

Institutional Handbook of Operating Procedures Policy 03.02.04	
Section: Employee Policies	Responsible Vice President: Senior Vice President & General Counsel
Subject: Regulatory Compliance	Responsible Entity: UTMB Department of Internal Investigations Title IX Coordinator For Immediate Reporting: (409) 772-2112; Title.IX@utmb.edu www.utmb.edu/studentsservice/titleix.asp Also, please see Section IV.G.

I. Title

Sexual Misconduct.

II. Policy

- A. The University of Texas Medical Branch (UTMB) is committed to maintaining a learning and working environment that is free from discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual Violence Elimination Act (SaVE Act), Violence Against Women Act (VAWA) and Clery Act. Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy, will not be tolerated and will be subject to disciplinary action.
- B. UTMB will promptly discipline any individuals or organizations within its control that violate this Policy. UTMB encourages any student, faculty, staff or visitor to promptly report incidents that could constitute violations of this Policy to the Title IX Coordinator as identified in Section IV. B.
- C. Free Speech. Freedom of speech and principles of academic freedom are central to the mission of institutions of higher education. Constitutionally protected expression cannot be considered Sexual Misconduct under this Policy.

III. Applicability

This Policy applies to all UTMB administrators, faculty, staff, students, and third parties within UTMB's control, including visitors and applicants for employment. Correctional Managed Care (CMC) employees are protected under this Policy; however, reporting and investigations may differ from those outlined in this Policy. It applies to conduct that occurs on University owned or controlled premises, in an education program or activity including University sponsored or supported events, buildings owned or controlled by student organizations officially recognized by the University, or off campus when the conduct potentially affects the complainant's education or employment with UTMB or potentially poses a risk of harm to members of the UTMB community. It also applies regardless of the gender, gender identity or sexual orientation of the parties.

IV. Reporting Incidents

- A. General Statement Empowering Community. This policy distinguishes between *reporting* sexual misconduct incidents on the one hand and *filing Formal Complaints* on the other. Reporting Sexual Misconduct incidents informs the University of the incident, which allows the institution to provide Supportive Measures (as outlined in Section VI. B of this Policy) to the Complainant and does not necessarily result in the initiation of the Grievance Process (as outlined in Section VII. of this Policy). All Complainants who report incidents of Sexual Misconduct will be offered individualized Supportive Measures. If Complainants wish to initiate the Grievance Process, they should file a Formal Complaint. As explained in more detail below (including exceptions and details as to applicability), generally speaking, the Grievance Process may involve an investigation into the incident and a hearing to determine the responsibility of the Respondent.
- B. All administrators, faculty, staff, students, and third parties are strongly encouraged to immediately report Sexual Misconduct, Retaliation, or any other conduct prohibited under this Policy to the Title IX Coordinator. Any person may report an incident, whether or not the person reporting is the person alleged to be the victim of the incident, and it can be a verbal or written report to the Title IX Coordinator:

Kelly N. Farrell, J.D.
 Institutional Title IX Coordinator
 UTMB Department of Internal Investigations
 Rebecca Sealy, Suite 2.318
 301 University Blvd.
 Galveston, TX 77555-0134
 Title.ix@utmb.edu
 (409) 772-2112
<http://www.utmb.edu/studentservices/titleIX.asp>

1. Filing a Formal Complaint. The Complainant may file a Formal Complaint with the Title IX Coordinator, as outlined in Section VII. B of this Policy.
2. Anonymity. You may make an anonymous report by telephone, in writing or electronically (<https://www.reportlineweb.com/UTMB>) with the Title IX Office; however, electing to remain anonymous may greatly limit UTMB's ability to stop the harassment, collect evidence, or take effective action against individuals or organizations accused of violating the Policy.
3. Confidentiality. UTMB has an obligation to maintain an environment free of sexual misconduct, thus many UTMB employees and faculty members have mandatory reporting and response obligations and may not be able to honor a complainant's request for confidentiality. You can discuss a complaint in strict confidence using the resources outlined in Section IV. G.
4. Timeliness of Reporting. Responsible Employees, as defined in Section IV. D below, are required to report known incidents and information of Sexual Misconduct promptly to the Title IX Coordinator. For others in the University community, you are strongly encouraged to report Sexual Misconduct, Retaliation, and any other conduct prohibited under this Policy as soon as you become aware of the inappropriate conduct.

C. Reporting Options for Correctional Managed Care Employees.

Correctional Managed Care employees should report incidents of Sexual Misconduct and other inappropriate sexual conduct to the appropriate Human Resources Regional Leader.

D. Responsible Employees.

1. You may also report incidents of Sexual Misconduct to Responsible Employees.
2. Responsible Employees can find contact information for the Title IX Office in Section IV. B of this Policy and at the following website:
<http://www.utmb.edu/student services/titleIX.asp>.
3. Responsible Employees, who in the course and scope of employment, witness or receive information about an incident that the employee reasonably believes to constitute sexual misconduct, sexual harassment, sexual assault, dating/domestic violence, or stalking must promptly report the incident to the Title IX Coordinator.
4. If a Responsible Employee knowingly fails to report incidents of alleged sexual misconduct or sexual harassment (except for sexual assault, dating violence, domestic violence, and stalking) within three (3) business days to the Title IX Office, he or she is subject to discipline, up to and including termination through the applicable disciplinary process. A Responsible Employee must immediately report alleged acts of sexual violence (this includes sexual assault, dating violence, domestic violence, and stalking) to the Title IX Office; an employee who knowingly fails to report timely is subject to discipline, up to and including termination through the appropriate disciplinary process. For the purposes of failure to report, the definition of sexual harassment, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as: Unwelcome, sex- based verbal or physical conduct that:
 - a) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
 - b) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary institution.
5. The report from Responsible Employees to the Title IX Office must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether the alleged victim expressed a desire for confidentiality in reporting the incident.
6. A Responsible Employee is not required to make a report under this section concerning:
 - a) an incident in which the person was a victim of sexual misconduct, sexual harassment, sexual assault, dating/domestic violence, or stalking; or
 - b) an incident in which the person received information due to a disclosure made at a sexual misconduct, sexual harassment, sexual assault, dating/domestic violence or stalking public awareness event sponsored by UTMB or by a student organization affiliated with UTMB.

7. Reporting under this Policy to the Title IX Office does not absolve individuals of any other duties to report to other agencies as required by state and federal laws.

E. Duties to Report Sexual Misconduct Towards Patients.

If you witnessed and/or were made aware of any Sexual Misconduct towards a patient, you have a duty to report this to the Title IX Office when:

- a) the alleged incident(s) occurred on UTMB property or in a UTMB sponsored program or activity;
- b) the alleged perpetrator is subject to UTMB's control (employee, student, visitor, contractor); or
- c) the patient is a student or employee at UTMB.

When a complaint involves a patient, the Title IX Office will consult with UTMB's Privacy Officer to assess how much information is needed in order to comply with various state and federal laws. Absent consent from the patient or reporting individual, an employee who receives information under circumstances that would render the communications confidential or privileged under the law shall only state the type of incident reported to the Title IX Office. This applies to employees with different privileges, including attorney-client communications. Furthermore, the Title IX Office will determine if the complaint falls under this Policy.

F. Reporting to Law Enforcement.

You may also file a police report with the UTMB Police Department at (409) 772-1111 (non-emergency) or 911 (emergency) or to the City of Galveston Police Department at (409) 765-3600 (non-emergency) or 911 (emergency) or to other local law enforcement authorities. The Title IX Office can help individuals contact these law enforcement agencies. Employees and students with protective or restraining orders relevant to a complaint are encouraged to provide a copy to the UTMB Police Department.

G. Confidential Support and Resources.

Students may discuss an incident with Confidential Employees or an off-campus resource (e.g. rape crisis center, doctor, psychologist, clergyperson etc.) without concern that the person's identity will be reported to the Title IX Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of their choice, or an off-campus rape crisis resource without concern that the person's identity will be reported to the Title IX Office. UTMB and community resources that provide such services are:

Student Health & Counseling counselors (contact information below)

Employee Assistance Program counselors (contact information below)

Resource & Crisis Center of Galveston County, Inc.

Local 24 Hour Hotline: 409-765-SAFE (7233)

Free 24 Hour Hotline: 7-888-919-SAFE (7233)

www.rccgc.org

H. Immunity.

In an effort to encourage reporting of Sexual Misconduct, UTMB may grant immunity from

student and/or employee disciplinary action to a person who acts in good faith in reporting an incident, filing a Formal Complaint, or participating in a Grievance Process (e.g. investigation, hearing, appeal). This applies to any violation of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. This immunity does not extend to the person's own violations of this Policy.

I. Reporting to Outside Entities.

You may also contact the following external agencies:

For students:

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

Office for Civil Rights
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202
Phone: (800) 537-7697
FAX: (214) 767-0432

Patients may also contact the Office for Civil Rights – U.S. Department of Health and Human Services to complain of sex-based discrimination or sexual harassment.

For employees:

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

Texas Workforce Commission
Civil Rights Division
101 E. 15th Street
Room 144-T
Austin, TX 78778-0001
Phone: (512) 463-2642

V. Parties' Rights Regarding Confidentiality, Requests to Not Investigate, and Requests to Dismiss Formal Complaints.

- A.** UTMB has great respect for the privacy of the parties identified in a report or Formal Complaint. Under state law, however, Responsible Employees who in the course and scope of employment, witness or receive information regarding the occurrence of an incident that the employee

reasonably believes constitutes any type of Sexual Misconduct must share that information with the Title IX Coordinator. Those individuals may need to act to maintain campus safety and must determine whether to investigate further, regardless of the Complainant's request for confidentiality or request to not investigate a report received by the Title IX Coordinator. In making determinations regarding requests for confidentiality, Complainant's requests to not investigate, Complainant's requests to dismiss Formal Complaints, and/or requests not to disclose identifying information to Respondents, the Title IX Coordinator should deliberately weigh the rights, interests, and safety of the Complainant, the Respondent, and the campus community. Factors UTMB must consider when determining whether to investigate an alleged incident of Sexual Misconduct include, but are not limited to:

1. The seriousness of the alleged incident;
 2. Whether UTMB has received other reports of alleged Sexual Misconduct by the alleged respondent;
 3. Whether the alleged incident poses a risk of harm to others; and
 4. Any other factors UTMB determines relevant.
- B.** Under state law, if the Complainant requests in writing that UTMB not investigate a report, the Title IX Coordinator or designee must inform the Complainant of the decision whether or not to investigate.
- C.** If UTMB dismisses a Formal Complaint (as outlined in Section VII. B 3 of this Policy), UTMB must provide the Complainant and Respondent a written notice of the dismissal and the reason(s) for the dismissal.
- D.** In the course of the Grievance Process, UTMB may share information only as necessary with people who need to know in compliance with the law, which may include but is not limited to the investigators, witnesses, Complainant, Respondent, parties' advisors, hearing officers and the appellate officer – if applicable. UTMB will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation or in any other part of the Grievance Process. UTMB will comply with the Family Educational Rights and Privacy Act (FERPA), with Texas Education Code Sec. 51.971 and other confidentiality laws as they apply to Title IX investigations. While UTMB cannot guarantee anonymity, UTMB will protect the privacy of all parties to a report of Sexual Misconduct, to the extent possible.

VI. Resources and Assistance.

A. Immediate Assistance.

1. Healthcare. An individual who experiences any form of sexual, domestic, or dating violence is encouraged to seek immediate medical care. Emergency medical care can be provided at UTMB's Emergency Department or any other hospital emergency room.
2. Sexual Assault Forensic Exam. Preserving DNA evidence is vital to identifying the perpetrator in a sexual violence case. Victims can undergo a medical exam to preserve physical evidence with or without police involvement. If possible, this should be done

immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to UTMB's Emergency Department. UTMB's Emergency Department has registered SANE nurses who have been specifically trained to provide comprehensive care to sexual assault survivors.

For more information about the SAFE, see <http://hopelaws.org/> or <https://www.texasattorneygeneral.gov/victims/sapcs.shtml#survivors>. The cost of the forensic portion of the exam is covered by the law enforcement agency that is investigating the assault or, in cases where a report will not be made to the police, the Texas Department of Public Safety. This does not include fees related to medical treatment that are not a part of the SAFE.

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

3. Police Assistance. UTMB encourages individuals who have experienced sexual misconduct to make a report to the police. The police may, in return, share your report with the Title IX Office. It is important to note that a police department's geographic jurisdiction depends on where the incident occurred. If the incident occurred on a UTMB campus, a report may be filed with the [UTMB Police Department](#):

- Emergency and on UTMB Galveston Campus land-line: 911
- Emergency and not on UTMB's Galveston Campus land-line: (409) 772-1111 or (409) 772-1511
- Non-emergency and on UTMB Galveston Campus land-line or personal phone: (409) 772-2691

UTMB Police can also assist with filing any protective orders. Reporting an assault to law enforcement does not mean that the case will automatically go to criminal trial or to a UTMB disciplinary hearing. If UTMB police are called, a uniformed officer will be sent to the scene to take a detailed statement. UTMB Police may provide a ride to the hospital. A report may be filed with the UTMB police department even if the assailant was not a UTMB student or employee. If the incident occurred outside the City of Galveston, a report may be filed with the local police department, even if time has passed since the assault occurred. If a report is made to the police, a uniformed officer will usually be dispatched to the location to take a written report.

4. Counseling and Other Services. A person who has experienced Sexual Misconduct is strongly encouraged to seek counseling or medical and psychological care even if he or she does not plan to request a SAFE or report the incident to the police. He or she may

be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by an incident are encouraged to seek counseling or psychological care.

He or she may receive medical care at UTMB's Student Health Services (for students only), at a local emergency room, or by a private physician. He or she may also be provided with psychological support by UTMB's Student Health and Counseling (students), Employee Assistance (employees), a referral through the Employee Assistance Program, or a care provider of the individual's choosing.

Students desiring counseling should contact:

[Student Health & Counseling](#)

Lee Hage Jamail Student Center – 3rd Floor
Monday – Friday, 7 am to 5 pm – (409) 747-9508
After Hours Care – (409) 747747-4357

Faculty and staff should contact:

[Employee Assistance Program](#)

UTEAP available 24 hours a day, 7 days a week. (844) 872-5986
<https://hr.utmb.edu/eap>

B. Supportive Measures.

UTMB will offer reasonably available individualized services, without any fee or charge, to the parties in a reported incident of Sexual Misconduct, when applicable. Supportive Measures may include but are not limited to housing reassignment, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, mutual restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus, or other similar measures tailored to the individualized needs of the parties.

Supportive Measures are non-disciplinary and non-punitive measures that do not unreasonably burden the other party. Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an emergency removal (as outlined in Section VIII) is appropriate.

UTMB will maintain the confidentiality of Supportive Measures provided to the parties, to the extent that maintaining such confidentiality does not impair UTMB's ability to provide the Supportive Measures.

VII. The Grievance Process.**TITLE IX****A. Key Officials in the Grievance Process.**

1. Title IX Coordinator. The Title IX Coordinator is the senior UTMB administrator who oversees UTMB's compliance with Title IX. The Title IX Coordinator is responsible for administrative response to reports and Formal Complaints of Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy. The Title IX Coordinator is available to discuss the Grievance Process, coordinate Supportive Measures, p, explain UTMB's policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities. Any member of the UTMB community may contact the Title IX Coordinator with questions.
2. Investigator(s). UTMB will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint. The investigators are neutral and impartial fact-finders and gather evidence during the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Title IX Deputy Coordinators may supervise and advise the Title IX investigators when conducting investigations and update the Title IX Coordinator as necessary to ensure compliance with Title IX.
3. Hearing Panel. The hearing panel is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner.

B. Formal Complaints Against Students and Employees.¹

1. Applicability of the Grievance Process. The Grievance Process in this Policy applies to the following situations:
 - i. Students and Employees. The Grievance Process in Section VII. of this Policy applies in the instances where the Respondent is a student or employee (including student employees)² at UTMB at the time of the alleged conduct and where the conduct alleged includes Sexual Harassment. An alternative Grievance Process in Section IX. of this Policy applies in instances where the Respondent is a student or employee at the time of the alleged conduct and where the conduct alleged does not include Sexual Harassment.

The Grievance Process in this Policy only applies where allof the following conditions are met:

¹ For Formal Complaints against third parties, such as contracted workers, volunteers, or visitors, the UTMB will apply the analysis in Section VII. B. 1 with regard to employees and may apply other institutional policies to those Respondents if the Grievance Process (outlined in this Policy) does not apply.

² Respondents who are both students and employees are treated as students under this Policy.

- (1) The Respondent is a student or employee at UTMB at the time of the alleged conduct;
- (2) The conduct alleged is Sexual Harassment under this Policy;
- (3) The alleged conduct occurred against a person in the United States; and
- (4) Where the Complainant was participating or attempting to participate in an education program or activity at UTMB. This element is met if the conduct occurred in any of the following: on any UTMB property; during any UTMB activity; in a building owned or controlled by a student organization that is officially recognized by UTMB; or in instances where UTMB exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

2. Formal Complaint. To begin the Grievance process, the Complainant must sign a Formal Complaint (requesting an investigation) and submit it to the Title IX Coordinator. The Complainant must submit a written statement setting out the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:

- a) Complainant's name and contact information;
- b) Respondent's name;
- c) A detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
- d) The date(s) and location(s) of the alleged occurrence(s);
- e) The names of any witnesses to the occurrence(s); and
- f) The resolution sought.

The Complainant may also submit any documents or information that is relevant to the Formal Complaint.

The Title IX Coordinator may also sign a Formal Complaint against a Respondent (requesting an investigation) and in doing so will initiate the Grievance Process.

3. Mandatory and Discretionary Formal Complaint Dismissals.

- 1. Under Title IX regulations, universities are required to distinguish between prohibited conduct that is "under Title IX" and prohibited conduct that is a violation of university policy. Under Title IX, UTMB must dismiss a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where:

- (1) Sexual Harassment is alleged and where:

- i. The conduct alleged does not meet the definition of Sexual Harassment;
- ii. The alleged conduct did not occur in UTMB's education program or activity; or,
- iii. The alleged conduct did not occur against a person in the United States.

A dismissal under this provision only applies to allegations of Sexual Harassment under Title IX. In such an instance, UTMB may still investigate a Formal Complaint for allegations of Sexual Harassment under this Policy. UTMB may also investigate allegations of prohibited conduct under this Policy, but it will not technically be "under Title IX."

- 2. UTMB may dismiss a Formal Complaint under Title IX, at its discretion, under this Policy's Grievance Process for any of the following circumstances:
 - (1) If the Complainant requests in writing to dismiss a Formal Complaint (e.g. withdraws the Formal Complaint or any allegations therein), as outlined in Section V of this Policy;
 - (2) If the Respondent is an employee and no longer employed by UTMB at the time the Formal Complaint is filed;
 - (3) Any specific circumstances that prevent UTMB from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
 - (4) The conduct alleged does not meet the definition of any prohibited conduct under this Policy.
- 3. If UTMB dismisses a Formal Complaint, UTMB must provide both parties a written notice of the dismissal and the reason(s) for the dismissal.
- 4. Concurrent Criminal or Civil Proceedings. UTMB will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint in UTMB's Grievance Process. UTMB has an independent duty to respond to Formal Complaints of Sexual Misconduct. At UTMB's discretion, UTMB may delay the investigation or Grievance Process for a brief period due to concurrent criminal or civil proceedings on a case-by-case basis.

D. Written Notice of the Formal Complaint, and Notification of University Offices Offering Assistance.

After receiving a Formal Complaint, the Title IX Office will provide a written notice to the parties of the Formal Complaint and available UTMB resources and assistance. The written notice of the Formal Complaint will include the following:

- 1. A notice of the Grievance Process, as outlined in this Policy;

2. A notice of the allegations that potentially constitute prohibited conduct under this Policy, including sufficient details about the alleged conduct, including the identity of the parties, if known, and the date(s), time(s), and location(s) of alleged conduct known by UTMB at the time of the Formal Complaint;
3. A statement of the potential policy violations being investigated;
4. A statement that the Respondent is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the Grievance Process;
5. Both parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
6. A statement that the parties may review evidence gathered as part of any investigation;
7. Provision of this Policy that knowingly making false statements or knowingly submitting false information during the Grievance Process is prohibited and subject to disciplinary action; and
8. Any other relevant information for the written notice.

E. Investigation of the Formal Complaint – Gathering of Evidence

1. After UTMB provides written notice of a Formal Complaint to the parties, the Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator.
2. UTMB will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Grievance Process.
3. Evidence. The parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint and may have an advisor of their choice attend any related interview, meeting, or proceeding in the Grievance Process. Advisors are not permitted to actively participate in meetings or proceedings in the Grievance Process, unless explicitly outlined in Section VII. H of this Policy. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.
4. Witness Interviews. The investigators will interview relevant and available witnesses. Neither the Complainant nor the Respondent will normally attend these interviews; however, if either one is permitted to attend, the other shall have the same right.
5. Investigation Timeframe. The investigation of a Formal Complaint will be concluded within 90 days of the filing of a Formal Complaint. The parties should be provided updates on the progress of the investigation, as needed.

6. **Access to Evidence.** Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained (whether relevant or not) as part of the investigation to both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice). Both parties will have 10 days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.
7. **Completed Investigation Report.** The completed investigation report will outline each of the allegations that potentially constitutes prohibited conduct under this Policy, provide the timeline (e.g. procedural steps) of the investigation, and fairly summarize relevant evidence, participant statements, and responses to questions. The investigator will provide a completed investigation report concurrently to both parties and each party's advisor, if any, upon a party's signed information release for their advisor of choice at least 10 days prior to the date of the scheduled hearing to review and provide a written response at the hearing. A copy of the completed investigation report will be issued to the Title IX Coordinator, and to the hearing officer assigned for the hearing.

G. Standard of Evidence and Presumption of Not Responsible. .

All Grievance Processes will use the preponderance of the evidence standard, as defined in this Policy. By law, it is presumed that the Respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the Grievance Process.

H. Live Hearing – Determination of Responsibility

1. Absent a Formal Complaint dismissal (if applicable), UTMB will provide a live hearing for all Formal Complaints subject to the Title IX Grievance Process as outlined in this Policy. After the parties have had at least 10 days to review the final investigation report, an appointed decision-maker will provide the following:
 - a) Each party will have an opportunity to submit written, relevant questions that a party wants asked of the other party and witnesses.
 - b) Each party will be provided the written answers from the other party and witnesses.
 - c) Each party will have an opportunity to ask additional, limited follow-up questions in writing of the other party and witnesses.
 - d) Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 - e) The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

- f) After this process by which the parties may ask questions of each other and any other witnesses, the decision-maker will make a determination regarding responsibility, as outlined in Section VII. H 11 in this Policy.
2. Written Notice of the Hearing. UTMB will provide at least 10 days written notice to participants of the hearing (and the participant's advisor, if any, upon a participant's signed information release for their advisor of choice), including the date, time, location, names of all participants of the hearing (including the hearing officer, and all parties and participants in the investigation report), purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered.
3. Challenges to the Hearing Panel. Either party may challenge the fairness, impartiality or objectivity of a hearing panel officer. The challenge must be submitted in writing to the hearing panel chair through the office coordinating the hearing within 4 days after notice of the identity of the hearing panel officers and must state the reasons for the challenge. The hearing panel chair will be the sole judge of whether the hearing panel officer can serve with fairness, impartiality, and objectivity. In the event that the hearing panel officer is recused, an alternative hearing officer will be assigned in accordance with the institution's procedures.
4. Hearing Panel Duties at the Hearing. The hearing panel will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question participants who testify at the hearing, and is entitled to have the advice and assistance of legal counsel from the Office of General Counsel of the U.T. System.
5. Access to Evidence. Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report, as outlined in Section VII. E. in this Policy.
6. Separate Rooms and Virtual Participation. At the request of either party, UTMB will provide the hearing to occur with the parties located in separate rooms with technology enabling the hearing panel and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.
7. Each party may make opening and closing statements.
8. Privileged Information Excluded. No person will be required to disclose information protected under a legally recognized privilege. The hearing panel must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
9. Advisor of Choice. Each party may have an advisor of their choice at the hearing. If a party does not have an advisor, UTMB will provide one. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.

- 10.** Questioning of the participants in the hearing: The hearing panel may, at the hearing panel's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The advisors may ask questions under the following procedure:
- a)** The advisor will ask a question of the applicable participant.
 - b)** Before the participant answers a question, the hearing panel will rule as to whether the advisor's question is relevant to the alleged conduct charges.
 - c)** If the hearing panel rules the advisor's question as not relevant, then the hearing panel must explain any decision to exclude a question as not relevant. If the hearing panel allows the question as relevant, the participant will answer it.

Prior Sexual History: A Complainant's sexual predisposition or prior sexual behavior are not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.

- 11.** Hearing Panel Determination. The hearing panel will issue a written determination, which must include the following:
- a)** The allegations that potentially constitutes prohibited conduct under this Policy;
 - b)** A description of all of the procedural steps of the Grievance Process under this Policy (from receipt of a Formal Complaint to the determination regarding responsibility of the Respondent, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
 - c)** The findings of fact supporting the hearing panel's determination;
 - d)** The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
 - e)** The disciplinary sanctions, if applicable;
 - f)** The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
 - g)** The institution's procedures and permissible bases for the parties to appeal, if applicable

The hearing panel will send a copy of the written determination concurrently to the parties, in addition to the Dean (for student Respondents) or appropriate administrator (for employee Respondents), and the Title IX Coordinator.

The hearing will be recorded in audio or audiovisual format and may be transcribed at the discretion of UTMB. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

12. Sanctions and Remedies. The following sanctions and remedies may be considered by the hearing panel in accordance with this Policy:

a) Possible Sanctions and Remedies for Student Respondents:

- i.** Educational training;
- ii.** No shared classes or extra-curricular activities;
- iii.** Disciplinary probation;
- iv.** Withholding of grades, official transcript, and/or degree;
- v.** Bar against readmission, bar against enrollment, drop from one or more classes, and/or withdrawal from the University;
- vi.** Suspension of rights and privileges, including but not limited to participation in athletic or extracurricular activities;
- vii.** Denial of degree;
- viii.** Suspension from the University for a specific period of time. Suspension is noted on the academic transcript with the term “Disciplinary Suspension.” The notation can be removed upon the request of the student in accordance with the University’s procedures when all conditions of the suspension are met;
- ix.** Expulsion (permanent separation from the University). Expulsion creates a permanent notation on the student’s academic transcript;
- x.** Revocation of degree and withdrawal of diploma; and/or
- xi.** Other sanction(s) or remedies as deemed appropriate under the circumstances.

b) Possible Sanctions and Remedies for Employee Respondents:

- i.** Job demotion or reassignment;
- ii.** Suspension with or without pay for a specific period of time;

- iii. Dismissal or termination;
- iv. Ineligibility for rehire; and/or
- v. Other sanction(s) or remedies as deemed appropriate under the circumstances

I. Appeals and Additional Processes Provided to Students and Employees.

Appeals. Either party may appeal in writing to a hearing panel's determination regarding a Respondent's responsibility under the Grievance Process or from UTMB's dismissal of a Formal Complaint (or any allegations in the Formal Complaint) within 10 days of notification of such a determination, on the following bases:

- 1. A procedural irregularity that affected the outcome of the matter;
- 2. There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or
- 3. The Title IX Coordinator, investigator(s), or hearing officer(s) on the hearing panel had a conflict of interest or bias for or against the parties (generally, or specifically in this matter) that affected the outcome of the matter.

The appellate officer must not be the same person as the Title IX Coordinator, investigator(s), or hearing officer in the Grievance Process. Both parties will be notified in writing when an appeal is filed and the appeal procedures will apply equally for both parties.

Any non-appealing party (or UTMB) will have seven (7) days from the notification of an appeal to submit a written statement in support of the outcome. The decision-maker on the appeal will release a written decision within 21 days from the date of the appeal.

The appellate officer will release a written decision within 21 days from the date of the appeal to:

- 1. Affirm the hearing panel's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable;
- 2. Affirm the hearing panel's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- 3. Remand the process back to the hearing stage for the hearing panel to remedy any procedural irregularity or consider any new evidence;
- 4. Reverse the hearing panel's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- 5. Affirm or amend the sanctions and/or remedies outlined in the administrative disposition issued under Section IX of this Policy.

Grievance Process Documentation. UTMB (through the appropriate office) will retain all of the documentation included in the Grievance Process (outlined in VII of this Policy) for seven (7) years, in accordance with state and federal records laws and University policy. All documentation of records are private and confidential to the extent possible under law. Student records of the Grievance Process are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA), the Texas Public Information Act (TPIA), and included in the employee's official employment record.

Grievance Process Timeframe. The entire Grievance Process (outlined in Section VII of this Policy, including any appeal) will be completed in no more than 150 days from the filing of the Formal Complaint. However, the circumstances may require a temporary delay in this timeframe, and UTMB may extend this timeframe for good cause. In such an instance, UTMB will provide written notice to the parties of the delay or extension and the reason(s) for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

VIII. Emergency Removal and Employee Administrative Leave.

- A.** Emergency Removal. A Respondent may be removed from UTMB's education program or activity on an emergency basis if, after an individualized safety and risk analysis, it is determined that such a removal is justified because the Respondent poses an immediate threat to the physical health or safety of an individual arising from the allegations of Sexual Misconduct. Under these circumstances, the Respondent will be notified in writing of the emergency removal from UTMB's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.
- B.** Employee Administrative Leave. An employee Respondent may be placed on administrative leave, in accordance with UTMB's policy and procedures on employee administrative leave, during the pendency of a Grievance Process, as outlined in this Policy.

IX. Alternative Grievance Process for Non-Title IX Sexual Misconduct Complaints

A. Assessment of Complaint.

- 1. The Title IX Coordinator or designee will conduct a preliminary assessment of the complaint and notify the Complainant of the methods of resolution which are appropriate based on the facts of the complaint. When both formal and informal resolution is appropriate, the Complainant may opt to pursue informal resolution, but may elect to resolve the complaint formally at any point.

B. Informal Resolution of Certain Complaints. (OPTIONAL)

Informal resolution may be appropriate:

- With a complaint of Sexual Misconduct that has been dismissed under Title IX, not including sexual violence as defined in this Policy; and
- When both parties are categorically similar (i.e. employee/employee or student/student).

- 1. Informal Assistance. If informal assistance is appropriate, the individual will be provided assistance in informally resolving the alleged Sexual Misconduct. Assistance

may include providing the Complainant with strategies for communicating with the offending party that the behavior is unwelcomed and should cease, directing a UTMB official to inform the offending party to stop the unwelcomed conduct or initiating mediation. However, UTMB may take more formal action, including disciplinary action, to ensure an environment free of sexual harassment or sexual misconduct.

2. Timeframe. Informal resolutions should be completed as soon as possible.
3. Documentation. UTMB will document and record informal resolutions, which will be retained by the Title IX Office in accordance with records retention requirements.

C. Investigation

1. After an investigator is assigned, the Respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.
2. The parties may present any document or information that is believed to be relevant to the complaint, including the names of witnesses who may provide relevant information.
3. The investigators will interview relevant and available witnesses. Neither the Complainant nor the Respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
4. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. The parties should be provided updates on the progress of the investigation.
5. After the investigation is complete, a written summary report³ will be issued to the Title IX Coordinator. The summary report will include factual findings and a preliminary conclusion of whether a policy violation occurred (based on a “preponderance of the evidence” standard). The initial findings from the report will also be shared with the appropriate administrator in a letter. The appropriate administrator will depend on the status of the Respondent (i.e., student, faculty, or employee).
6. After the written summary report is completed and reviewed by the Title IX Coordinator, the parties will receive notification of the outcome of the investigation in writing via email. The initial findings letter will summarize the findings of the investigation in compliance with FERPA and Texas Education Code, Section 51.971. The letter will contain enough detail to allow the parties to comment on the adequacy of the investigation or the findings. Each party will have seven (7) business days from the date the email was sent to submit written comments regarding the investigation to the Title IX Coordinator (or designee).
7. Within seven (7) business days after the deadline for receipt of comments from the parties, the Title IX Coordinator (or designee) will:
 - a) Request further investigation into the complaint;
 - b) Dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or

³ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

c) Find that the Policy was violated.

8. If it is determined that the Policy was violated, the matter will be referred to the appropriate disciplinary process.
9. The Complainant and the Respondent will be informed concurrently in writing of the decision.
10. The appropriate administrator will impose disciplinary action or sanction(s) in accordance with the applicable policies and procedures dependent on the status of the Respondent (i.e., student, faculty, or employee).

Disciplinary action against faculty and employees will be handled under UTMB's policies for discipline and dismissal of faculty and employees, as follows:

- [IHOP Policy 3.1.9 Discipline, Dismissal, and Appeal for Classified Employees](#)
- [IHOP Policy 5.3.10 Termination](#)
- UTMB Police Officers are subject to disciplinary action in accordance with The University of Texas System Police Policy 208 Discipline and Appeal Procedure.

Disciplinary actions for individuals not covered under the above-mentioned policies may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, and dismissal.

- The Student Affairs Dean of each school and the Student Conduct and Discipline Officer will impose disciplinary action, if any, against a student under [IHOP Policy 7.1.3 Student Conduct and Discipline](#). Student disciplinary actions may include, but are not limited to, probation, suspension, or expulsion.

D. Provisions Applicable to the Investigation.

1. Assistance. During the investigation process, an advisor, who may be an attorney, may assist the parties; however, the advisor may not actively participate in meetings or interviews.
2. Time Limitations. Time limitations in these procedures may be modified by the Title IX Coordinator or appropriate administrator on a written showing of good cause by the parties or UTMB.
3. Concurrent Criminal or Civil Proceedings. UTMB will not wait for the outcome of a concurrent criminal or civil justice proceeding to take action. UTMB has an independent duty to investigate complaints of sexual misconduct. (Except as provided in Section VII.F. above).
4. Documentation. UTMB shall document complaints and their resolution and retain copies of all materials in accordance with state and federal records laws and UTMB policy.

X. Dissemination of Policy and Educational Programs.

- A.** This Policy will be made available to all UTMB administrators, faculty, staff, and students online at http://www.utmb.edu/policies_and_procedures/toc.aspx and in UTMB student catalog(s) and any employee handbook of operating procedures. Periodic notices will be sent to UTMB administrators, faculty, staff, and students about UTMB's Sexual Misconduct Policy. The notice will include information about Sexual Misconduct, Retaliation, and other conduct prohibited under this Policy, including the Formal Complaint procedure, the UTMB Grievance Process and available resources, such as support services, health, and mental health services. The notice will specify the right to file a Formal Complaint under this Policy, right to file a police report with law enforcement, the Title IX's Coordinator's contact information, and will refer individuals to designated offices or officials for additional information. The Title IX Coordinator will send all enrolled students this notice via email at the beginning of each fall and spring semester with a list of upcoming programs, events, and ongoing campaigns.
- B.** Ongoing Sexual Misconduct Training. UTMB's commitment to raising awareness of the dangers of Sexual Misconduct includes providing ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained UTMB personnel. Preventive education and training programs will be provided to UTMB administrators, faculty, staff, and students and will include information about primary prevention, risk reduction, and bystander intervention: <https://www.utmb.edu/studentservices/departments/title-ix>.
- C.** Training of Title IX Coordinators, Investigators, Hearing Officers and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over UTMB Grievance Processes and appeals will receive training each academic year about applicable prohibited conduct, Grievance Processes, due process, and UTMB policies related to Sexual Misconduct. All training materials used to train Title IX-related personnel (e.g. Title IX Coordinators, deputies, investigators, hearing officers, and appellate officers (among others)) will be made available on the UTMB's Title IX website: <https://www.utmb.edu/studentservices/departments/title-ix>.
- D.** Annual Reporting and Notice. UTMB's Title IX General Policy Statement will be made available to all students, faculty, and employees online; in required publications; and in specified departments.

XI. Additional Conduct Violations.**A. Retaliation.**

Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including witnesses or any UTMB employee) in a Grievance process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from UTMB. If any participant in a Grievance Process believes they have been subject to Retaliation (as defined in this Policy), they should immediately report the alleged retaliatory conduct to the Title IX Office. See IHOP Policy 03.02.09 Non-Retaliation Policy for more information.

B. Failure to Report.

As stated in section IV D. above, a Responsible Employee who knowingly fails to report is subject to discipline up to and including termination through the applicable disciplinary

process.

C. False Information and False Complaints.

Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to termination or dismissal under the applicable disciplinary process. A determination that a Respondent is not responsible for the allegations of Sexual Misconduct does not indicate a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

D. Interference with the Grievance Process.

Any person who interferes with the Grievance Process outlined under this Policy is subject to disciplinary action up to and including dismissal or separation from UTMB. Interference with a Grievance Process may include, but is not limited to:

1. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
2. Removing, destroying, or altering documentation relevant to the Grievance Process; or
3. Knowingly providing false or misleading information to the investigator or Title IX Coordinator, investigator or hearing panel, or encouraging others to do so.

E. No Effect on Pending Personnel or Academic Actions Unrelated to the Complaint.

The filing of a Formal Complaint under this Policy will not stop or delay any action unrelated to the Formal Complaint, including: (1) any evaluation or disciplinary action relating to a Complainant who is not performing up to acceptable standards or who has violated UTMB rules or policies; (2) any evaluation or grading of students participating in a class, or the ability of a student to add/drop a class, change academic programs, or receive financial reimbursement for a class; or (3) any job-related functions of a UTMB employee. Nothing in this section limits UTMB's ability to take interim action or execute an emergency removal.

XII. Definitions and Examples.⁴

Complainant: The individual who is alleged to be the victim of any prohibited conduct under this Policy.

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

Confidential Employees: Confidential Employees include counselors in Counseling and Psychological Services, a health care provider in Health Services, or clergypersons. Additionally,

⁴ The definitions provided in the main body of the text are the definitions adopted by the UTMB. When applicable, we have included the state law definition. In any criminal action brought by law enforcement, the state law definition will apply.

employees who receive information regarding an incident of sexual misconduct under circumstances that render the employee's communications confidential or privileged under other law (such as attorneys) are also considered "Confidential Employees. Internal employees designated to serve as advisors in the Grievance Process are also confidential employees.

Note: Under state law, Confidential Employees who receive information regarding incidents of sexual harassment, sexual assault, dating violence or stalking committed by or against a student or an employee of the University, are required to report the **type of incident** to the Title IX Coordinator (or Deputy Coordinators). Confidential Employees may not include any information that would violate a student's expectation of privacy. The Confidential Employee's duty to report an incident under any other law also applies.

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

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

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

The definition of consent for the crime of sexual assault in Texas can be found in Section 22.011(b) of the Texas Penal Code.⁵

Dating Violence⁶: Violence committed by a person who is or has been in a social relationship of a

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

⁶ Dating Violence is defined by the Texas Family Code, Section 71.0021 as: (a) an act, other than a defensive measure to protect oneself, by an actor that:

- (1) is committed against a victim:
 - (A) with whom the actor has or has had a dating relationship; or
 - (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and
- (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
- (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:
 - (1) the length of the relationship;
 - (2) the nature of the relationship; and
 - (3) the frequency and type of interaction between the persons involved in the relationship.

A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b). Texas Penal Code, Section 22.01 provides the criminal penalties associated with Dating Violence.

romantic or intimate nature with the victim. The existence of such a relationship will be determined based on the consideration with consideration of the following factors:

- a) The length of the relationship;
- b) The type of relationship; and
- c) The frequency of interaction between the persons involved in the relationship

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

Domestic (Family) Violence⁷: includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

Hostile Environment: exists when sexual misconduct is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from the University's education program or activity or an employee's terms and conditions of employment.⁸ A hostile environment can be created by anyone (e.g., administrators, faculty members, employees, students, and UTMB visitors) involved in an education program or activity or work environment.

In determining whether sexual misconduct has created a hostile environment, UTMB considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was mistreated. To conclude that conduct created or contributed to a hostile environment, UTMB must also find that a reasonable person in the individual's position would have perceived the conduct as undesirable or offensive.

To ultimately determine whether a hostile environment exists for an individual or individuals, UTMB may consider a variety of factors related to the severity, persistence, or pervasiveness of the sexual misconduct, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of the persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected an individual's education or employment.

The more severe the sexual misconduct, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the sexual misconduct is

⁷ Family Violence is defined by the Texas Family Code Section 71.004 as:

- (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;
- (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or
- (3) dating violence, as that term is defined by Section 71.0021.

Texas Penal Code Section 22.01 provides the criminal penalties associated with Domestic (Family) Violence.

⁸ Depending on the facts of a particular case, the University may investigate claims of hostile work environment under this Policy, the University's gender discrimination policy, or both. See Department of Education, Office for Civil Rights, January 2001 Revised Sexual Harassment Guidance, page 2.

not particularly severe.

Incapacitation: Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized determination.

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, incontinence or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

An individual’s level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity is aware of both their own and the other person’s level of intoxication and capacity to give consent.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one’s own or the other individual’s intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

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

UTMB offers the following guidance on consent and assessing incapacitation:

After establishing that a person is in fact incapacitated, the University asks two questions:

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

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

A Respondent will be found to have violated policy only if the Respondent knew of should have known that the person was incapacitated.

Intimidation: Unlawfully placing another person in reasonable fear of bodily harm through the use

of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

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

Participants – The term “participants” includes the Complainant, Respondent, and any witnesses.

Parties: The term “parties” refers to the “Complainant” and the “Respondent” under this Policy. .

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

Respondent: The individual who has been reported to be the perpetrator of prohibited conduct under this Policy.

Responsible Employee: A UTMB employee who has the duty to report incidents of and information reasonably believed to be Sexual Misconduct to the Title IX Coordinator. Responsible employees include all employees at UTMB. Employees with confidentiality obligations as defined in Section IV. G. are not included in the definition of responsible employee. Responsible Employees must report all known information concerning the incident to the Title IX Office and must include whether a complainant has expressed a desire for confidentiality in reporting the incident.

Retaliation: Any adverse action (including, but it not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone *because* the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint, participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities. Retaliation includes, but is not limited to, intimidation, threats or harassment against any complainant, witness or third party.

Sex Discrimination – Occurs when an individual is treated less favorably on the basis of that person’s sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype. Sexual harassment, as defined in this Policy, is a form of sex discrimination.

Sexual Assault⁹: An offense that meets the definition of rape, fondling, incest, or statutory rape:

⁹ Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

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

- a) *Rape*: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- b) *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c) *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d) *Statutory Rape*: Sexual intercourse with a person who is under the statutory age of consent.

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

Sexual Harassment: Conduct on the basis of sex that satisfies one or more of the following:

- a) Quid pro quo: An employee of the institution conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- c) "Sexual assault," "dating violence," "domestic violence," or "stalking" as defined in this Policy.

Subsections (a) and (c) in this definition are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access, because such conduct is sufficiently serious to deprive a person of equal access. Therefore, any instance of quid pro quo sexual harassment and any instance of sexual assault, dating violence, domestic violence, and stalking are considered sexual harassment under this Policy.

Sexual Misconduct: A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes, but is not limited to, sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence, stalking, and other Inappropriate Sexual Conduct. Sexual Misconduct can be committed by any person, including strangers or acquaintances.

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

c) Causing the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor.

Stalking¹⁰: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress. For the purposes of this definition--

- a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

XIII. Relevant Federal and State Statutes

[Title IX of the Higher Education Amendments of 1972](#) (Title IX)

[Title VII of the Civil Rights Act of 1964](#) (Title VII)

[Campus Sexual Violence Elimination Act](#) (SaVE Act)

[Family Education Rights and Privacy Act](#) (FERPA)

Texas Education Code, Subchapter E-2: Reporting Incidents of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.251-51.259

Texas Education Code, Subchapter E-3: Sexual Harassment, Sexual Assault, Dating Violence, and Stalking §51.281-51.291

XIV. Relevant System Policies and Procedures

[Regent Rule and Regulations, Rule 30601 – Discipline and Dismissal of Classified Employees](#)

XV. Related UTMB Policies and Procedures

[IHOP - 03.01.09 - Discipline, Dismissal, and Appeal for Classified Employees](#)

[IHOP - 05.03.10 - Termination](#)

[IHOP – 07.01.03 Student Conduct and Discipline](#)

XVI. Dates Approved or Amended

<i>Originated: 7/01/2015</i>	
<i>Reviewed with Substantive Changes</i>	<i>Reviewed without Substantive Changes</i>
09/12/2018	11/2/2020
12/16/2019	12/21/2023

¹⁰ Stalking as defined by Texas Penal Code, Section 42.072 is when an individual on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

- a) is considered harassment, or that the actor knows or reasonably should know the other person will regard as threatening: i.bodily injury or death for the other person; ii.bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or iii.that an offense will be committed against the other person's property;
- b) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- c) would cause a reasonable person to:
 - i. fear bodily injury or death for himself or herself;
 - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship; iii.fear that an offense will be committed against the person's property; or
 - iv.feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

08/12/2020	
09/13/2021	

XVII. Contact Information

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