe to do so, creating a distraction, calling law enforcement, or seeking assistance from a person in authority.

4. Role of the Title IX Coordinator

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education's implementing regulations at 34 C.F.R. Part 106, the University's Title IX Coordinator has primary responsibility for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in all the operations of this University, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX.

Sexual Misconduct against students, including sexual harassment, sexual assault, rape, and sexual exploitation, can be a form of sex discrimination under Title IX. The Title IX coordinator oversees the University's response to

reports and complaints that involve possible sex discrimination affecting students to monitor outcomes, identify and address any patterns, and assess effects on the campus climate, so the University can address issues that affect the wider school community.

A student or employee should contact the Title IX Coordinator in order to:

- seek information or training about victim's rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including sexual misconduct,
- file a complaint or make a report of sex discrimination, including sexual misconduct,
- notify the University of an incident or policy or procedure that may raise potential Title IX concerns,
- get information about available resources (including confidential resources) and support services relating to sex discrimination, including sexual misconduct, and
- ask questions about the University's policies and procedures related to sex discrimination, including Sexual Misconduct.

Functions and Responsibilities of the Title IX Coordinator

The Title IX Coordinator's functions and responsibilities include the following:

(1) Training for Students, Faculty, and Staff

The Title IX Coordinator provides or facilitates ongoing training, consultation, and technical assistance on Title IX for all students, faculty and staff, including:

- regular training for faculty and staff outlining their rights and obligations under Title IX, including the appropriate response to reports of sexual misconduct, the obligation to report sexual misconduct to appropriate University officials, and the extent to which counselors and advocates may keep a report confidential, and
- regular training for students outlining their rights under Title IX; with regard to sexual misconduct, this training will include what constitutes sexual misconduct and when it creates a hostile environment, the definition of consent, reporting options (including reports to Responsible Employees, campus and local law enforcement, and confidential reporting to counselors or advocates), the procedures used to process complaints, applicable disciplinary code provisions relating to sexual misconduct and the consequences of violating those provisions, the role of alcohol and drugs in sexual misconduct, the effects of trauma, strategies and skills for bystander intervention, the offices or individuals with whom students can speak confidentially, the offices or individuals who can provide support services, the employees who must report incidents to the Title IX coordinator, and Title IX's protections against retaliation.

(2) Investigations

The University is responsible for conducting adequate, reliable, and impartial investigations of reports and complaints of Sexual Misconduct. The Title IX Coordinator oversees many aspects of this response, including:

- determining whether the report or complaint alleges conduct that may, upon investigation, constitute prohibited sexual misconduct,
- reviewing the intake information to assess whether there is sufficient information upon which an investigation may proceed,

- appointing an investigative team upon such determination,
- making certain that individual reports and complaints are handled properly and in a prompt and timely manner,
- informing all parties regarding the disciplinary process,
- confirming that all parties have been notified of disciplinary decisions and of the right to, and procedures for, appeal, if applicable,
- maintaining information and documentation related to the investigation in a secure manner, and
- monitoring compliance with timeframes specified in the discipline procedures.

Use of Drugs and Alcohol

Any student who files a complaint, or who acts as a third-party witness in an investigation under this policy, will not be subject to disciplinary action for using and/or consuming alcohol or drugs at or near the time of the alleged incident, provided that any such alcohol or drug use did not, and do not, place the health or safety of any other person at risk.

The Title IX Coordinator evaluates requests for confidentiality, as outlined below, by those who report or complain about sexual misconduct in the context of the University's responsibility to provide a safe and non-discriminatory environment for all students.

5. Reporting Sexual Assault or Other Violations of the Sexual Misconduct Policy

Timing of Complaints

If the respondent is a current THSU student, there is no time limit for filing a complaint to initiate these procedures. However, students are strongly encouraged to report sexual misconduct in a timely manner to maximize the University's ability to gather evidence, and conduct a thorough, impartial, and reliable investigation.

After Graduation Complaints of Pre-Graduation Incident

THSU can hear complaints against students who have graduated if the alleged incident took place before the accused student graduated and the complainant files a written complaint within the twelve months of the accused's date of graduation. If found to be responsible for a violation of sexual misconduct policy, the former student charged could face revocation of his/her diploma.

Contact Information for Reporting:

All reports of sexual misconduct under this policy can be made to the Title IX Coordinator, or Responsible Employee.

Antonio Holloway- Title IX Coordinator (Austin)
512-444-8082
faid@thsu.edu

Kai-Chang Chan- Title IX Coordinator (San Antonio)
210-509-8080
kchan@thsu.edu

Reporting to the Police

Students are also encouraged to report sexual assault and relationship violence not only to the Title IX Coordinator, but also to law enforcement authorities. However, students have a right to choose not to file a

report with law enforcement. The decision to file a criminal complaint is a deeply personal choice. Students often make this decision based on the circumstances surrounding the incident and the circumstances in their life at the time of the incident. Some students discover that participating in a proceeding to hold the accused accountable helps them to regain some measure of control lost by virtue of the assault, and to protect themselves and others from future harm. The Austin Police Department contact information is:

Austin Police Department

911

<http://www.austintexas.gov/department/police>

- 911 provides emergency response and takes reports of sexual assaults
- Offers Victim Services counselors at 512- 974-5037

San Antonio Police Department

911

<https://www.sanantonio.gov/sapd>

- 911 provides emergency response and takes reports of sexual assaults
- Offers Victim Services counselors at 210-207-7413

Austin Community Resources

SafePlace

512- 267-SAFE

<http://www.safeplace.org/>

- Operates a twenty-four-hour hotline
- Helps individuals who have experienced a sexual assault navigate the forensic medical exam
- Offers individual and group therapy for individuals who have experienced sexual assault and/or domestic violence
- Provides domestic violence shelter services

St. David's Hospital Emergency Room

512- 544-4240

<http://www.stdavids.com/locations-facilities/st-davids-medical-center.aspx>

- Operates emergency room, located at 919 East 32nd Street, Austin, TX 78705

Dell Seton Medical Center at The University of Texas

512- 324-7000

<http://www.seton.net/locations/dell-seton/>

Individuals may also contact the following federal and state agencies:

U.S. Department of Education (Office of Civil Rights)

1999 Bryan Street, Suite 1620

Dallas, TX 75201-6810

Phone: 214-661-9600

Fax: 214-661-9587

OCR.dallas@ed.gov

U.S. Equal Employment Opportunity Commission

Legacy Oaks, Building A

Suite 200

San Antonio, TX 78229
Phone: 800-669-4000
Fax: 210-281-7690
www.eeoc.gov

Texas Workforce Commission

Civil Rights Division
101 E 15th Street
Room 144-T
Austin, TX 78778-0001
Phone: 512-463-2642
www.twc.state.tx.us

San Antonio Community Resources

San Antonio Rape Crisis Center

(210) 349-7273 (24 hour crisis hotline)
<http://rapecrisis.com/>

Family Violence Prevention Services, Inc.

(210) 733-8810 (24 hour hotline)
<http://www.fvps.org/>

The National Domestic Violence Hotline

1.800.799.7233
<http://www.thehotline.org/>
Rape, Abuse & Incest National Network (RAINN) 1.800.656.4673 <https://rainn.org>

6. Confidentiality

Cases involving alleged discrimination, harassment or violence based on sex demand special attention to issues of confidentiality. Dissemination of information relating to these cases is limited so as to ensure, as fully as possible, the privacy of the individuals involved. Additionally if the complainant wishes to remain anonymous, or not pursue a formal complaint, the complainant should be advised that the University's response may be limited.

Furthermore, because of the University's obligation to maintain a safe environment for all members of the University community, the University may have an obligation to pursue an investigation without the complainant's cooperation. In such cases, the University will take preventative measures to preserve confidentiality to the extent practicable and permissible by applicable law.

The University encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the University can respond appropriately.

- All employees are required to report all the details of an incident (including the identities of both the

victim and alleged perpetrator) to the Title IX coordinator. A report to these employees (called “Responsible Employees”) constitutes a report to the University—and generally obligates the University to thoroughly review and, if deemed necessary, appropriately investigate the incident and take appropriate steps to address the situation.

Exceptions to Confidentiality:

While THSU will try to maintain a victim’s confidentiality, the University may have mandatory reporting or other obligations under state law, if:

- The perpetrator’s behavior poses a serious threat of harm to self or others, or receipt of a court order or a subpoena under certain circumstances can trigger a duty to timely disclose confidential information, irrespective of the categories above;
- The University determines that the alleged perpetrator(s) poses a serious and immediate threat to the University community.

A. Reporting to “Responsible Employees.”

A “Responsible Employee” is a University employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty.

When a victim tells a Responsible Employee about an incident of sexual violence, the victim has the right to expect the University to take immediate and appropriate steps to review thoroughly and appropriately investigate what happened and to resolve the matter promptly and equitably.

A Responsible Employee must report to the Title IX coordinator all relevant details about the alleged sexual violence shared by the victim and that the University will need to determine what happened – including the names of the victim and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University’s response to the report. A Responsible Employee should not share information with law enforcement without the victim’s consent or unless the victim has also reported the incident to law enforcement.

All University employees are deemed to be Responsible Employees. This includes, but is not limited to: University administrators, Campus Safety Officers, Faculty, and other Staff.

To the extent possible and practicable, a Responsible Employee should try to ensure that the victim understands the employee’s reporting obligations before a victim reveals any information to a responsible employee, – and, if the victim wants to maintain confidentiality, direct the victim to confidential resources.

If the victim wants to tell the Responsible Employee what happened but also maintain confidentiality, the employee should tell the victim that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will also inform the Coordinator of the victim’s request for confidentiality.

Responsible Employees will not pressure a victim to request confidentiality, but will honor and support the victim’s wishes, including for the University to fully investigate an incident. By the same token, Responsible Employees will not pressure a victim to make a full report if the victim is not ready to do so.

Requesting Confidentiality: How the University Will Weigh Request and Respond

If a victim discloses an incident to a Responsible Employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the University must weigh that request against the University's obligation to provide a safe, non-discriminatory environment for all students, including the victim.

If the University honors the request for confidentiality, a victim must understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator(s) may be limited.

There are times when the University may not be able to honor a victim's request in order to provide a safe, non-discriminatory environment for all members of the university community.

The University has designated the Title IX Coordinator to evaluate requests for confidentiality once a Responsible Employee is on notice of alleged sexual misconduct. The Title IX Coordinator may consult other appropriate University stakeholders in his or her assessment of such a request and consideration of the factors identified below.

When weighing a victim's request for confidentiality or that no investigation or discipline be pursued, the University will consider a range of factors, including the following:

- The increased risk that the alleged perpetrator will commit additional acts of sexual or other violence, such as:
- whether there have been other sexual violence complaints about the same alleged perpetrator;
- whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence;
- whether the alleged perpetrator threatened further sexual violence or other violence against the victim or others;
- whether the sexual violence was committed by multiple perpetrators;
- whether the sexual violence was perpetrated with a weapon;
- whether the victim is a minor;
- whether the University possesses other means to obtain relevant evidence of the sexual violence (e.g., security cameras or personnel, physical evidence);
- whether the victim's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

The presence of one or more of these factors could lead the University to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the University will likely respect the victim's request for confidentiality.

If the University determines that it cannot maintain a victim's confidentiality, the University will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the University's response.

The University will remain ever mindful of the victim's well-being, and will take ongoing steps to protect the victim from retaliation or harm and work with the victim to create a safety plan. Retaliation against the victim, whether by students or University employees, will not be tolerated. The University will also:

- assist the victim in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);
- provide other security and support, which in some circumstances could include issuing a no-contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and
- inform the victim of the right to report a crime to campus or local law enforcement – and provide the victim with assistance if the victim wishes to do so.

The University may not require a victim to participate in any investigation or disciplinary proceeding.

If the University determines that it can respect a victim's request for confidentiality, the University will also take immediate action as necessary to protect and assist the victim.

7. The University's Response Procedure

Upon the University receiving notice of an incident of Sexual Misconduct, the University will provide the complainant with additional resources and a written notification outlining a number of choices including but not limited to:

- speaking with a counselor
- seeking medical assistance
- reporting the incident to local police
- filing formal conduct charges
- requesting reasonable accommodations

Timeframe for Response Process

Unless otherwise stated, all timeframes under this policy are listed in calendar days, not business days.

The University will conduct a timely review of all complaints of sexual misconduct. Absent extenuating circumstances, review and resolution is expected to take place within sixty (60) calendar days from receipt of the complaint, or a maximum of ninety (90) calendar days in the event of a subsequent appeal.

An appeal of the results, whether by the complainant or the accused, must be submitted within five (5) business days of receipt of the written result. Absent extenuating circumstances, decisions on appeals are typically issued within thirty (30) days of the date of the original decision.

Extensions

All deadlines and time requirements in the Code may be extended for good cause as determined by the Title IX officer or his or her designee. Both the respondent and the complainant will be notified in writing of the delay, the reason for delay, and provided the date of the new deadline or event. Extensions requested by one party will not be longer than 5 business/school days.

Extenuating Circumstances

Notwithstanding the above, Extenuating Circumstances may require that this timeline be extended. For example, a complainant who seeks confidentiality and chooses not to name an accused at the time of intake may cause an investigation to be paused. If that complainant later identifies an accused, the Response Process

may be re-initiated, and the time from the receipt of the initial incident report to sanctions, if imposed, may extend beyond sixty (60) days.

Intake

Upon receiving a complaint, the University will conduct an Intake. At the Intake stage, the University will take steps to make a safety plan, prevent or address any retaliatory conduct, address any immediate physical or emotional safety concerns for anyone involved, offer support to the complainant with any law enforcement reporting decision, address any threat to the safety of the University community, and enter any non-identifying information into the University's crime log.

Prior to initiating its investigation, the University will inform the complainant of their intention to investigate, and request his or her consent to do so. The University will assess any requests for confidentiality or requests not to investigate further at that time, consistent with the Confidentiality policy outlined above. If the University cannot honor such a request, the complainant will be informed at that time.

Informal Resolution Options

The University may present an opportunity for informal remedies or resolution at any time during the response process. A complainant will never be expected to work out a resolution directly with the accused. Likewise, in incidents of sexual assault or sexual violence, mediation is never an option. Informal resolutions are voluntary.

Interim Measures

If necessary, the University will take immediate steps to protect complainants pending the final outcome of an investigation with interim measures. If it is determined by a staff member that contact between specific persons may pose a threat to the safety or emotional well-being of an individual, a No-Contact order can be issued by the University. Other interim measures available to the University include but are not limited to: temporary administrative suspension, restrictions on participation in a team or organization, or student accommodations as described below.

Student Accommodations

A student who has been a victim of sexual misconduct may request an academic accommodation or change in residence after a report of sexual misconduct. Any individual who makes a request will receive an appropriate and reasonable accommodation. Possible requests include the ability to change academic schedules or work schedules, withdraw from or retake a class without penalty, access academic support such as tutoring services, and change residence hall assignments. Pursuant to Title IX, in most cases of sexual violence or sex discrimination, the University will endeavor, to the extent practicable, to change the schedule or accommodations of the accused student prior to changing the schedule or accommodations of the complainant.

After any necessary Interim Measures or Accommodations have been made, the scope of any further investigation or disciplinary action will depend upon factors including but not limited to: whether the complainant wishes to pursue a complaint to the University Conduct Board and whether the University has an obligation to pursue a University Conduct Board hearing regardless of the wishes of the complainant to preserve the safety of the University community.

Investigation and University Conduct Board Discipline Process

After the Intake, the Title IX Coordinator will determine if the allegations contained in the complaint would, if proven, constitute a violation of this Policy. If a determination is made that the allegations would constitute a

violation, an Investigation will be initiated by the Title IX coordinator or his or her deputy or designee.

If the Title IX coordinator determines that the allegations, if true, would not constitute a violation of the Policy, the complainant will be provided with other support options as appropriate, but the Title IX coordinator will not pursue any further investigation or discipline under this Policy at that time.

If, however, the complainant presents new evidence, reveals new information, or presents a violation of another THSU Policy, this decision can be reevaluated by the Title IX Coordinator.

Investigation Process

If the Title IX Coordinator determines that an investigation is appropriate under the standard described above, the Title IX Coordinator will conduct a prompt, fair, and impartial investigation that involves interviewing parties and witnesses as appropriate, and reviewing evidence including available police reports. All investigations will be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking, and how to conduct a hearing process that protects the safety of victims and promotes accountability. Any member of the university community who knowingly makes a false statement to the investigator during the course of the investigation may be subject to disciplinary action.

The Investigator will complete an investigation report within a reasonable time period after initiating the investigation. The Title IX Coordinator will then, based upon the findings in that report, determine whether the conduct in question should be referred to the University Conduct Board for a hearing. If so, written charges will be prepared by the Title IX Coordinator or his or her designee, provided to the complaining party and the accused simultaneously by email, and filed with the University Conduct Board. An investigative report completed as part of this process is a fact-finding report that will not include a recommendation of sanctions to the University Conduct Board, which will determine what sanctions, if any, are to be imposed. The report shall be mandatory evidence for the University Conduct Board hearing, and will be presented to the Board by the Title IX Coordinator or the Investigator.

If the Title IX Coordinator determines that the information presented does not merit a referral for a University Conduct Board hearing, he or she will inform both the complainant and the accused simultaneously by email to their THSU email accounts of the decision. That email will include Notice that the investigation may be re-opened at the discretion of the Title IX Coordinator if new evidence is presented, new information comes to light, or a violation of another THSU Policy or another section of this Policy are discovered.

University Conduct Board Hearing for Students

If the matter is referred to the University Conduct Board, or if a complainant files independent charges with the Student Conduct Board, a hearing will be conducted consistent with the process outlined in the Student Handbook and herein. All hearings conducted involving allegations of Sexual Misconduct will be conducted by officials with annual training related to domestic violence, sexual assault, and stalking, and on processes that protect the safety of victims and promote accountability.

Parties' Rights to Advisors

The accused and the complainant may be assisted during disciplinary hearings, any mediation, and related meetings, by an advisor of their choice, including an attorney. The respondent and complainant may propose witnesses and may produce other evidence for consideration by the University Conduct Board. The respondent and complainant are responsible for presenting evidence on their own behalf. Either party may request a brief recess to consult with their advisor which will be granted at the discretion of the hearing officer or his or her designee. Advisors may speak privately to their advisee, during the proceeding, but may not present evidence,

question witnesses, raise objections, or address the student conduct body.

Student Sanctions

The University considers Sexual Misconduct violations as extremely serious and subject to sanctions including expulsion, suspension, disciplinary probation, recommended counseling, and/or other educational sanctions.

Evidentiary Standard in Sexual Misconduct Complaints:

The burden of proof in all cases of Sexual Misconduct to be adjudicated by the conduct board is “the preponderance of the evidence” standard – whether it is “more likely than not” that the sex discrimination, dating violence, domestic violence, sexual assault, or stalking occurred. If the evidence presented meets this standard, then the respondent must be found responsible.

Evidence and Witnesses

Evidence to be presented by complainant(s) and respondent(s) during any hearing on the charges must be presented to members of the University Conduct Board presiding over the hearing at least 24 hours prior to the hearing, who will then share it with the opposing party in advance of the scheduled hearing. The Conduct Board members presiding at and/or hearing the case may exclude evidence that has not been shared or adjourn the hearing to afford all parties the opportunity to review evidence to be presented during the hearing.

If a party intends to present witnesses, a list of proposed witnesses and a written witness statement for each witness must be presented to the hearing officer at least 24 hours prior to the hearing. Written witness statements will be shared with the opposing party as documentary evidence. Witnesses are defined as someone who perceived the actual incident as it occurred. The Conduct Board will have discretion to call or choose not to call proposed witnesses during the hearing. The parties may not question witnesses directly during the hearing, but may submit questions to the Conduct Board, which the conduct board may, in their discretion, ask directly to the witness. Any attempt to coerce or intimidate a proposed witness by any person will constitute Retaliation under this policy subject to appropriate disciplinary action.

Members of the University Conduct Board presiding at and/or hearing the case will have broad discretion and make the final decision relating to the admissibility of all evidence and the presentation of witnesses. When the circumstances warrant, Conduct Board members may, in their sole discretion, consider evidence or admit witnesses submitted with less than 24-hours’ notice. Where required by applicable law, witness statements or evidence may be reasonably redacted to protect recognized privacy rights.

Documentation or Recording of Proceedings

The University will seek to maintain a record of all hearings, including findings of fact. The record of the University Conduct Board Hearing will generally be made by audio recording, though alternative methods of recording or documentation may be employed at the University Conduct Board’s discretion or as needed.

Notice to Parties

Both the complainant and the accused will be informed, simultaneously, by email to their THSU email accounts, of (1) the outcome of any disciplinary proceeding involving and allegation of sexual misconduct, (2) the University’s appeal process and the rights of both the complainant and the accused to appeal the results (3) any change to the results that occurs prior to the results becoming final, and (4) when such results become final.

Rights of Appeal

Both parties shall have the opportunity to appeal a decision by the University Conduct Board using the procedure described in the Student Handbook. Appeals must be submitted within five (5) business days of the decision.

Additional Reporting Resources

A student or applicant who believes that he or she has been discriminated against can file a Charge of Discrimination at their regional U.S. Department of Education Office for Civil Rights.

The Texas Regional Office of the U.S. Department of Education can be contacted at:

U.S. Department of Education, 1999 Bryan Street, Suite 1620, Dallas, TX 75201-6810
Telephone: (214) 661-9600 Fax: (214) 661-9587 Email: OCR.Boston@ed.gov

Retaliation

Retaliation against any individual who files a complaint or participates in a harassment inquiry is prohibited. Anyone who reports an actual or suspected incident of harassment, discrimination or violence based on sex, or who participates in an investigation, will not be subjected to retaliation. If a Complainant or witness believes s/he has been subjected to retaliation s/he should contact the Title IX Coordinator. Anyone found to be in violation of this retaliation provision will be subject to disciplinary action.

SEXUAL MISCONDUCT REPORT FORM

COMPLAINANT'S INFORMATION (if different from reporter):	
Complainant's Name:	Complainant's Affiliation to THSU (student, faculty, staff, unaffiliated):
Complainant's Contact Information (if available):	
<u>Telephone:</u>	<u>Email:</u>
OFFENDER(S) INFORMATION:	
Offender's Name (if known):	Offender's Affiliation to THSU (student, faculty, staff, unaffiliated):
INCIDENT INFORMATION:	
Date and Time of Incident:	Location of Incident:
Brief Description of Incident (nature of misconduct, context or circumstances, such as spring break trip, on campus event, off campus party, etc.):	
REPORTER'S INFORMATION (required):	
Reporter's Name:	Date of Report:
Reporter's Affiliation to THSU (student, faculty, staff, unaffiliated):	Reporter's Contact Information: <u>Telephone:</u> <u>Email:</u>

What should I do with the completed report form?

Deliver the completed form to the appropriate Title IX Coordinator

Antonio Holloway- Title IX Coordinator (Austin)
Antonio)
Texas Health and Science University
4005 Manchaca Rd.

Kai-Chang Chan- Title IX Coordinator (San
Texas Health and Science University
9240 Guilbeau Rd, Suite 102

Austin, TX 78704
512-444-8082
faid@thsu.edu

San Antonio, TX 78250
210-509-8080