

**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/studentervices/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) which requires institutions to provide mechanisms for reporting specific crimes that occur on or near college campuses. Sexual misconduct, as defined in Section XII, Definitions and Examples, will not be tolerated and individuals who engage in sexual misconduct 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 violations of this Policy to the Title IX Coordinator or Deputy Coordinators (collectively “Title IX Office”) as identified in Section IV. G.
- C. Free Speech. This Policy encourages and respects the right of free speech guaranteed by the First Amendment of the Constitution and the principles of academic freedom. Constitutionally protected expression cannot be considered harassment under this policy. Each faculty member is entitled to full freedom in the classroom in discussing the subject that they teach. The right to free speech and principles of academic freedom are not absolute, however. The offensive conduct underlying some incidents might be protected speech, but it may still be in contradiction to the University’s commitment to academic freedom, integrity, honesty, dignity, respect and honorable conduct (see generally Regents Rule 10901, Statement of U.T. System Values and Expectations). In these instances, constitutional rights will continue to be protected, but UTMB will also exercise its right to speak and engage in educational dialogue with those engaged in these types of behaviors. Further, some offensive conduct, even though it contains elements of free speech, may rise to the level of the type of conduct that creates a sexually hostile environment and, thus, violates this policy.

III. Applicability

This Policy applies to all UTMB administrators, faculty, staff, students, and third parties within the University'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 regardless of where it occurs, including off UTMB property, if it potentially affects the complainant's education or employment with UTMB or potentially affects the UTMB community. It also applies regardless of the gender, gender identity or sexual orientation of the parties. In addition, it applies to any complaint made verbally or in writing.

IV. Filing a Complaint and Reporting Violations.

A. Title IX Coordinator

All administrators, faculty, staff, students, and third parties are strongly encouraged to immediately report any incidents of sexual misconduct (including sexual harassment and sexual violence) and other inappropriate sexual conduct to the Title IX Office.

1. Anonymity. You may file an anonymous complaint in any manner, including 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.
2. 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. Complainants who want to discuss a complaint in strict confidence may use the resources outlined in Section IV. E.
3. Timeliness of Complaint. You should report sexual misconduct as soon as possible after you (the complainant) becomes aware of the inappropriate conduct.

B. 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.

C. Responsible Employees.

1. You may also report incidents of sexual misconduct to Responsible Employees, as defined in Section XII.
2. Responsible Employees can find contact information for the Title IX Office in Section IV. G. of this Policy and at the following website:
<http://www.utmb.edu/studentervices/titleIX.asp>.
3. If a Responsible Employee does not report incidents of alleged sexual harassment within three (3) business days to the Title IX Office, he or she could be subject to disciplinary action, up to and including termination. A Responsible Employee must immediately report alleged acts of sexual violence to the Title IX Office; any delay beyond 24 hours could result in disciplinary action, up to and including termination.

D. Reporting to Law Enforcement.

You may also make a complaint 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.

E. Confidential Support and Resources.

Physical and mental health care professionals and pastoral counselors (including those who act in that role under the supervision of these individuals), are prohibited by confidentiality laws from reporting any information about an incident to anyone, in any way that identifies the victim, without the victim's permission. Thus, students may discuss an incident with a counselor in Counseling and Psychological Services, a health care provider in Health Services, the clergyperson of the student's choice, or an off-campus resource (i.e. rape crisis center, doctor, psychologist, etc.) without concern that the incident will be reported to the Title IX Office. Employees may also seek assistance from the Employee Assistance Program, their own personal health care provider, the clergyperson of the employee's choice, or an off-campus rape crisis resource without concern that the incident will be reported to the Title IX Office. Community resources that provide such services are:

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

F. Immunity.

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

G. Title IX Coordinator and Deputy Coordinator Contact Information.

Primary Office: Rebecca Sealy Suite 2.302
Other Office: Jamail Student Center. 2.126
Title IX Phone: 409-772-2112
Title IX Email: Title.IX@utmb.edu

H. Reporting to Outside Entities.

You may also contact the following external agencies:

For students:

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

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.

- A.** UTMB has great respect for the privacy of the parties in a complaint. Under federal law, however, Responsible Employees who receive a report of sexual misconduct must share that information with the Title IX Office. Those individuals may need to act to maintain campus safety and must determine whether to investigate further under Title IX, regardless of the complainant's request for confidentiality. In making determinations regarding requests for confidentiality and the disclosure of identifying information to the respondent, the Title IX Coordinator should deliberately weigh the rights and interests of the complainant, the respondent, and the campus community.
- B.** In the course of the investigation, UTMB may share information only as necessary with people who need to know, which may include but is not limited to the investigators, witnesses, and the respondent. UTMB will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation. 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.

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 sexual misconduct 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 in the City of Galveston,

but off campus, a report may be filed with the Galveston 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.

3. **Counseling and Other Services.** A person who has experienced sexual misconduct is strongly encouraged to seek counseling or medical and psychological care even if he or she does not plan to request a SAFE or report the assault to the police. He or she may be prescribed medications to prevent sexually transmitted infections and/or pregnancy even if the police are not contacted or if a SAFE is not performed. Similarly, other individuals impacted or affected by a sexual misconduct complaint are encouraged to seek counseling or psychological care.

You may receive medical care at UTMB's Student Health Services (for students only), at a local emergency room, or by a private physician. You 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 your 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) 747-4357

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. Interim Measures and Ongoing Assistance.

UTMB will offer reasonably available individualized services to the parties in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Interim measures may include but are not limited to reassignment, suspension, counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, withdrawal from or retake of a class without penalty, campus escort services, restrictions on contact between the parties, change in work or housing locations, leaves of absences, increased security and monitoring of certain areas of campus, or other similar accommodations tailored to the individualized needs of the parties.

VII. Investigation Process – What You Need to Know.

A. Key Officials in an Investigation.

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 overseeing the administrative response to reports of sexual misconduct and is available to

discuss options, provide support, 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.

Any member of the UTMB community may contact the Title IX Coordinator with questions.

UTMB Department of Internal Investigations

Title IX Coordinator

Rebecca Sealy, Suite 2.302
(409) 772-2112

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

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

C. Notification of UTMB Offices Offering Assistance.

After receiving a complaint, the Title IX Office will inform the parties of available resources and assistance. While taking into consideration requested confidentiality, the Student Ombudsperson or Employee Relations office may serve as a liaison between the parties and the Title IX Office during the investigation.

D. Informal Resolution of Certain Complaints. (OPTIONAL)

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

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.

E. Formal Complaint and Investigation.

1. Formal Complaint. To begin the investigation process, the complainant should submit a written statement setting out the details of the conduct that is the subject of the complaint, including the following:
 - a) Complainant's name and contact information;
 - b) The name of the person directly responsible for the alleged violation;
 - c) A detailed description of the conduct or event that is the basis of the alleged violation;
 - d) The date(s) and location(s) of the alleged occurrence(s);
 - e) The names of any witnesses to the occurrence(s);
 - f) The resolution sought; and
 - g) Any documents or information that is relevant to the complaint.

For additional assistance with filing a complaint, the Title IX Office can provide an intake form.

UTMB may initiate an investigation regardless of the manner in which a complaint is received or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the complaint is not in writing, the investigator should prepare a statement of what he or she understands the complaint to be and ask the complainant to verify that statement. If a UTMB office, other than the Department of Internal Investigations/Title IX Office receives the complaint, it must be referred to the Title IX Office, as soon as possible.

2. Standard of Proof.

All investigations under this Policy will use the preponderance of the evidence standard, as defined in Section XII, Definitions and Examples, to determine violations of this Policy.
3. Investigation.
 - a) After an investigator is assigned, the respondent will be provided notice of the complaint and be allowed a reasonable time to respond in writing.

- b) The parties may present any document or information that is believed to be relevant to the complaint, including the names of witnesses who may provide relevant information.
- c) The investigators will interview relevant and available witnesses. Neither the complainant nor the respondent will normally attend these interviews or the gathering of evidence; however, if either one is permitted to attend, the other shall have the same right.
- d) The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint. The parties should be provided updates on the progress of the investigation.
- e) After the investigation is complete, a written summary report¹ 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).
- f) 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 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.
- g) Within seven (7) business days after the deadline for receipt of comments from the parties, the Title IX Coordinator (or designee) will:
 - (1) Request further investigation into the complaint;
 - (2) Dismiss the complaint if it is determined that no violation of policy or inappropriate conduct occurred; or
 - (3) Find that the Policy was violated.
- h) If it is determined that the Policy was violated, the matter will be referred to the appropriate disciplinary process.
- i) The complainant and the respondent will be informed concurrently in writing of the decision.
- j) 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).

F. Timelines.

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

At the request of law enforcement, UTMB may defer its fact-gathering until after the initial stages of a criminal investigation. UTMB will promptly resume its fact-gathering as soon as law enforcement has completed its initial investigation, or if the fact-gathering is not completed in a reasonable time, UTMB will move forward. The filing of a complaint under this Policy does

¹ Appropriate report redactions will be made to comply with Texas Education Code, Section 51.971.

not excuse the complainant from meeting time limits imposed by outside agencies. Likewise, the applicable civil or criminal statute of limitations will not affect UTMB's investigation of the complaint.

G. Due Process and Privacy Rights.

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

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

H. Remedies.

1. In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, UTMB will take appropriate action(s) to resolve complaints of sexual misconduct, prevent any recurrence and, as appropriate, remedy any effects. These actions include but are not limited to:

- a) Imposing sanctions against the respondent, including attending training, suspension, termination or expulsion;
- b) Ensuring the complainant and respondent do not share classes, working environments or extracurricular activities;
- c) Making modifications to the on campus living arrangements of the respondent or complainant (if the complainant requests to be moved);
- d) Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- e) Providing the parties extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
- f) Determining whether sexual misconduct adversely affected the complainant's UTMB standing;
- g) Designating an individual specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist victims whenever needed;
- h) Conducting, in conjunction with UTMB leaders, a UTMB climate check to assess the effectiveness of efforts to ensure that UTMB is free from sexual misconduct, and using that information to inform future proactive steps that UTMB will take;
- i) Providing targeted training for a group (students, staff, faculty, departments), including bystander intervention and sexual misconduct prevention programs;
- j) Issuing policy statements or taking other steps to clearly communicate that UTMB does not tolerate sexual misconduct.

I. Sanctions and Discipline.

1. 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.

2. 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.

VIII. Provisions Applicable to the Investigation.

- A. 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.
- B. 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.
- C. 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).
- D. 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.

IX. 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 publications. Periodic notices will be sent to UTMB administrators, faculty, staff and students about UTMB's Sexual Harassment/Sexual Misconduct Policy. The notice will include information about sexual misconduct, including the complaint procedure, and about UTMB's disciplinary policies and available resources, such as support services, health, and mental health services. The notice will specify the right to file a complaint under this Policy and with law enforcement and will refer individuals to designated offices or officials for additional information.
- B.** Ongoing Sexual Misconduct Training. UTMB's commitment to raising awareness of the dangers of sexual misconduct includes offering ongoing education through annual training and lectures by faculty, staff, mental health professionals, and/or trained UTMB personnel. Preventive education and training programs will be provided to UTMB administrators, faculty, staff, and students and will include information about risk reduction, including bystander intervention.
- C.** Training of Coordinators, Investigators, Hearing and Appellate Authorities. All Title IX Coordinators, Deputy Coordinators, investigators, and those with authority over sexual misconduct hearings and appeals will receive training each academic year about offenses, investigatory procedures, due process, and UTMB policies related to sexual misconduct to ensure the safety of victims and promote accountability.

- 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.

X. Additional Conduct Violations.

A. Retaliation.

Any person who retaliates against the parties or any other participants in an investigation or disciplinary process relating to a complaint, or 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 an investigation believes they have been subject to retaliation, 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. False Complaints.

Any person who knowingly files a false complaint under this Policy is subject to disciplinary action up to and including dismissal or separation from UTMB. A finding of non-responsibility does not indicate a report was false.

C. Interference with an Investigation.

Any person who interferes with an ongoing investigation conducted under this Policy is subject to disciplinary action up to and including dismissal or separation from UTMB. Interference with an ongoing investigation 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 investigation; or
3. Providing false or misleading information to the investigator, or encouraging others to do so.

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

The filing of a complaint under this Policy will not stop or delay any action unrelated to the complaint, including: (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.

XI. Documentation.

UTMB will confidentially maintain information related to complaints under this Policy, as required by law.

XII. Definitions and Examples.²

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

² 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.

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.

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

Consent is not effective if it results from: (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.³

Dating Violence⁴: 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 will be determined by the victim with consideration of the following factors:

³ 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.

⁴ 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

- 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) Violence⁵: 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 harassment (which is a form of sex-based harassment) is sufficiently severe or pervasive to deny or limit the individual's ability to participate in or benefit from the University's programs or activities or an employee's terms and conditions of employment.⁶ A hostile environment can be created by anyone involved in UTMB's program or activity (e.g., administrators, faculty members, employees, students, and UTMB visitors).

In determining whether sexual harassment 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 harassed. 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 considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual harassment, 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 harassment, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of sexual assault may be sufficient to create a

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

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

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

⁵ 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.

⁶ 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.

hostile environment. Likewise, a series of incidents may be sufficient even if the sexual harassment is 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. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

UTMB offers the following guidance on consent and assessing incapacitation:

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

In evaluating consent in cases of alleged incapacitation, the University asks two questions:

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

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

One need not be a medical expert in assessing incapacitation. One should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may show signs of incapacitation differently, some signs include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, 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.

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.

Parties: The term “parties” refers to the “complainant” and the “respondent” in a Title IX complaint.

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

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

Responsible Employee: A UTMB employee who has the duty to report incidents of sexual misconduct to the Title IX Office or other appropriate designee, or an employee whom an individual could reasonably believe has this duty. Responsible employees include all administrators, supervisory staff, advisors, graduate teaching assistants, and faculty who have a responsibility for students in the following capacities: teaching; advising; coaching or mentoring; or supervising in a clinical setting. Employees with confidentiality obligations as defined in Section IV. E. are not included in the definition of responsible employee. Incidents of sexual misconduct may also be reported to Responsible Employees.

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

Sexual Assault⁷: An offense that meets the definition of rape, fondling, incest, or statutory rape:

- 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.

⁷ Sexual Assault is defined by Texas Penal Code, Section 22.011 as intentionally or knowingly:

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

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

- a) Submission to such conduct is made explicitly or implicitly a term or condition of a person's student status, employment, or participation in UTMB's activities; or
- b) Such conduct is sufficiently severe or pervasive that it creates a hostile environment, as defined in this Policy.

Sexual harassment is a form of sex discrimination that includes:

- a) Sexual violence, sexual assault, stalking, domestic violence and dating violence as defined herein.
- b) Physical conduct, depending on the totality of the circumstances present, including frequency and severity, including but not limited to:
 - i. Unwelcome intentional touching; or
 - ii. Deliberate physical interference with or restriction of movement.
- c) Verbal conduct not necessary to an argument for or against the substance of any political, religious, philosophical, ideological, or academic idea, including oral, written, or symbolic expression, including but not limited to:
 - i. Explicit or implicit propositions to engage in sexual activity;
 - ii. Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
 - iii. Gratuitous remarks about sexual activities or speculation about sexual experiences;
 - iv. Persistent, unwanted sexual or romantic attention;
 - v. Subtle or overt pressure for sexual favors;
 - vi. Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
 - vii. Deliberate, repeated humiliation or intimidation based upon sex.

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

Stalking⁸: 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)

XIV. Relevant System Policies and Procedures

- [The University of Texas System Police Policy 208 Discipline and Appeal Procedure](#)

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:</i> 7/01/2015	
<i>Reviewed with Substantive Changes</i>	<i>Reviewed without Substantive Changes</i>
09/12/2018	

⁸ 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.

XVII. Contact Information

UTMB Department of Internal Investigations
Title IX Coordinator
Rebecca Sealy, Suite 2.302
(409) 772-2112

Pending UT Board of Regents Approval