

**UT HEALTH SAN ANTONIO HANDBOOK OF OPERATING PROCEDURES**

Chapter 4	General Personnel Policies	Effective:	November 2000
Section 4.2	Employee Relations	Revised:	August 2017
<b>Policy 4.2.2</b>	<b>Title IX Sexual Harassment/Sexual Misconduct Policy</b>	Responsibility:	Vice President, Academic, Faculty and Student Affairs

## **TITLE IX SEXUAL HARASSMENT/SEXUAL MISCONDUCT POLICY**

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### **Section 1 General Policy Statement**

1. The Institution 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 is a form of sex discrimination and will not be tolerated. As stated in the definition, sexual misconduct includes sexual harassment, sexual violence, sexual assault, stalking, domestic violence and/or dating violence. Individuals who engage in sexual misconduct and other inappropriate sexual conduct will be subject to disciplinary action.
2. UT Health San Antonio will take prompt disciplinary action against any individuals or organizations within its control who violate this Policy. UT Health San Antonio encourages any student, faculty, staff or visitor to promptly report allegations and/or violations of this Policy to an individual identified below in Section 3.2.

### **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 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. It also applies regardless of the gender, gender identity or sexual orientation of the complainant or the respondent. In addition, it applies whether the complaint was made by or against a third party, and whether the complaint was made verbally or in writing.

### **Section 3 Filing a Complaint and Reporting Violations**

1. All Members of the UT Health San Antonio Community, Third Party and Anonymous Complaints. All administrators, faculty, staff, students, and third parties are strongly encouraged to

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immediately report any incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct to the Title IX Director or Deputy Directors.

- a. Anonymity. Individuals wishing to remain anonymous can file a complaint in any manner, including by telephone or written communication with the Title IX Director or a Deputy Director; however, electing to remain anonymous may greatly limit the Institutions ability to stop the harassment, collect evidence, or take effective action against individuals or organizations accused of violating the Policy.
  - b. Confidentiality. UT Health San Antonio has an obligation to maintain an environment free of sex discrimination, thus many UT Health San Antonio employees have mandatory reporting and response obligations and may not be able to honor a complainant’s request for confidentiality. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section 3.5.
  - c. Timeliness of Complaint. Complaints should be reported as soon as possible after the complainant becomes aware of the inappropriate conduct. Delays in reporting can greatly limit UT Health San Antonio’s ability to stop the harassment, collect evidence, and/or take effective action against individuals or organizations accused of violating the Policy.
2. Responsible Employees. Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees. A Responsible Employee is an Institution 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, and advisors, and graduate teaching assistants, except any employee with confidentiality obligations as defined in Section 3.5.<sup>i</sup>

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

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Responsible Employees can find contact information for the Title IX Director at the following website:

<http://uthscsa.edu/eo/harassment.asp>

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.<sup>ii</sup> 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.

If a complaint of sexual misconduct is reported to the University Police, it 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 U.S. Department of Education, Office for Civil Rights (OCR) to complain of sex discrimination or sexual misconduct including sexual violence:

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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<sup>ii</sup> 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; Harlingen Police Department (956-365-8900); Cameron County Sheriff's Department; Edinburg Police Department (956-316-7151); Hidalgo County Sheriff's Department; Laredo Police Department (956-523-7414); and Webb County Sheriff's Department.

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

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

5. Confidential Support and Resources. Physical and mental health care professionals and pastoral counselors (including those who act in that role under the supervision of these individuals), are generally prohibited by confidentiality laws from reporting any information about an incident to anyone, in any way that identifies the victim, without the victim's permission. Thus, students may discuss an incident with a counselor in the Student Counseling Center, a health care provider in Student Health Center, the clergyperson of the student's choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Director. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of the employee's choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Director. 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://utpolice.uthscsa.edu/divisions/crimeprev/resources.asp>;

<http://shc.uthscsa.edu/>

<http://uthscsa.edu/hr/inside/utadv.asp>

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

### **Section 4 Parties' Rights Regarding Confidentiality**

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

In the course of the investigation, 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, such as investigators, witnesses, and the respondent. UT Health San Antonio will take all reasonable steps to ensure there is no retaliation against a complainant. 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 Victim Resources**

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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/>

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<http://uthscsa.edu/hr/inside/utadv.asp>

- 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/> 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 sexual misconduct to make a report to the police. It is important to note that a police department's geographic jurisdiction depends on where the sexual misconduct occurred. If the incident occurred on the 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.

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

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

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Faculty and staff should contact:

Employee Assistance Program  
<http://uthscsa.edu/hr/inside/utadv.asp>  
(713) 500-3327 or toll-free at (800) 346-3549

### 2. Interim Measures and Ongoing Assistance.

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

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

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## **Section 6 Intake Procedures and Protocol**

### 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 leading the administrative investigation of 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 Directors.



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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 Directors shall supervise and advise the Title IX investigators when conducting investigations and update the Title IX Director as necessary.

2. Assessment of Complaint.

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

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

3. Notification of UT Health San Antonio Offices Offering Assistance. After receiving a complaint, the Title IX Director or Deputy Director shall provide the complainant with referrals to available resources and assistance.

4. Informal Resolution of Certain Sexual Harassment Complaints.

A complainant may use this option instead of or before filing a formal complaint, but is not required to do so. Also, this option is not permitted for sexual violence cases. Anyone who believes that he or she has been subject to sexual misconduct may immediately file a formal complaint as described in Section 3 of this Policy. An individual wishing to use the informal resolution process should contact the Title IX Director.

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- 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 should be completed no later than 10 business days after the Title IX Director receives the request for informal resolution.
- c. Confidentiality and Documentation. UT Health San Antonio will document and record informal resolutions. The Title IX Director will retain the documentation. If the individual's wish to remain anonymous limits UT Health San Antonio's ability to establish facts and eliminate the potential harassment, UT Health San Antonio will attempt to find the right balance between the individual's desire for privacy and confidentiality and its responsibility to provide an environment free of sexual harassment.
5. 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 complainant's name, signature, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the names of any witnesses to the occurrence(s); the resolution sought; and any documents or

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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. An investigator will be assigned to investigate the complaint.
- b. As part of the investigation process, the complainant and the respondent will be provided notice of the complaint and allowed a reasonable time to respond in writing.
- c. The complainant and the respondent may present any document or information that is believed to be relevant to the complaint.
- d. Persons thought to have information relevant to the complaint will be interviewed, and those interviews will be appropriately documented. Both the respondent and the complainant may recommend witnesses for interview and suggest questions that should be asked. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- e. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. In investigations exceeding 60 days, a justification for the delay will be presented to and reviewed by the Title IX Director or his/her supervisor. The complainant, respondent, and supervisor should be provided updates on the progress of the investigation and issuance of the report.

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- f. After the investigation is complete, a written report<sup>iii</sup> will be issued to the Title IX Director and the appropriate administrator. The appropriate administrator will depend on the status of the respondent (i.e., student, faculty or employee). The report shall include factual findings and a preliminary conclusion of whether a policy violation occurred (based on a “preponderance of the evidence” standard).
- g. After the written report is completed, the complainant and respondent will be allowed to inspect the report or, at the Institution’s discretion, provided letters summarizing the findings in the report in keeping with FERPA and Texas Education Code, Section 51.971. If a letter is provided, it will contain enough detail to allow the complainant and respondent to comment on the adequacy of the investigation. Each will have 7 business days from the date of receipt (as indicated on the return receipt) to submit written comments regarding the investigation to the Title IX Director.
- h. Within 7 business days after the deadline for receipt of comments from the complainant and respondent, 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. A decision that the Policy was violated shall be based on the record.
- i. If the Title IX Director or his or her designee determines that the Policy was violated, he or she will refer the matter for disciplinary action under the applicable disciplinary policies and procedures, which depend on the status of the respondent (i.e., student, faculty or employee).

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

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- j. The complainant and the respondent shall be informed concurrently in writing of the decision in accordance with Section 6.5.g of this Policy.
  - k. The appropriate administrator will impose disciplinary action or sanction(s) in accordance with the applicable policies and procedures dependent on the status of the respondent (i.e., student, faculty or employee).

6. Standard of Proof

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

7. Timelines

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

At the request of law enforcement, UT Health San Antonio may defer its fact-gathering until after the initial stages of a criminal investigation. UT Health San Antonio will nevertheless communicate with the complainant regarding his/her Title IX rights, procedural options, the status of the investigation, and the implementation of interim measures to ensure his/her safety and well-being. UT Health San Antonio will also communicate with the respondent regarding his/her Title IX rights, procedural options and information regarding the status of the 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.

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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.

### 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 complainant and respondent do not share classes, working environments or extracurricular activities;
- c. Making modifications to the on campus living arrangements of the respondent or complainant (if the complainant requests to be moved);
- d. Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- e. Providing the complainant extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- f. Determining whether sexual misconduct adversely affected the complainant's Institution standing;
- g. Designating an individual specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist victims whenever needed;
- h. Conducting, in conjunction with Institution leaders, a UT

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Health San Antonio climate check to assess the effectiveness of efforts to ensure that UT Health San Antonio is free from sexual misconduct, and using that information to inform future proactive steps that UT Health San Antonio will take;

- i. Providing targeted training for a group of students if, for example, the sexual misconduct created a hostile environment in a residence hall, fraternity or sorority, or on an athletic team. Bystander intervention and sexual misconduct prevention programs may be appropriate;
- j. Issuing policy statements or taking other steps to clearly communicate that UT Health San Antonio does not tolerate sexual misconduct and will respond to any incidents and to any individual who reports such incidents.

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

9. Sanctions and Discipline

Disciplinary action against faculty and employees will be handled under UT Health San Antonio’s policies for discipline and dismissal of faculty and employees. Disciplinary actions may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal. Under a School’s policy for academic and professional conduct, the Associate Dean of Student Affairs in each school will impose disciplinary action, if any, against a student under UT Health San Antonio’s student disciplinary procedures, as appropriate and consistent with the School’s policies and protocols. A School Dean may delegate to another School official this responsibility. Student disciplinary actions may include, but are not limited to,

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probation, suspension, or expulsion.

For students, if the finding of the report from the Title IX Director falls outside of the academic and professional conduct standards of a school, the Office of the Vice President, Academic, Faculty and Student Affairs will impose disciplinary action. Student policies may be found at: <http://catalog.uthscsa.edu/>

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

Pursuant to the Higher Education Opportunity Act (HEOA), Section 493(a)(1)(A), UT Health San Antonio will upon written request, disclose to the alleged victim of a crime of violence, or a non-forcible sex offense, the results of any disciplinary hearing conducted by the university against the student who is the alleged perpetrator of the crime or offense. If the alleged victim is deceased as a result of the crime or offense, UT Health San Antonio will provide the results of the disciplinary hearing to the victim’s next of kin, if so requested.

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**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).



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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/> 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. Training on sexual harassment and sexual violence policy and procedures will be provided to law enforcement personnel, including training on their obligation to advise UT Health San Antonio administrators, faculty, staff, and students of their rights to file a complaint under this Policy and their right to file a criminal complaint.
  3. Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Directors, Deputy Directors, investigators,
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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.

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**Section 9**  
**Additional**  
**Conduct**  
**Violations**

1. Retaliation. Any administrator, faculty member, student or employee who knowingly and intentionally retaliates in any way against an individual who has brought a complaint under this Policy, participated in an investigation or disciplinary process of such a complaint, or opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from UT Health San Antonio.
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:

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- 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.

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**Section 10  
Documentation**

UT Health San Antonio shall confidentially maintain information related to complaints under this Policy, as required by law. The Title IX Director will document each complaint or request for assistance under this Policy, whether made by a victim, a third party, or anonymously, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law. Any person who knowingly and intentionally makes an unauthorized disclosure of confidential information contained in a complaint or otherwise related to the investigation of a complaint under this Policy is subject to disciplinary action.

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**Section 11:  
Annual Reporting  
and Notice**

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

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**Definitions and  
Examples**

**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

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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.<sup>iv</sup>

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<sup>iv</sup> Texas Penal Code, Section 22.011(b) states that a sexual assault is without consent if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat.

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**DATING VIOLENCE**<sup>v</sup>: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

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

- 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**<sup>vi</sup>: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate

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

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

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

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

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

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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;
- the number of individuals involved;
- the location of the conduct and the context in which it occurred;

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(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.

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

**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.

**PREPONDERANCE OF THE EVIDENCE:** The greater weight of the credible evidence. Preponderance of the evidence is the standard for

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determining allegations of sexual misconduct under this Policy. This standard is satisfied if the action is deemed more likely to have occurred than not.

**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 3.5. Incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct may also be reported to Responsible Employees.

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

**SEXUAL ASSAULT**<sup>vii</sup>: An offense that meets the definition of rape, fondling, incest, or statutory rape:

- *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.

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

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



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- *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; 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 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; such conduct is sufficiently severe or pervasive that it interferes with an individual's education, employment, or participation in UT Health San Antonio activities, or creates an objectively hostile environment; or such conduct is intentionally directed towards a specific individual and has the effect of unreasonably interfering with that individual's education, employment, or participation in UT Health San Antonio activities, or creating an intimidating, hostile, or offensive environment. 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:

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- ❖ 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,

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sexual coercion, sexual abuse, indecency with a child, and/or aggravated sexual assault.

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

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- *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.

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### Relevant Federal and State Statutes and Standards

[Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688 and its implementing regulations, 34 C.F.R. Part 106](#)

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

a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening:

- i. bodily injury or death for the other person;
- ii. bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or
- iii. that an offense will be committed against the other person's property;

b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

c) would cause a reasonable person to:

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

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[Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e–2000e-17 and its implementing regulations 29 C.F.R. §1604 11](#)

[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](#)

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**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](#)

[Regents' Rules and Regulations, Rule 31008, Termination of a Faculty Member](#)

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**System Administration Office Responsible for Policy**

Office of General Counsel  
[ogc\\_intake@utsystem.edu](mailto:ogc_intake@utsystem.edu)

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**Dates Approved or Amended**

System Policy: May 14, 2015; August 22, 2014; December 10, 2004  
UT Health San Antonio Policy: October 2015; June 2015; November 2000

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**Contact Information**

Office of the Vice President, Academic, Faculty and Student Affairs  
210-567-2004

Office of Human Resources  
210-567-2600

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