SEXUAL MISCONDUCT POLICY

Section 1
General Policy Statement

1. The University of Texas Health Science Center (UT Health San Antonio) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act). Sexual misconduct, as defined in Part 3, Definitions and Examples, will not be tolerated and will be subject to disciplinary action.

2. UT Health San Antonio will promptly discipline any individuals or organizations within its control who violate this Policy. The University encourages you to promptly report violations of this Policy to the Title IX Coordinator or Deputy Coordinators (collectively “Title IX Office”) or a Responsible Employee, as identified in Section 3.2 below.

3. Free Speech. This Policy encourages and respects the right of free speech guaranteed by the First Amendment of the Constitution and the principles of academic freedom. Constitutionally protected expression cannot be considered harassment under this policy. Each faculty member is entitled to full freedom in the classroom in discussing the subject which they teach. The right to free speech and principles of academic freedom are not absolute, however. The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University’s commitment to academic freedom, integrity, honesty, dignity, respect and honorable conduct (see generally Regents Rule 10901, Statement of U.T. System Values and Expectations). In these instances, constitutional rights will continue to be protected, but the University will also exercise its right to speak and engage in educational dialogue with those engaged in these types of behaviors. Further, some offensive conduct, even though it contains elements of speech, may rise to the level of the type of conduct that creates a sexually hostile environment and, thus, violates this policy.
Section 2
Applicability

This Policy applies to all UT Health San Antonio administrators, faculty, staff, students, trainees, and third parties within UT Health San Antonio control, including visitors and applicants for admission or employment. It applies to conduct regardless of where it occurs, including off UT Health San Antonio property, if it potentially affects the complainant’s education or employment with UT Health San Antonio or potentially affects the University community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

Section 3
Filing a Complaint and Reporting Violations

1. All Members of the UT Health San Antonio Community, Third Party and Anonymous Complaints are strongly encouraged to immediately report any incidents of sexual misconduct and other inappropriate sexual conduct to the Title IX Director or Deputy Directors.

   a. Anonymity. You may file an anonymous complaint by telephone, in writing or electronically [https://students.uthscsa.edu/titleix/] with the Title IX Office. Your decision to remain anonymous, however, may greatly limit the University’s ability to stop the alleged conduct, collect evidence, or take action against parties accused of violating the Policy.

   b. Confidentiality. Most University employees are required to report and respond to complaints of sexual misconduct and may be unable to honor a request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5 below.

   c. Timeliness of Complaint. You should report sexual misconduct as soon as you become aware of such conduct.
2. Responsible Employees. You may also report incidents to Responsible Employees, as defined below.\(^i\)

3. Reporting to Law Enforcement. Complaints of sexual misconduct may also be made to The University of Texas System Police, UT Health San Antonio (University Police) at 210-567-2800 (non-emergency) or 210-567-8911 (emergency) or 911 (emergency) or to other local law enforcement authorities.\(^ii\) The Title IX Deputy Directors can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the University Police Department.

If a complaint of sexual misconduct is reported to the University Police, the Department shall advise the complainant of his or her right to file a complaint under this Policy. To the extent allowed by law and University policy, the University Police shall also notify the Title IX Director of the complaint, and provide the Title IX Director or the individual investigating the complaint access to any related University law enforcement records, so long as doing so does not compromise any criminal investigation.

4. Reporting to Outside Entities. An individual wishing to make a complaint may also contact the following external agencies to complain of sex discrimination or sexual misconduct including sexual violence:

   For students:

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

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\(^i\) For example, students may make a complaint to their Student Affairs Dean, , a faculty member or university police. Each of these individuals is considered a Responsible Employee and accordingly each is obligated to report the complaint to the Title IX Director or other appropriate designee.

\(^ii\) Because of the multiple site locations where UT Health San Antonio programs are conducted, reporting to law enforcement may include the San Antonio Police Department; Bexar County Sheriff’s Department; Shavano Park Police Department (210-492-9248); Boerne Police Department (830-249-8645); Laredo Police Department (956-523-7414); and Webb County Sheriff’s Department.
5. **Confidential Support and Resources.** Students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider at the Student Health and Wellness Center, the clergyperson of their choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Office. Employees may also seek assistance from the Employee Health and Wellness Center, Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Office. A listing of different UT Health San Antonio and community resources that provide such services can be found through the Student Counseling Center, the Student Health Center, University Police, and the Office of Human Resources. The weblinks are:

[http://students.uthscsa.edu/counseling/](http://students.uthscsa.edu/counseling/);
6. **Immmunity.** In an effort to encourage reporting of sexual misconduct, UT Health San Antonio will grant immunity from student disciplinary action to a person who voluntarily initiates a report of sexual misconduct or assists a complainant, if that person acts in good faith in reporting a complaint or participating in an investigation. This immunity does not extend to the person’s own violations of this Policy.

7. UT Health San Antonio has a Title IX Director and Two Deputy Title IX Coordinators. They may be reached at:

   Title IX Director (Office of Academic Faculty and Student Affairs): 210-567-2982

   Deputy Title IX Coordinator (Office of Academic Faculty and Student Affairs): 210-450-8470

   Deputy Title IX Coordinator (Office of Human Resources): 210-567-2600
In the course of the investigation, UT Health San Antonio may share information only as necessary with people who need to know to fulfill the purposes of this Policy and applicable law, which may include but is not limited to investigators, witnesses, and the respondent. UT Health San Antonio will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation. UT Health San Antonio will comply with the Family Educational Rights and Privacy Act (FERPA), with Texas Education Code Sec. 51.971 and other confidentiality laws as they apply to Title IX investigations. To the extent possible, UT Health San Antonio will also protect the privacy of all parties to a report of sexual misconduct.

Section 5
Resources and Assistance

1. **Immediate Assistance.** A listing of different UT Health San Antonio and community resources can be found through the Student Counseling Center, the Student Health Center, University Police, and the Office of Human Resources. The weblinks are:

   http://students.uthscsa.edu/counseling/;

   http://utpolice.uthscsa.edu/divisions/crimeprev/resources.asp;

   http://shc.uthscsa.edu/

   http://ehwc.uthscsa.edu/

   https://uthealthsa.sharepoint.com/HR/Pages/UTEAP.aspx

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

For more information about the SAFE, see http://rapecrisis.com/, https://www.texasattorneygeneral.gov/files/cvs/sexual_assault_examination.pdf or https://www.texasattorneygeneral.gov/cvs/sexual-assault-prevention-and-crisis-services. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

b. Police Assistance. UT Health San Antonio encourages individuals who have experienced or witnessed sexual misconduct to make a report to the police. The police may, in turn, share your report with the Title IX Office.

It is important to note that a police department’s geographic jurisdiction depends on where the sexual misconduct occurred. If the incident occurred on the UT Health San Antonio campus, a report may be filed with the University Police by calling 210-567-2800 or in person at 7703 Floyd Curl Dr., San Antonio, TX, even if time has passed since the assault occurred.

The University Police can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean that the case will automatically go to criminal trial or to a UT Health San Antonio disciplinary hearing. If the University Police are called, a uniformed officer will be sent to the scene to take a detailed statement. A ride to the hospital may be provided by a police department counselor. A report may be filed with the University Police even if the assailant was not a UT Health San Antonio student or employee. If the incident occurred off the UT Health San Antonio campus in San Antonio, a report may be filed with the appropriate local law enforcement agency, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.
c. Counseling and Other Services. A person who has experienced sexual misconduct is strongly encouraged to seek counseling or medical and psychological care even if he or she does not plan to request a SAFE or report the assault to the police. He or she may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

Medical care can be provided at Student Health Center (for students only), at the Employee Health and Wellness Center (for employees), at a local emergency room, or by a private physician. Psychological support can be provided by the Student Counseling Center (students), Employee Health and Wellness Center or Employee Assistance Program (employees), a referral through the Employee Assistance Program, or a care provider of the individual’s choosing.

Students desiring counseling should contact:

Student Counseling Center
http://students.uthscsa.edu/counseling/
210-567-2648

Faculty and staff should contact:

Employee Health and Wellness Center
http://ehwc.uthscsa.edu/
Phone: 210-567-2788

Employee Assistance Program
https://uthealthsa.sharepoint.com/HR/Pages/UTEAP.aspx
x(713) 500-3327 or toll-free at (800) 346-3549

2. Interim Measures.

The University will offer reasonably available individualized services to the parties involved in an alleged incident of sexual
misconduct, prior to an investigation or while an investigation is pending.

Interim measures may include but are not limited to reassignment, suspension, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus or other similar accommodations tailored to the individualized needs of the parties.

Section 6
The Investigation Process – What You Need to Know.

1. Key Officials in an Investigation
   a. Title IX Director. The Title IX Director is the senior UT Health San Antonio administrator who oversees UT Health San Antonio’s compliance with Title IX. The Title IX Director is responsible for overseeing the administrative response to reports of sexual misconduct and is available to discuss options, provide support, explain UT Health San Antonio policies and procedures, and provide education on relevant issues. The Title IX Director may designate one or more Deputy Title IX Coordinators.

      Any member of the UT Health San Antonio community may contact the Title IX Director with questions.

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

2. Notification of UT Health San Antonio Offices Offering Assistance. After receiving a complaint, the Title IX Director or Deputy Coordinator will inform the parties of available resources and assistance.
3. **Informal Resolution of Certain Sexual Harassment Complaints.**

Both parties may voluntarily agree to use this option instead of or before filing a formal complaint, but are not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that he or she has been subjected to sexual misconduct may immediately file a formal complaint as described in Section 3 of this Policy. Anyone interested in the informal resolution process, should contact the Title IX Director. Before beginning the informal resolution process, the Title IX Director must provide both parties full disclosure of the allegations and their options for formal resolution. At any time during the informal resolution process, the complainant may elect to discontinue the informal resolution process and file a formal complaint.

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

b. **Timeframe.** Informal resolutions of a complaint will be concluded as soon as possible.

c. **Documentation.** The University will document and record informal resolutions. The Title IX Director will retain the documentation.

4. **Formal Complaint and Investigation.**

**Formal Complaint.** To begin the investigation process, the complainant should submit a signed, written statement setting out
the details of the conduct that is the subject of the complaint, including the following:

- complainant’s name, signature and contact information;
- name of the person directly responsible for the alleged violation;
- detailed description of the conduct or event that is the basis of the alleged violation;
- date(s) and location(s) of the alleged occurrence(s);
- names of any witnesses to the alleged occurrence(s); the resolution sought; and
- any documents or information that is relevant to the complaint.

UT Health San Antonio may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and ask the complainant to verify that statement. The UT Health San Antonio office receiving the complaint should refer the complaint to the Title IX Director.

Investigation.

a) After an investigator is assigned, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.

b) The parties may present any information and evidence that may be relevant to the complaint, including the names of any witnesses who may provide relevant information.

c) The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
d) The investigation of a complaint will be concluded as soon as possible after receipt of the complaint. The parties should be provided updates on the progress of the investigation.

e) After the investigation is complete, a written report will be issued to the Title IX Director and the appropriate administrator. The report shall include factual findings and a preliminary conclusion regarding each allegation of whether a policy violation occurred (based on a “preponderance of the evidence” standard).

f) After the written report is completed, both parties will be allowed to inspect the report or, at the Institution’s discretion, be provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. Each party will have 7 business days to submit written comments regarding the investigation to the Title IX Director.

g) Within 7 business days after the deadline for receipt of comments from the parties, the Title IX Director or his or her designee will:

- request further investigation into the complaint;
- dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
- find that the Policy was violated.

h) If it is determined that the Policy was violated, the matter will be referred for disciplinary action.

i) The parties shall be informed concurrently in writing of the decision in accordance with Section 6.5.f of this Policy.

j) If disciplinary action or sanction(s) is warranted, it will be imposed in accordance with the applicable policies and procedures.

5. **Standard of Proof**

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Footnote:

*iii* Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.
All investigations under this Policy will use the preponderance of the evidence standard, as defined in Definitions and Examples, to determine violations of this Policy.

6. Timelines

Best efforts will be made to complete the complaint process in a timely manner by balancing principles of thoroughness and fundamental fairness with promptness.

At the request of law enforcement, UT Health San Antonio may defer its fact-gathering until after the initial stages of a criminal investigation. UT Health San Antonio will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, the University will move forward.

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


- UT Health San Antonio will strive to ensure that the steps it takes to provide due process to the respondent will not restrict or delay the protections provided by Title IX to the complainant.

- The Family Educational Rights and Privacy Act (FERPA) does not override federally protected due process rights of a respondent.

8. Remedies

In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, UT Health San Antonio will take appropriate action(s), including but not limited to those below to resolve complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects:
a. Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;

b. Ensuring the parties do not share classes, working environments or extracurricular activities;

c. Providing comprehensive, services to the parties including medical, counseling and academic support services, such as tutoring;

d. Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;

e. Determining whether sexual misconduct adversely affected the complainant’s Institution standing;

f. Designating an individual specifically trained in providing trauma-informed comprehensive services;

g. Conducting a UTHealth San Antonio climate check to assess the effectiveness of sexual misconduct prevention measures;

h. Providing targeted training for a group of students including bystander intervention and sexual misconduct prevention programs;

i. Issuing policy statements regarding the University’s intolerance of sexual misconduct.

9. Sanctions and Discipline

Disciplinary action will be handled under that appropriate disciplinary policy depending on the status of the respondent.

Section 7
Provisions Applicable to the Investigation

1. Assistance. During the investigation process, a complainant or respondent may be assisted by an advisor, who may be an attorney; however, the advisor may not actively participate in a meeting or interview.
2. **Time Limitations.** Time limitations in these procedures may be modified by the Title IX Director or appropriate administrator on a written showing of good cause by the complainant, respondent, or UT Health San Antonio.

3. **Concurrent Criminal or Civil Proceedings.** UT Health San Antonio will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. UT Health San Antonio has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Sec. 6.7).

4. **Documentation.** UT Health San Antonio shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and UT Health San Antonio policy.

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### Section 8 Dissemination of Policy and Educational Programs

1. This Policy will be made available to all UT Health San Antonio administrators, faculty, staff, and students online at [http://students.uthscsa.edu/titleix/](http://students.uthscsa.edu/titleix/) and in UT Health San Antonio publications. Periodic notices will be sent to UT Health San Antonio administrators, faculty, staff and students about UT Health San Antonio’s Sexual Harassment/Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about UT Health San Antonio disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.

2. **Ongoing Sexual Misconduct Training.** UT Health San Antonio’s commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained UT Health San Antonio personnel. UT Health San Antonio will periodically educate and train employees and supervisors regarding the Policy and conduct that could constitute a violation of the Policy. Preventive education and training programs will be provided to UT Health San Antonio administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention.
3. **Training of Coordinators, Investigators, Hearing and Appellate Authorities.** All Title IX Directors, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals shall receive training annually about offenses, investigatory procedures, due process, and UT Health San Antonio policies related to sexual misconduct.

4. **Annual Reporting and Notice.** The University’s Title IX General Policy Statement will be made available to all students, faculty, and employees online, in required publications and in specified departments.

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**Section 9 Additional Conduct Violations**

1. **Retaliation.** Any person who knowingly and intentionally retaliates in any way against an individual who has brought a complaint under this Policy, participated in an investigation or disciplinary process of such a complaint, or opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from UT Health San Antonio. If any participant in an investigation believes they have been subject to retaliation, they should immediately report the alleged retaliatory conduct to the Title IX Office.

2. **False Complaints.** Any person who knowingly and intentionally files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from UT Health San Antonio. A finding of non-responsibility does not indicate a report was false.

3. **Interference with an Investigation.** Any person who knowingly and intentionally interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from UT Health San Antonio. Interference with an ongoing investigation may include, but is not limited to:

   a. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;

   b. Removing, destroying, or altering documentation relevant to the investigation; or
c. Providing false or misleading information to the investigator, or encouraging others to do so.

4. No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint. The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including:

a. any evaluation or disciplinary action relating to a complainant who is not performing up to acceptable standards or who has violated UT Health San Antonio rules or policies;

b. any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or

c. any job-related functions of a UT Health San Antonio employee. Nothing in this section shall limit UT Health San Antonio’s ability to take interim action.

Section 10
Documentation

UT Health San Antonio shall confidentially maintain information related to complaints under this Policy, as required by law.

Definitions and Examples

COMPLAINANT: – The student, employee or third party who presents as the victim of any prohibited conduct under this Policy, regardless of whether that person makes the report or seeks action under this Policy.

COERCION: – The use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion can include a wide range of behaviors, including psychological or emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail that causes the person to engage in unwelcome sexual activity. A person’s conduct or words are sufficient to constitute coercion if they eliminate a reasonable person’s freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include but are not limited to threatening to “out” someone based on sexual
orientation, gender identity, or gender expression; threatening to harm oneself if the other party does not engage in the sexual activity; and threatening to expose someone’s prior sexual activity to another person.

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

Consent is not effective if it results from:

- the use of physical force,
- a threat of physical force,
- intimidation,
- coercion,
- incapacitation or
- any other factor that would eliminate an individual’s ability to exercise his or her own free will to choose whether or not to have sexual activity.

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

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.\(^iv\)

\(^iv\) Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has
**DATEING VIOLENCE**: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

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

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

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

**DOMESTIC (FAMILY) VIOLENCE**: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim that: (a) was not consensual and the actor knew the other person was unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person’s power to appraise or control the other person’s conduct by administering any substance without the other person’s knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

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\( ^v \) Dating Violence is defined by the Texas Family Code, Section 71.0021 as:

(a) an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim;

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, “dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(1) the length of the relationship;

(2) the nature of the relationship; and

(3) the frequency and type of interaction between the persons involved in the relationship.

(c) A casual acquaintance or ordinary fraternization in a business or social context does not constitute a “dating relationship” under Subsection (b).

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

\( ^v \) Family Violence is defined by the Texas Family Code Section 71.004 as:
partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the state of Texas.

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

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

To ultimately determine whether a hostile environment exists for an individual or individuals, UT Health San Antonio considers a variety of factors related to the severity, persistence, or pervasiveness of the sex-based harassment, including:

- the type, frequency, and duration of the conduct;
- the identity and relationships of the persons involved;

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

(2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or

(3) dating violence, as that term is defined by Section 71.0021.

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.
• the number of individuals involved;
• the location of the conduct and the context in which it occurred;
and
• the degree to which the conduct affected an individual’s education or employment.

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

First Amendment Considerations: this Policy does not impair the exercise of rights protected under the First Amendment.

UT Health San Antonio’s sexual misconduct policy prohibits only sex-based harassment that creates a hostile environment. In this and other ways, UT Health San Antonio applies and enforces this Policy in a manner that respects the First Amendment rights of students, faculty, and others.

**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 sexual 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 a sexual interaction.

The University offers the following guidance on consent and assessing incapacitation:
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 determination.
In evaluating consent in cases of alleged incapacitation, the University asks two questions:

- (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not,
- (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combative ness, incontinence 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. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent. 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. If there is any doubt as to the level or extent of one’s own or the other individual’s intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

**Being impaired by alcohol or other drugs is no defense to any violation of this Policy.**

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

**OTHER INAPPROPRIATE SEXUAL CONDUCT:** Includes unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature directed towards another individual that does not rise to the level of sexual harassment but is unprofessional, inappropriate for the workplace or classroom and is not protected speech. It also includes
consensual sexual conduct that is unprofessional and inappropriate for the workplace or classroom. Depending on the facts of a complaint, the conduct may not violate this Policy but may violate other university policies including by not limited to standards of conduct or professionalism policies.

PARTIES: The term "parties" refers to the "complainant" and the "respondent" in a Title IX complaint.

PREPONDERANCE OF THE EVIDENCE: The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

RESPONDENT: The student, employee, or third party who has been accused of violating this policy.

RESPONSIBLE EMPLOYEE: A UT Health San Antonio employee who has the duty to report incidents of sexual misconduct to the Title IX Director or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible employees include all administrators, faculty, supervisory staff, resident life directors and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.2. Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees.

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

SEXUAL ASSAULT: An offense that meets the definition of rape, fondling, incest, or statutory rape:

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vi Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:
   a) Causing the penetration of the anus or sexual organ of another person by any means, without that person’s consent; or
- **Rape:** the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

**SEXUAL EXPLOITATION:** Occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own benefit, or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner, and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

**SEXUAL HARASSMENT:** Unwelcome conduct of a sexual nature including but not limited to unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when:

b) Causing the penetration of the mouth of another person by the sexual organ of the actor, without that person’s consent; or

c) Causing the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.
a) submission to such conduct is made either explicitly or implicitly a term or condition of a person’s student status, employment, or participation in UT Health San Antonio activities;

b) or such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined by this policy.

Sexual harassment is a form of sex discrimination that includes:

- Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.

- Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
  
  - unwelcome intentional touching; or
  
  - deliberate physical interference with or restriction of movement.

- Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
  
  - explicit or implicit propositions to engage in sexual activity;
  
  - gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
  
  - gratuitous remarks about sexual activities or speculation about sexual experiences;
  
  - persistent, unwanted sexual or romantic attention;
  
  - subtle or overt pressure for sexual favors;
  
  - exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
deliberate, repeated humiliation or intimidation based upon sex.

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

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

**STALKING**: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For the purposes of this definition—

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through

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**Stalking** as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that: a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening: i. bodily injury or death for the other person; ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or iii. that an offense will be committed against the other person's property; b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and c) would cause a reasonable person to:

- i. feel bodily injury or death for himself or herself;
- ii. feel bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
- iii. feel that an offense will be committed against the person's property; or
- iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.
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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 victim.

- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Relevant Federal and State Statutes and Standards**


Clery Act, 20 U.S.C 1092(f) and its implementing regulations 34 C.F.R. Part 668

FERPA Regulations, 34 C.F.R. Part 99

**Other Relevant Policies, Procedures, and Forms**

Regents' Rules and Regulations, Rule 30105, Sexual Harassment, Sexual Misconduct, and Consensual Relationships

University of Texas System Administration Systemwide Policy (UTS 184), Consensual Relationships

Nondiscrimination Policy and Complaint Procedure HOP 4.2.1

Regents' Rules and Regulations, Rule 31008, Termination of a Faculty Member

Staff Discipline Policy HOP 4.9.3

Student Discipline Policy
Chapter 4  General Personnel Policies  Effective: November 2000
Section 4.2  Employee Relations  Revised: February 2019
Policy 4.2.2  Sexual Misconduct Policy  Responsibility: Vice President, Academic, Faculty and Student Affairs

System Administration Office Responsible for Policy
Office of General Counsel
ogc_intake@utsystem.edu

Dates Approved or Amended
System Policy: May 14, 2015; August 22, 2014; December 10, 2004
UT Health San Antonio Policy: August 2017; October 2015; June 2015; April 2013; November 2000

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