

POLICY TITLE: Sexual Misconduct Policy (including Sexual Harassment, Assault, Violence, and other Sexual Misconduct)

POLICY NUMBER: SL-105.1

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Effective: August 2020
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Responsible University Office:
Student Development

Administrative Oversight:
Vice President of Enrollment Management & Student Development

Policy Contact: Director of Campus Life

I. POLICY

Purpose and Scope

The King’s University is committed to respecting all employees, students and guests. Sexual harassment offenses are incompatible with TKU’s Standards of Conduct, are criminal acts that infringe on the rights of others and are strictly prohibited by the University. This policy is applicable to all University employees, students, or visitors to the University, as well as anyone participating in a University sponsored activity.

Title IX applies to sexual harassment that occurs on campus or in a University program/activity. Title IX does not apply to sexual harassment that occurs off-campus, in a private setting, and that is not part of the institution’s education program/activity or is outside of the United States. In cases where Title IX does not apply, the university may adjudicate complaints based on established disciplinary procedures.

The University is committed to providing a workplace and educational environment free from sexual harassment and misconduct. To ensure compliance with federal and state civil laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program/activity, TKU has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment or retaliation. The University values and upholds the equal dignity of all members of its community.

This Sexual Misconduct Policy is meant to promote a safe environment for all members of the campus community in accordance with TKU’s Scriptural beliefs about human sexuality and in

compliance with state and federal laws including, but not limited to, Title IX, the Violence Against Women Reauthorization Act of 2013, Title VII of the Civil Rights Act of 1964, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crim Statistics Act, and the Campus Sexual Violence Elimination (SaVE) Act.

Statement of Non-Discrimination

The King's University believes that all people are created in the image of God and is committed to providing equal opportunity and access in its educational and spiritual programs and activities. The school provides full and affirmative compliance with the provision of Title VI of the Civil Rights Acts of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

The school does not discriminate on the basis of race, color, gender, national or ethnic origin, handicaps or disability, age, marital, or veteran status in any of its policies, procedures, or practices. This includes its admissions policy, educational programs, treatment, employment, and all other activities that it provides. In addition, recognizing that women and men are equal partners in the ministry of building the Kingdom of God, the school strongly discourages the use of discriminatory language. The school also prohibits any form of sexual harassment on the part of its employees and students.

Title IX Coordinator

The Vice President of Student Development serves as the Title IX Coordinator and coordinates the University's compliance with Title IX and all University conduct policies related to sexual misconduct. Anyone wishing to make a report relating to sexual harassment may do so by contacting the Title IX Coordinator (or deputy coordinator). The Title IX Coordinator's responsibilities include (but are not limited to):

- Communicating with all members of the University community regarding Title IX and VAWA, and providing information about how individuals may access their rights;
- Reviewing applicable University policies to ensure institutional compliance with Title IX and VAWA;
- Monitoring the University's administration of its own applicable policies, including this policy and all related record keeping, timeframes, and other procedural requirements;
- Conducting training regarding Title IX, VAWA, and prohibited conduct defined in this policy and related policies; and
- Responding to any report or formal complaint regarding conduct that violates this policy. For any report of which the University has actual knowledge (and any formal complaint), the University Title IX Coordinator shall oversee and implement the explanation and provision of any supportive measures. For any formal complaint, the University Title IX Coordinator oversees the investigation and resolution of such alleged misconduct, directs the provision of any additional supportive measures, and monitors the administration of any related appeal.

The Title IX Coordinator may delegate certain responsibilities under this policy to designated administrators, who will be appropriately trained.

The University's Title IX Coordinator's contact information is as follows:

Rhonda Davis
2121 E. Southlake Blvd
Southlake, TX 76092
TitleIX@tku.edu
817-722-1768

Applicable Definitions

- **Actual Knowledge:** Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an official who has authority to institute corrective measures on behalf of the university.
- **Advisor:** A person chosen by a party or appointed by the university to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Coercion:** Verbal and/or physical conduct, including manipulation, intimidation, unwanted contact, and express or implied threats of physical, emotional, or other harm, that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual misconduct.
- **Complainant:** An individual who is alleged to be the victim of conduct that could be sexual harassment based on a protected class, or retaliation for engaging in a protected activity.
- **Confidential Resource:** Employees who are professional licensed counselors, pastoral counselors, or medical professionals, acting within their licensure and role, are not required to report any information disclosed about an incident to the Title IX Coordinator without permission.
- **Consent:** The University considers consent as a voluntary, informed, un-coerced agreement through words or actions freely given, which could be reasonably interpreted as a willingness to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate.
 - *Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one individual overcomes the physical limitations of another individual; and when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances in which the individual is in a state of incapacitation.*
- **Education Program or Activity:** Locations, events or circumstances where the Recipient exercises substantial control over both the Respondent and the context in which the sexual harassment occurs.
- **Force:** The use or threat of physical violence or intimidation to overcome an individual's freedom of will to choose whether or not to participate in sexual contact or using one's strength to impose on someone physically to gain sexual access.
- **Formal Complaint:** A document filed by a complainant (meaning document or electronic submission) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint) alleging Title IX Sexual Harassment against a respondent and requesting that the University investigate the allegation of Title IX Sexual Harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University. A formal complaint may be filed with the University Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided in this policy, and by any additional method identified in this policy.
- **Incapacitation:** The state in which an individual's perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions. The use of drugs or alcohol can cause incapacitation. An individual who is incapacitated is unable to consent to sexual activity. Engaging in sexual activity with an individual who is incapacitated (and therefore unable to consent), where an individual knows or ought reasonably to have understood that the individual is incapacitated, constitutes Title IX Sexual Harassment as defined by this policy.

- **Official with Authority:** University administrators who have authority to institute corrective measures on behalf of the University.
- **Party or Parties:** Referring to the complainant(s) and the respondent(s).
- **Respondent:** The individual(s) who has been alleged to be the perpetrator of conduct that could constitute Title IX Sexual Harassment.
- **Third Party:** Any individual who is not a University student or employee.

Sexual Misconduct Offenses

This policy addresses Title IX Sexual Harassment, which encompasses all of the prohibited conduct described below that occurs on the basis of sex and meets all of the following requirements:

- Occurs within the United States; and
- Occurs within the University's education program or activity; and
- At the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity of the University.

Quid Pro Quo Sexual Harassment: Unwelcome conduct of an employee of the University, who conditions the provision of an aid, benefit, or service of the University (implicitly or explicitly), on an individual's participation in unwelcome sexual activity.

Title IX Sexual Harassment: Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the University's education program or activity.

Sexual Assault: Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Title IX regulations have adopted the following types of sexual assault (consistent with Clery Act reporting):

- *Rape:* 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 Complainant.
- *Fondling:* intentionally touching of the private body parts of another person without consent. Fondling may be over or under clothing, and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.
- *Incest:* occurs between persons who are related to each other within the degrees wherein marriage is prohibited by law. It includes 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.
- *Statutory Rape:* sexual intercourse with a person who is under the statutory age of consent.

Domestic Violence: A felony or misdemeanor crime of violence committed by:

- a) a current or former spouse or intimate partner of the complainant;
- b) a person with whom the complainant shares a child in common;
- c) a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner;
- d) a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;

- e) any other person against an adult or youth victim, protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating 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 based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (a) fear for the person's safety or the safety of others; or (b) suffer substantial emotional distress.

For the purposes of the Stalking definition:

- *Course of conduct* means two or more acts, including 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 an individual, or interferes with an individual'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.

Retaliation: Retaliation is a person's adverse action against another person because they have filed a complaint or participated in providing relevant information an investigation. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. All appropriate and available steps will be taken to protect individuals who fear they may be subjected to retaliation.

Protections Associated with Title IX

Emergency Removal: The university can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This Violence Risk Assessment (VRA) is performed by the Title IX Coordinator. There is no appeal process for emergency removal decisions.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a

written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions. Violation of an emergency removal under this policy will be grounds for discipline, which may include dismissal. The Title IX Coordinator will implement the least restrictive emergency actions possible in light of circumstances and safety concerns. These actions include, but are not limited to: temporary re-assignment of an employee, restrict a student's or (employee's) access to or use of facilities or equipment, allow a student to withdraw or take grades of incomplete without financial penalty, authorize an administrative leave, and suspend a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Promptness: All allegations are acted upon promptly by the university once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the university will avoid all undue delays within its control.

Privacy and Exceptions: Every effort is made by the university to preserve the privacy of reports. The university will not share the identity of any individual who has made a report of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. The university reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA), including Divisions of Student Development, Academic Affairs, and Office of the President. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as small as possible to preserve the parties' rights and privacy. In some cases, the university may contact parents/guardians to inform them of situations in which there is a significant health and/or safety risk but will usually consult with the student first before doing so.

Jurisdiction of Title IX and the University: Title IX applies to educational program and activities of the university, to conduct that takes place on the campus or on property owned or controlled by The King's University, at university-sponsored events, or in buildings owned or controlled by TKU's recognized student organizations. This policy can also be applicable to off-campus misconduct that effectively deprives someone of access to TKU's educational program. If the Respondent is a member of TKU's community, this policy applies.

If the Respondent is unknown or not a member of TKU's community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus/local resources and support options. When criminal conduct is alleged, assistance with contacting law enforcement if the individual would like to file a police report may be offered. The

university may take other actions as appropriate to protect the Complainant against third parties, such as restricting individuals from TKU property and/or events. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the university, by means of other disciplinary protocol.

The Limits on Reporting: There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to The King's University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, change of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures/remedies, and/or engage in informal or formal action.

Online Sexual Harassment and/or Retaliation: Policies of TKU are written and interpreted to include online behaviors prohibited in this policy, when those behaviors occur in or have an effect on the university's education program and activities or use university networks, technology, or equipment. Although we may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported, we will engage in a variety of means to address and mitigate the effects. Members of the community are to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the TKU community.

Amnesty: In order to encourage reports of conduct that is prohibited under this policy, the university may offer leniency with respect to other violations which may come to light as a result of such reports, depending on the circumstances involved.

False Allegations and Evidence: Deliberately false and/or malicious accusations are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties who knowingly provide false evidence, tamper with/destroy evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under university policy.

Options for Reporting

The King's University encourages individuals to report sexual harassment offenses and to talk to somebody about what happened for support and so the university can respond appropriately. We understand that this can be difficult and want individuals to be aware of the reporting and confidential disclosure options available to them so they can make informed choices about where to turn.

Generally, when university employees are told of sexual harassment, they are expected to immediately report allegations to appropriate officials, with some limited exceptions. On campus,

some resources may maintain confidentiality – meaning they are not required to report to appropriate university officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for an individual to report crimes and policy violations and to expect action taken. The following options are available:

Mandated Reporters: All university employees are expected to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, unless they are confidential employees (see next section). If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves. If a Complainant has requested that a Mandated Reporter maintain the Complainant’s anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the university to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the university’s ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant’s personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for those who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

Generally, disclosures in campus surveys, classroom writing assignments or discussions, human subjects research, etc. do not provide notice that must be reported to the Coordinator, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the university. Supportive measures may be offered as the result of such disclosures without formal university action.

Confidential Reporting: On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared. If an individual would like to talk with someone but wants details of an incident to be kept confidential, there are resources on-campus and off campus. On-campus resources are:

- a) Licensed professional counselors (TKU Counseling Center)
- b) Associate Director of Campus Ministries (Campus Life offices)

These employees will maintain confidentiality, according to their licensure, except in extreme cases of immediate threat or danger, or abuse of a minor. These employees will submit anonymous, aggregate statistical information for Clery Act purposes unless they believe it to be harmful to a specific person.

Information regarding off-campus Christian counseling offices may be obtained through the Campus Life office.

After consulting a Confidential Resource as appropriate, a Complainant may:

- Request supportive measures from the Title IX Coordinator
- File a formal complaint with the Title IX Coordinator, thereby invoking the University's internal grievance process
- Contact local law enforcement to file a criminal complaint. At the complainant's request, the University will assist the complainant in contacting local law enforcement and will cooperate with law enforcement agencies if a complainant decides to pursue a criminal process

Emergency Reporting: In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must immediately contact the police department by dialing 911.

When a Complainant Does not Wish to Proceed: If a Complainant does not wish for their name to be shared, an investigation to take place, or want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator. The coordinator will evaluate the request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether the university proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of a violence risk assessment.

The Title IX Coordinator's decision should be based on results of a violence risk assessment that show a compelling risk to health and/or safety that requires the university to pursue formal action to protect the community. This includes evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the university's ability to pursue a Formal Grievance Process fairly and effectively.

If the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. When the Recipient proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. The goal is to provide the Complainant with as much control over the process as possible, while balancing the Recipient's obligation to protect its community.

In cases in which the Complainant requests confidentiality or no formal action and circumstances allow the university to honor that request, the Recipient will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint later.

II. REPORTING A SEXUAL HARASSMENT OFFENSE

The university encourages individuals to report sexual harassment offenses to the Title IX Coordinator (or Deputy Coordinator), Campus Security, and/or appropriate law enforcement officials. The university will act on any formal or informal notice of a sexual harassment violation that is received by the Title IX Coordinator by applying the procedures outlined in the section. If it is determined that the complaint falls under Title IX jurisdiction, the coordinator will apply procedures outlined in this policy. If the alleged sexual harassment falls outside of university property or a university function, other disciplinary procedures can be implemented.

Upon receipt of a complaint or notice to the Title IX Coordinator will initiate the following:

1. Offer supportive measures whether or not the Complainant decides to file a formal complaint;
 2. Engage an initial assessment to determine Title IX jurisdiction and complainant's wishes.
 3. If appropriate to proceed, discuss Informal Resolution and/or Formal Grievance Process
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Supportive Measures

A Title IX officer will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive services offered as appropriate, reasonably available, and without fee or charge to the parties to restore or preserve access to The King's University's education program or activity and/or deter sexual harassment and/or retaliation. These measures, may include, but are not limited to:

- Referral to counseling (students) or to HR (employee assistance program)
- Education for the campus community
- Altering work arrangements for students or employees (on campus)
- Providing campus escorts, increased security monitoring by the University's Security Office
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines and schedules, chapel attendance, etc. (students)
- Timely Warnings, if required
- Interim suspension
 - The university may interim suspend an individual/s pending completion of the grievance process, particularly when, in the judgment of the Title IX officer, the safety/well-being of a member of the campus community may be jeopardized by the presence on-campus of the respondent or the ongoing activity of a student organization whose behavior is in question.
 - When imposed, the individual/s will be given opportunity to meet with a Title IX officer prior to imposition, or as soon after as reasonably possible, to show cause why suspension should not be implemented. The Title IX officer has sole discretion to implement or stay an interim suspension under this policy on and to determine its conditions and duration. Violation of an interim suspension is grounds for dismissal (students) or termination (employees).
 - During an interim suspension, an individual/s may be denied access to university campus email, intranet, facilities, activities, and/or events for which

the individual might otherwise be eligible. At the discretion of the Title IX officer, alternative coursework or other options may be pursued to ensure as minimal an impact as possible on the respondent.

The university will keep supportive measures as private as possible, provided it does not impair the institution's ability to provide those accommodations. We will implement measures in a way that does not reasonably burden the other party, unless an emergency removal is advised

Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person affected wishes to make a formal complaint and will assist them to do so. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint based on whether a violence risk indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency, works with the Complainant to make sure it is correctly completed, and to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive/remedial response, an informal resolution, or a formal investigation/grievance process.
 - If a supportive/remedial response is preferred, the Title IX Coordinator works with Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution (both parties must agree).
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address: an incident, pattern of alleged misconduct, and/or a culture/climate concern, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and must “dismiss” that aspect of the complaint, if any), assesses which university policies may apply, and refers the matter for resolution under other disciplinary protocol. Dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit authority to address a complaint with an appropriate process and remedies.

Violence Risk Assessment:

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment. A VRA can aid in critical and/or required determination:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether a Title IX Coordinator should pursue a formal complaint absent a willing Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;

- To help identify potential predatory conduct;
- To help assess/identify possible grooming behaviors;
- Whether it is reasonable to consider informal resolution, and what may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/No Contact Directive is needed.

A VRA is used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process. More about process for VRA can be found in Appendix B.

Dismissing a Complainant (Mandatory and Discretionary):

The university is required (2020 Title IX Regulations, 34 CFR §106.45) to dismiss a formal complaint or any allegations, at any time during the investigation or hearing, if it is determined that:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by the university, and/or the university does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

The university may dismiss a formal complaint or allegations if:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the recipient; or
3. Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal, the university will send written notice and the rationale for doing so simultaneously to the parties. A decision to dismiss/not dismiss is appealable by any party under procedures for appeal.

Counterclaims:

The university is obligated to ensure that the grievance process is not abused for retaliatory purposes. It permits the filing of counterclaims but uses an initial assessment to assess whether the allegations in a counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted. Counterclaims determined to be reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

Right to an Advisor:

Each party may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process. Parties may select whomever they wish as their Advisor as

long as the Advisor is eligible (no conflicting roles) and available (able to be present during scheduled times). The law permits one advisor for a complainant and one for the respondent only. The university cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the university is not obligated to provide an attorney.

Who Can Serve as an Advisor?

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the TKU community. If a party choose an Advisor from outside the pool of those identified by the university, the Advisor may not have been trained by the university and may not be familiar with policies and procedures.

The Title IX Coordinator can also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the university, the Advisor will be trained by the university and be familiar with the resolution process.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing; however, during a hearing, they will need an advisor for the hearing.

The Advisor's Role in Meetings and Interviews

Parties may be accompanied by their Advisor in all meetings/interviews at which the party is entitled to be present, including intake and interviews. Advisors may not address university Title IX officials or answer questions in a meeting/interview unless invited to by the official. Advisors may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination. Advisors are expected to advise ethically, with integrity, and in good faith.

All Advisors are subject to the same university policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Advisors in Hearings

Under U.S. Department of Education Title IX regulations, a form of indirect questioning is required during the hearing, and must be conducted by the parties' Advisors, as the parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the university will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses during the hearing. A party may reject this appointment and choose their own Advisor, but they may not proceed in the hearing without an Advisor. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and university policies and procedures.

Advisor Violations of University Policy

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Sharing Information with the Advisor

Parties may wish to have the university share documentation and evidence directly related to the allegations with their Advisors. The parties must complete, sign, and submit the consent form to the Title IX Coordinator demonstrating consent to a release of information to the Advisor before university is able to share any records with an Advisor.

Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the university. TKU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the privacy expectations.

Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before a hearing.

Outside Assistance in Securing an Advisor

The university can provide a pool of trained advisor or parties may seek outside assistance.

Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

Resolution Process

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with this policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. The university encourages parties to discuss any sharing of information with their Advisors before doing so.

Informal Resolution:

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, [including mediation, restorative practices, etc.], usually before a formal investigation takes place.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the Title IX Coordinator, or designee, will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the university. The Title IX Coordinator, or designee, will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism [including mediation or restorative practices, etc.] by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the university are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of university policy and implements agreed-upon sanctions and/or remedies.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

Negotiated Resolution

The Title IX Coordinator, with consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the university. Negotiated Resolutions are not appealable.

Formal Grievance Process

Grievance Process Pool:

The Formal Grievance Process relies on a pool of Title IX administrators to carry out the process. Members of the Pool include the Title IX Coordinator, Investigator/s, Advisors, and Hearing Panel members/Decision makers.

Pool Member Roles

Members can serve in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution
- To investigate complaints
- To serve as a Hearing Facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

Pool Member Appointment

The Title IX Coordinator, in consultation with the President's Cabinet, appoints the Pool, which acts with independence and impartiality. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

Pool Member Training

The Pool members receive annual training based on their roles, including, but not limited to:

- Scope of the university's Sexual Misconduct Policy and Procedures
- Implicit bias, impartiality and objectivity
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- Implement appropriate and situation-specific remedies and/or sanctions
- Conduct investigations in a thorough, reliable, and impartial manner

- Uphold fairness, equity, and due process
- Weigh evidence, conduct questioning, assess credibility
- Render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses; how to apply definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- Conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes that protect the safety of Complainants and Respondents, and promote accountability
- Technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, university advisors, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted [here](#).

Pool Membership

The Pool includes [this is just an example]:

- 3 chairs: one representative each from HR, Academics, and Student Development, who are members and who can respectively Chair hearings
- 2 members each from: Academic Affairs, Staff, Student Development

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

Formal Grievance Process: Notice of Investigation and Allegations:

The Title IX Coordinator will provide written *Notice of the Investigation and Allegations* to the Respondent upon commencement of the Formal Grievance Process. This facilitates a Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The complainant receives a copy of the Notice and is given advance notice of delivery. The Notice includes:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the university presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the university's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that university Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have,

and

- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local addresses of the parties, or emailed to the parties' university-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Resolution Timeline

The university will make a good faith effort to complete the resolution process within a 60-90 business-day time period, including appeal. This may be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties, as well as an estimate of how much additional time will be needed to complete the process.

Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the university president.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The university operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of evidence, standard of proof.

Investigation Timeline

Investigations are completed normally within 30 business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. These include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The university will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The university will promptly resume its investigation and resolution process as soon as feasible. University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation Process

All investigations are to be thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator typically takes the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with the Title IX Coordinator, initiate/assist with any supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Identify issues and develop a strategic investigation plan, includes a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation. The Notice may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the timeline
- Provide regular status updates to the parties throughout the investigation
- Prior the conclusion of the investigation, provide parties and respective Advisors (if desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator will gather, assess, and synthesize evidence, but make no conclusions and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if desired by the parties) a secured electronic or hard copy of the draft investigation report. They will have an opportunity to inspect and review all of the evidence obtained as part of the investigation directly related to the reported misconduct, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- Investigator may elect to respond in writing to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary

revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period

- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties, their Advisors, and appropriate Pool members, through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

Role and Participation of Witnesses in the Investigation

Witnesses in the TKU community are expected to cooperate with and participate in the university's investigation and resolution process. Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Video conferencing technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. The university will take appropriate steps to reasonably ensure the security/privacy of remote interviews. Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of, and consent to, audio and/or video recording.

Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-makers–unless all parties and the Decision-maker agree to an expedited timeline. The Title IX Coordinator will select appropriate Decision-makers from the Pool depending on whether the Respondent is an employee or a student. |

Hearing Decision-Maker Composition

The university will designate a three-member panel from the Pool, at the discretion of the Title IX Coordinator. One of the three members will be appointed as Chair by the Title IX Coordinator. The Decision-Makers will not have had any previous involvement with the investigation. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter. The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

Evidentiary Considerations in the Hearing

Any evidence that the Decision-makers determine is relevant and credible may be considered. The hearing does not consider:

1. incidents not directly related to the possible violation, unless they evidence a pattern;
2. the character of the parties; or
3. questions and evidence about the Complainant's sexual predisposition or prior sexual behavior; unless such questions and evidence about the Complainant's prior sexual behavior

are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility; however, this information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement, prior to the hearing, for consideration by the Decision-makers at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:

- A description of alleged violation(s), list of policies allegedly violated, description of applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Information about technology that will be used to facilitate the hearing and the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-makers and parties to see and hear a party or witness answering questions. Request by either the Chair or one of the parties must be made at least 5 days prior to hearing
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. Objections must be raised with the Title IX Coordinator at least 5 business days prior to hearing.
- Information how hearing will be recorded and access to recording for parties after the hearing.
- A statement that if a party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. The party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-makers. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the university will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-makers about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-makers will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notice that parties cannot bring mobile phones/devices into the hearing.

Hearings for alleged violations that occur near or after the end of an academic term, but are unable to be resolved prior to the end of term, will typically be held immediately after the end of the term or

during the summer, as needed, to meet the resolution timeline followed by the university and remain within the 60-90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing. The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Pre-Hearing Preparation

The Chair or hearing facilitator, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator (either personally or in writing), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper

evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing. At each pre-hearing meeting with a party/Advisor, the Chair will consider arguments that evidence identified in a final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings. Pre-hearing meetings will be recorded.

Hearing Procedures

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services. The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-makers and the parties and will then be excused.

Joint Hearings

In hearings involving more than one Respondent, or in which two (2) or more Complainants, have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and

distributing materials to participants, as appropriate, etc.

Investigator Presents the Final Investigation Report

The Investigator will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-makers and the parties (through their Advisors). The Investigator will be present during the entire hearing process, but not during deliberations. Neither the parties nor Decision-makers should ask the Investigator their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Testimony and Questioning

Once the Investigator presents the report and is questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-makers and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing (either because they do not attend the meeting, or they attend but refuse to participate in questioning), then the Decision-makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If a party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself, then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-makers, as distinguished from questions posed by Advisors through cross-examination. The

Decision-makers may not draw any inference solely from a party's/witness's absence from the hearing, refusal to answer cross-examination, or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-makers may consider evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by a party/witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the Recipient's established rules of decorum for the hearing, the Recipient may require the party to use a different Advisor. If a recipient-provided Advisor refuses to comply with the rules of decorum, the University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

Recording Hearings

Hearings (not deliberations) are recorded by the university for purposes of review in the event of an appeal. Parties may not record the proceedings and no unauthorized recordings are permitted. The Decision-makers, parties, Advisors, and appropriate university administrators will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

Deliberation, Decision-making, and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-makers may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-makers may, at their discretion, consider the statements, but they are not binding.

The Decision-makers will review the statements and any pertinent conduct history provided by the university and will determine appropriate sanction(s). The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, evidence used in support of its determination, evidence not relied upon in its determination, credibility assessments, and any sanctions. This report is typically three (3) to five (5) pages and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If extension is granted, the Title IX Coordinator will notify the parties.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will be reviewed by appropriate administrators. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-makers' deliberation statement. The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local address of the parties as indicated in official university records, or emailed to the parties' university-issued email account. Once mailed, emailed,

and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate:

- the specific policy(ies) reported to have been violated, including the relevant policy section;
- a description of the procedural steps taken by the university from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held;
- the finding on each alleged policy violation;
- the findings of fact that support the determination;
- conclusions regarding the application of the relevant policy to the facts at issue;
- a statement of, and rationale for, the result of each allegation to the extent the Recipient is permitted to share such information under state or federal law;
- any sanctions issued which the university is permitted to share according to state or federal law;
- any remedies provided to the Complainant designed to ensure access to the university's educational or employment program or activity, to the extent the university is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent);
- information on when results are considered by the university to be final, any changes that occur prior to finalization; and
- the relevant procedures and bases for any available appeal options.

Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- Nature, severity of, and circumstances surrounding the violation(s)
- Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- Sanctions/responsive actions to bring an end to sexual harassment and/or retaliation
- Sanctions/responsive actions to prevent future recurrence of sexual harassment/retaliation
- Remedy effects of sexual harassment/retaliation on Complainant and the community
- Impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either at outcome of any appeal or expiration of the window to appeal when appeal is not requested. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any university policy, procedure, or directive will result in more severe actions.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified time. Terms of the probation may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. During a suspension, respondent is not authorized to attend university-sponsored events.
- *Dismissal*: Permanent termination of student status and revocation of rights to be on campus for

any reason or to attend university-sponsored events. This status may be noted permanently as a Conduct Dismissal on the student's official transcript.

- *Withholding Diploma*: The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The University reserves the right to revoke a degree previously awarded for fraud, misrepresentation, and/or other violation of TKU's policies, procedures, or directives in obtaining the degree, or for other serious violations committed prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, other actions may be assigned.

Employee Sanctions

The following are the usual sanctions that may be imposed upon employees singly or in combination

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility/Demotion
- Delay of tenure track progress
- Suspension with/without pay
- Termination
- The University may assign any other sanctions as deemed appropriate.

Long-Term Remedies/Other Actions

In addition to any sanctions implemented, the Title IX Coordinator or Decision-Makers may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent recurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the Recipient to the Respondent to ensure no effective denial of educational access. The university will maintain the privacy of any long-term remedies, actions, or measures, provided privacy does not impair the university ability to provide these services.

Failure to Comply with Sanctions, Interim/Long-term Remedies, Other Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-makers, including the Appeal

Chair/Panel. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the university and may be noted on a student's official transcript or an employee's file..

Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Policy, the university may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from TKU, the resolution process ends, as the university no longer has disciplinary jurisdiction over a withdrawn student. However, the university will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to TKU. Such exclusion applies to all campuses of the university. A hold will be placed on their ability to be readmitted. They may also be barred from Recipient property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the university unless and until all sanctions have been satisfied.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the university no longer has disciplinary jurisdiction over the resigned employee. However, the university will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation. The employee who resigns with unresolved allegations pending is not eligible for rehire with TKU or any campus of TKU, and the records retained by the Title IX Coordinator and HR Director will reflect that status. All university responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Appeals:

Any party may file a *Request for Appeal*, but it must be submitted in writing to the Title IX Coordinator within 5 business days of the delivery of the *Notice of Outcome*. Appeals under this policy will be heard by an "Appeal Panel" comprised of three individuals, chosen from the Pool. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal Panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal. This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of determination regarding responsibility that could affect the outcome of the matter; and

- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the [Chair/Panel] will render a decision in no more than 5 business days, barring exigent circumstances. [All decisions [are by majority vote] and apply the preponderance of the evidence standard.

A *Notice of Appeal Outcome* will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the university is permitted to share according to state or federal law, and the rationale supporting essential findings to the extent the university is permitted to share under state/federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local address of the parties as indicated in official institutional records, or emailed to the parties' university-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

TKU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Appeals are not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-makers merely because they disagree with a finding and/or sanction(s).
- The Appeal Chair/Decision-makers may consult with the Title IX Coordinator on questions of procedure/rationale, for clarification. Documentation of all such consults will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- Results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the university or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

Additional Notes

University students and employees are responsible for knowing the information, policies and procedures outlined in this document. The university reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. If government regulations change in a way that impact this document, this document will be construed to comply with government regulations in their most recent form. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged harassment occurred. Procedures applicable are those that are in place at the time of resolution. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

Recordkeeping:

The university will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the university's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. TKU will make these training materials publicly available on our website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of

sexual harassment, including:

- a. The basis for all conclusions that the response was not deliberately indifferent;
- b. Any measures designed to restore or preserve equal access to the university's education program or activity; and
- c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

TKU will also maintain any and all records in accordance with state and federal laws.

Disabilities Accommodations in the Resolution Process:

The King's University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the university's resolution process. Anyone needing such accommodations or support should contact the Associate Director of Student Success [or the HR Manager if employee], who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Additional Federal Obligations

Annual Security Report (ASR):

In addition to Title IX requirements, the Clery Act requires the university to submit an Annual Security Report with only statistical data concerning crimes in the past year. All campus employees are deemed Campus Security personnel and have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes. Personally identifiable information is confidential, but statistical information must be passed along to campus public safety regarding incident type and location (on or off-campus, in the surrounding area) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime.

Federal Timely Warning Reporting

Individuals reporting a sexual harassment offense should be aware that university administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

Sexual Violence Prevention Education

The university takes measures to provide a safe campus environment for its students and employees. We offer prevention and awareness programs to promote awareness of sexual violence. Ongoing annual training is also presented and monitored to encourage participation. The programs include:

- Annual review of the TKU Sexual Misconduct Policy which prohibits all forms of sexual violence and harassment, as stated in the student and employee handbooks;
- Title IX compliance training
- Understanding healthy relationships and relationship violence
- Alcohol and drug abuse prevention program

APPENDIX A: RELATED TEXAS STATE INFORMATION

If a person would like to press criminal charges for an alleged violation of any of the below criminal laws, or would like to seek an order of protection, the definitions contained in the Texas Penal Code and Family Code would apply, not the internal definitions used in this policy.

Dating Violence: “an act, other than a defensive measure to protect oneself, by an actor that is committed against a victim or applicant for a protective order: with whom the actor has or has had a dating relationship; or because of the victim’s or applicant’s marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim or applicant in fear of imminent physical harm, bodily injury, assault, or sexual assault... ‘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: the length of the relationship; the nature of the relationship; and the frequency and type of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a ‘dating relationship.’” *Texas Family Code Section 71.0021.*

Domestic (Family) Violence: “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, or abuse by a member of a family or household toward a child of the family or household, or dating violence.” *Texas Family Code Section 71.004.*

Sexual Assault: “a person commits an offense if the person (1) intentionally or knowingly causes the penetration of the anus or sexual organ of another person by any means, without that person's consent; causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or (2) intentionally or knowingly causes the penetration of the anus or sexual organ of a child by any means; causes the penetration of the mouth of a child by the sexual organ of the actor; causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual 25 organ of another person, including the actor; causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

A sexual assault is without the consent of the other person if: the actor compels the other person to submit or participate by the use of physical force, violence, or coercion, the actor compels the other person to submit or participate by threatening to use force or violence against the other person, or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat; the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; 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; the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; 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; 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; the actor is a public servant who coerces the other person to submit or participate;

or the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor. The actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other. 'Child' means a person younger than 17 years of age. 'Spouse' means a person who is legally married to another." *Texas Penal Code Section 22.011.*

Stalking: "a person who, 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: (1) the person knows or reasonably should know the other person will regard as threatening including bodily injury or death for the other person, 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 fear that an offense will be committed against the other person's property, and (2) 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 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 (3) would cause a reasonable person to fear bodily injury or death for himself or herself, or 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, or fear that an offense will be committed against the person's property; or feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended. A fact finder may find that different types of conduct described above, if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct." *Texas Penal Code Section 42.072.*

APPENDIX B: VIOLENCE RISK ASSESSMENT (VRA)

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A *Violence Risk Assessment (VRA)* is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other members.

A VRA occurs in collaboration with the Title IX Coordinator, Public Safety Director, and team members (counselor, student success staff, community life staff, and VP for Student Development). Understood as an on-going process, not a singular evaluation or meeting, a VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. an appraisal of *risk factors* that escalate the potential for violence;
2. a determination of *stabilizing influences* that reduce the risk of violence;
3. a contextual *analysis of violence risk* by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. the application of *intervention and management* approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the VRA process, and will assign a trained individual to perform the assessment, according to the specific nature of the Title IX case. The assessor will rely on a consistent, research-based, reliable system that allows for the operationalization of the risk levels, rather than subjective opinions.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric (www.nabita.org/tools), The Structured Interview for Violence Risk Assessment (SIVRA-35) (www.nabita.org/resources/assessment-tools/sivra-35/), The Extremist Risk Intervention Scale (ERIS) (www.nabita.org/resources/assessment-tools/eris/), Looking Glass (www.nabita.org/looking-glass), Workplace Assessment of Violence Risk (WAVR-21) (www.wavr21.com), Historical Clinical Risk Management (HCR-20) (hcr-20.com), and MOSAIC (www.mosaicmethod.com).

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner. The team conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to health and/or safety of an individual or community.