

## **SECTION D: SEXUAL MISCONDUCT PROCEDURES FOR STUDENTS**

The University is committed to providing and strengthening an educational, working, and living environment where students, faculty, staff, and visitors are free from sex discrimination of any kind. Texas Tech prohibits discrimination based on sex (which includes pregnancy, sexual orientation, gender identity, and gender expression), and other types of Sexual Misconduct. Sexual Misconduct includes Title IX Sexual Misconduct, sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, sexual violence, and any other misconduct based on sex. Any acts that fall within the scope of this policy hereinafter are referred to as Sexual Misconduct. Discriminatory behavior is prohibited regardless of the manner in which it is exhibited, whether verbally, in writing, by actions, or electronically displayed or conveyed.

This section provides information regarding the University's prevention and education efforts related to sex discrimination and Sexual Misconduct. This policy, in conjunction with [TTU OP 40.03 and Texas Tech University System Regulation 07.06](#), provides students with their rights and options and also explains how the University will proceed once it is made aware of allegations of prohibited conduct in keeping with the University's values and in order to meet the legal obligations of Title IX, the Violence Against Women Act (VAWA), the Campus Sexual Violence Elimination Act (SaVE), the Clery Act, Texas Education Code, 34 CFR Part 106, and other applicable law. [Any conflict among the policies set forth in this Handbook, OP 40.03, and System Regulation 07.06 shall be resolved by System Regulation 07.06.](#)

These policies apply to all University students. The University will respond to any Sexual Misconduct and restore or preserve equal access to the University's Education Programs or Activities, as appropriate.

All investigations and procedures will be conducted in a reasonably prompt timeframe of 120 business days, and in an equitable and impartial manner. Investigations conducted under this policy are not criminal investigations. For all complaints under this policy, the burden of proof shall be a preponderance of the evidence, which means more likely than not.

The University expects all members of the University Community to comply with applicable laws, System Regulations, and University policies. Members of the University Community who violate these policies and laws may be subject to disciplinary action or sanctions, up to and including termination of employment, expulsion from the University, or being barred from University premises and events.

In accordance with federal and state laws, the University has adopted two distinct policies and

procedures for responding to reports of Sexual Misconduct. The applicable policy is based on the nature, context, and location of the alleged conduct. Title IX Sexual Misconduct is addressed in accordance with [System Regulation 07.06.A](#), and Non-Title IX Sexual Misconduct is addressed in accordance with [System Regulation 07.06.B](#). The Title IX Coordinator or designee will assume responsibility for determining which policy should be utilized to address a report of Sexual Misconduct and will coordinate the appropriate processes. The following [flowchart](#) will be utilized to assist the Title IX Coordinator in determining what policy will apply to the alleged misconduct.

### 1. **Definitions**

For purposes of this policy, the definitions below apply. However, some of these terms are also defined under state law. If a person would like to file criminal charges for any alleged violations of criminal law, the definitions as set forth in state law may apply.

- a. **Actual Knowledge** - Notice of Title IX Sexual Misconduct or allegations thereof to the University's Title IX Coordinator or Deputy Coordinators.
- b. **Complainant** – An individual who was alleged to be the victim of conduct that could constitute Sexual Misconduct.
- c. **Consent** – Mutually understandable words or actions, actively communicated both knowingly and voluntarily, that clearly conveys permission for a specific activity.
  - i. 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 their own free will to choose whether or not to engage in sexual activity.
  - ii. Before engaging in any type of sexual activity, it is the initiator's responsibility to obtain their partner's consent, either verbally or non-verbally. Silence cannot be assumed to express consent and saying "NO" is not the only way a sexual partner may communicate lack of consent. A partner may use non-verbal cues to indicate their lack of consent for any sexual activity. Some examples of non-verbal communication that demonstrate lack of consent include:
    - Resistance: pushing hands away, pulling away from partner
    - Body going limp or freezing up
    - Crying
    - Wincing
  - iii. Other points regarding consent:
    1. A person is not required to actively resist their aggressor.
    2. A person's intentional use of alcohol/drugs neither negates nor diminishes the initiator's responsibility to acquire consent before engaging in sexual activity.
    3. Consent has an expiration date. Consent on Thursday does not mean consent on Friday.
    4. A prior existing sexual relationship between consenting adults does not

imply future consent to engage in sexual activities. This is true even in marriage or other long-term sexual relationships.

**5.** A person CANNOT consent to sexual activity when they are incapacitated. Engaging in sexual activity with someone you know or reasonably should know is incapacitated is a violation of this policy. The question of what the Respondent should have known is objectively based on what a reasonable person would have known about the condition of the Complainant.

**6. Revocation of Consent**- One partner can revoke their consent at any time. Revocation must be clearly communicated verbally and/or non- verbally. Once a partner has revoked consent, the sexual activity must stop. If sexual activity continues after the other partner has revoked their consent, a sexual assault has occurred.

- d. **Education Program or Activity**- Includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the Title IX Sexual Misconduct allegedly occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- e. **Employee** – Any person who receives a W-2 or 1042-S from the University, including full- and part-time faculty, staff, and students. An employee is working in the course and scope of their employment if the Employee is performing duties in the furtherance of the University’s interests.
- f. **Formal Complaint**- Document filed by a Complainant or signed by the University’s Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the University investigate the allegation of Sexual Misconduct.
- g. **Grievance Process**- The process of addressing Formal Complaints of Sexual Misconduct before the imposition of any disciplinary or other actions that are not Supportive Measures against a Respondent.
- h. **Incapacitation** – A state of being that prevents an individual from having capacity to give consent. Incapacitation includes, but is not limited to:
  - Age: A minor cannot consent to engage in sexual activity. In Texas, the legal age of consent is 17.
  - Intellectual or other Disability: A person with a mental disorder or other cognitive issue which prohibits them from making an informed decision lacks capacity to consent to engage in sexual activity.
  - Physical Incapacitation: A person who is asleep, unconscious, and/or intoxicated to the point of no longer understanding or controlling their actions cannot consent to engage in sexual activity.
- i. **Informal Resolution**- An alternative to the Grievance Process that may be offered and facilitated by the University following the filing of a Formal Complaint and upon the voluntary, written consent of the parties

- j. **Investigative Report**- A report that summarizes the relevant evidence based upon the completion of an Investigation conducted under the Grievance Process.
- k. **Public Indecency** – Engaging in private or sexual acts in a publicly viewable location, such that it is offensive to accepted standards of decency including, but not limited to:
  - Exposing one’s genitals or private areas;
  - Public urination;
  - Defecation; and/or
  - Public sex acts.
- l. **Reporting Party** – A person or entity (in the case of the University), other than the Complainant, who reports an alleged violation of this policy.
- m. **Respondent**- An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.
- n. **Sex Discrimination** – An act that deprives a member of the University Community of their rights of access to campuses and facilities and of participation in education, services, programs, operations, employment, benefits, or opportunities with the university on the basis of the person’s sex.
- o. **Non-Title IX Sexual Misconduct**
  - **Interpersonal Violence** – For purposes of this policy, Interpersonal Violence is:
    - **Domestic or Family Violence** – Abuse or violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person with whom the Complainant is cohabiting (or has cohabited) with a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant 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.
    - **Dating Violence** – Abuse or violence, or a threat of abuse or violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. A casual acquaintanceship or ordinary socializing between two individuals does not constitute a romantic or intimate relationship. This definition does not include acts covered under Domestic or Family Violence.
  - **Sexual Assault** – Sexual contact or intercourse with a person without the person’s consent, including sexual contact or intercourse against the person’s will or in a circumstance in which the person is incapable of consenting to the contact or intercourse. Sexual Assault includes:
    - **Nonconsensual Sexual Contact** – Intentional sexual touching, however slight, with any object or part of one’s body of another’s private areas without consent. Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals;
  - Touching another with any of these body parts;
  - Making another touch you or themselves with or on any of these body parts; or
  - Any other intentional bodily contact in a sexual manner
  - **Nonconsensual Sexual Intercourse** – Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal. This can include intentional removal of a condom or other protective measure during intercourse without the consent of the partner.
  - **Sexual Exploitation** – Taking nonconsensual or abusive sexual advantage of another for the benefit of oneself or a third party. Prohibited behavior includes, but is not limited to:
    - Purposeful recording, distribution, or dissemination of sexual or intimate images or recordings of another person without that person’s full knowledge or consent;
    - Sexual voyeurism;
    - Inducing another to expose one’s genitals or private areas;
    - Prostituting another; or
    - Knowingly exposing someone to or transmitting a sexually transmitted disease without the party’s full knowledge and consent.
  - **Sexual Harassment** – Means unwelcome, sex-based verbal or physical conduct that 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.
  - **Stalking** – A course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others or would cause that person to suffer substantial emotional distress. A “course of conduct” means two or more acts in which a person 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. “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling
- p. **Sexual Misconduct** – A broad term encompassing all forms of gender-based harassment or discrimination and unwelcome behavior of a sexual nature. The term includes sexual harassment, nonconsensual sexual contact, nonconsensual sexual intercourse, sexual assault, sexual exploitation, stalking, public indecency, interpersonal violence, sexual violence, and other misconduct based on sex.
- q. **Supportive Measures**- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

- r. **Title IX Sexual Misconduct-** Conduct that allegedly occurred against a person in the United States, in a University’s Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:

Sexual Harassment that is:

1. *Quid Pro Quo.* A University employee conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
2. *Severe, Pervasive, and Objectively Offensive Conduct.* 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. Without limiting the foregoing, the following types of conduct are deemed to meet this severe, pervasive, and objectively offensive standard:
  - “Sexual Assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v);
  - “Dating Violence” as defined<sup>5</sup> in 34 U.S.C. 12291(a)(10)
  - “Domestic Violence” as defined in 34 U.S.C. 12291(a)(8) or
  - “Stalking” as defined in 34 U.S.C. 12291(a)(30).

- s. **University Community** – All faculty, staff, and students of and visitors to any University premises or University-affiliated activity.

## **2. Title IX Staff**

The Office for Student Civil Rights & Sexual Misconduct (SCRSM) will investigate complaints of Sexual Misconduct by or between students. (*Please note, some campus partners refer to SCRSM as “the Title IX Office.”*) The Texas Tech University System Office of Equal Opportunity (Office of EO) will be the primary Investigators for complaints of Sexual Misconduct by or between employees.

SCRSM staff includes the Title IX Coordinator, Assistant Title IX Coordinator/ Case Manager, Title IX Training and Outreach Coordinator, Investigators, CARE (Campus Advocacy, Response and Education) Coordinators, and a Business Assistant. Information provided to SCRSM is considered private and is only shared with other campus officials in the event of an emergency, or an educational need to know. Reports are only shared with law enforcement with the express consent of the student involved, or through a lawfully issued subpoena.

- a. Title IX Coordinator- A trained University staff member who oversees the University’s compliance with Title IX and other applicable state/federal laws. The University has also designated Title IX Deputy Coordinators, and Title IX Liaisons for students, athletics, academic affairs and employees.
- b. Case Manager/Title IX Deputy Coordinator- A trained University staff member whose role is to respond to all Sexual Misconduct reports. The Case Manager conducts Intake

meetings with the Complainant and Respondent, coordinates all Supportive Measures and remedies for students involved in Sexual Misconduct cases, and assists students with anonymous reporting. The Case Manager oversees the University's compliance in offering assistance to involved parties.

- c. Title IX Training and Outreach Coordinator- A trained University staff member who oversees training and outreach activities for the campus community. The Title IX Training and Outreach Coordinator also serves as the Hearing Coordinator and a member of the Case Management Team.
- d. Investigator- A trained University staff member whose role is to conduct a thorough, reliable, and equitable investigation and compile the information gathered into an Investigation Report. Investigators may facilitate Informal Resolutions when requested by the parties involved in the case. In cases heard by a Hearing Panel, the Investigator will present the information and evidence obtained through the Investigation to the Panel. Investigators are assigned to cases by the Title IX Coordinator or Deputy Title IX Coordinator.
- e. CARE Coordinators- CARE Coordinators are graduate students who, in conjunction with the Case Manager, connect students with resources after a referral is made to SCRSM. They serve as a student's primary point of contact. CARE Coordinators are trained to work with both Complainants and Respondents, but each Coordinator will only work with one party in a case. CARE Coordinators review and clarify process and policies, reporting options and available resources; attend meetings as a support person; review documents and materials from the investigation, report, Hearing, decision letters and sanctioning as requested; and provide general support and a safe listening space. CARE Coordinators can assist students in filing anonymous reports but are not a confidential resource. CARE Coordinators do not provide legal guidance or serve as Title IX Advisors.
- e. SCRSM Business Assistant- A staff member who assists with day to day operations of the office.

### **3. Sexual Misconduct Allegations**

The following constitute allegations that may be assigned under the Title IX and Non-Title IX Sexual Misconduct Policy.

#### **1. Title IX Sexual Misconduct**

Conduct that allegedly occurred against a person in the United States, in the University's Education Program or Activity, on the basis of sex, and that satisfies one or more of the following:

- a. Sexual Harassment-
  - 1. *Quid Pro Quo*. A University Employee conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
  - 2. Severe, Pervasive, and Objectively Offensive Conduct. 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. The following incidents are deemed to meet

the Severe, Pervasive, and Objectively Offensive standard:

- Sexual Assault- An offense classified as a forcible or nonforcible sex offense.
  - Forcible sex offense- Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, including Rape, Sodomy (oral or anal sexual intercourse), Sexual Assault with an Object, and Fondling.
  - Nonforcible sex offense- Unlawful, nonforcible sexual intercourse including incest and statutory rape.

*Note: (For complete definitions of forcible and nonforcible sex offenses, please see [System Regulation 07.06.A](#))*

- Dating Violence- Violence committed by a person who is or has been in a social relationship of a romantic nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relations, and the frequency of interaction between the persons involved in the relationship.
- Domestic Violence- 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 cohabitation 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 laws of the jurisdiction, 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 jurisdiction.
- Stalking- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress.

## 2. Non-Title IX Sexual Misconduct

a. Intimate Partner / Relationship Violence/Dating Violence For the purposes of this policy, Interpersonal Violence is:

1. Domestic or family violence is abuse or violence committed by a (1) current or former spouse or intimate partner of the Complainant, (2) person with whom the Complainant shares a child in common, (3) person who is cohabitating (or has cohabited) with the Complainant as a spouse or intimate partner, (4) person similarly situated to a spouse of the Complainant under state/local law, or (5) any other person against an adult or youth who is protected by that person's acts under the state/local domestic or family violence laws.
2. Dating violence is abuse or violence, or a threat of abuse or violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on the type and length of the relationship and the frequency of interaction between the person's involved in the relationship. A casual acquaintanceship or ordinary

socializing between two individuals does not constitute a romantic or intimate relationship. This definition does not include acts covered under Domestic or Family Violence.

3. Verbal abuse must be sufficiently severe, persistent, or pervasive that it adversely affects the Complainant's education or creates an intimidating, hostile, abusive or offensive educational environment which interferes with the student's ability to realize the intended benefits of the University's resources and opportunities.
- b. Nonconsensual Sexual Contact - Intentional sexual touching, however slight and with any object or part of one's body, of another's private areas without consent. Sexual Contact includes:
    1. Intentional contact with the breasts, buttock, groin, or genitals;
    2. Touching another with any of these body parts;
    3. Making another touch you or themselves with or on any of these body parts; or
    4. Any other intentional bodily contact in a sexual manner.
  - c. Nonconsensual Sexual Intercourse - Sexual penetration or intercourse, however slight, with a penis, tongue, finger, or any object, and without consent. Penetration can be oral, anal, or vaginal. This can include intentional removal of a condom or other protective measure during intercourse without the consent of the partner.
  - d. Public Indecency - Engaging in private or sexual acts in a publicly viewable location, such that it is offensive to accepted standards of decency. Including, but not limited to exposing one's genitals or private area(s), public urination, defecation, and/or public sex acts.
  - e. Sexual Exploitation - Taking non-consensual or abusive sexual advantage of another for the benefit of oneself or a third party. Prohibited behavior includes, but is not limited to:
    1. Photography or video recording of another person in a sexual, intimate, or private act without that person's full knowledge and consent;
    2. Purposeful distribution or dissemination of sexual or intimate images or recordings of another person without that person's full knowledge and consent;
    3. Sexual voyeurism;
    4. Inducing another to expose one's genitals or private areas;
    5. Prostituting another student;
    6. Knowingly exposing someone to or transmitting a sexually transmitted infection without the party's full knowledge and consent.
  - f. Sexual Harassment - Unwelcome sex-based verbal, written, or physical conduct when:
    - (1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment or education;
    - (2) Submission to or rejection of such conduct is used as a basis for decisions affecting employment or education; or
    - (3) Such conduct has the purpose or effect of interfering with the individual's work or educational performance or of creating an intimidating, hostile, or offensive working or educational environment. To constitute an intimidating, hostile, or offensive working or educational environment, the

complained of conduct must be either severe, persistent, or pervasive.

- g. Stalking - A course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or would cause that person to suffer substantial emotional distress.

1.A "course of conduct" means two or more acts in which a person 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.

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

### **3. Complicity or Knowingly Present**

- a. Assisting via acts or omissions another student, individual, or group in committing or attempting to commit a violation of the Code of Student Conduct.
- b. Complicity with or failure of any organized group to address known or obvious violations of the Code of Student Conduct by its members.
- c. Any person who is knowingly present for the commission of a violation of the Code of Student Conduct and does not take steps to remove themselves from the location of the violation.

- 4. **Discriminatory Harassment** - Conduct based on a student's sex, race, national origin, religion, age, disability, sexual orientation, gender, or other protected categories, classes, or characteristics that is sufficiently severe, persistent, or pervasive that it adversely affects the victim's education or creates an intimidating, hostile, abusive or offensive educational environment which interferes with the student's ability to realize the intended benefits of the University's resources and opportunities.

### **5. Failure to Comply**

- a. Failure to comply with reasonable directives of a University official acting in the performance of their duties.
- b. Failure to present student identification on directive or identify oneself to any University official acting in the performance of their duties.
- c. Any intentional, retaliatory, or adverse action taken by a Respondent, individual, or third party, absent legitimate nondiscriminatory purposes, against a party or supporter of a party to a Misconduct or Sexual Misconduct proceeding or other protected activity under this Code of Student Conduct.
- d. Failure to comply with the sanctions imposed by the University under the Code of Student Conduct or the Student Handbook.

### **6. Retaliatory Discrimination or Harassment**

- a. Any intentional, adverse action taken by an individual or allied third party, absent legitimate nondiscriminatory purposes, against a participant [or supporter of a participant] in a conduct process, civil rights grievance proceeding, or other protected activity.

### **4. Reporting Sexual Misconduct**

All employees, including student employees, who in the course and scope of employment witness or receive information regarding a possible incident of sexual harassment, sexual assault, dating violence, or stalking against a student, employee, or visitor to the institution shall promptly report the incident to the Title IX Coordinator or Deputy Coordinators. While

not required, students are strongly encouraged to report any incident of Sexual Misconduct to the University, including incidents in which the student was a victim.

Students may also report incidents of Sexual Misconduct to law enforcement, including University and local police. Complainants may choose to notify law enforcement and will be provided the assistance of the Title IX Coordinator, Case Manager, CARE Coordinator, or Investigator in contacting these authorities if the individual wishes. Parties may also choose not to notify law enforcement of incidents of Sexual Misconduct. A student who experiences sexual or dating violence is encouraged to seek medical care for treatment and preservation of evidence, if applicable, as soon as possible after the incident. Preserving DNA evidence can be key to a sexual violence case. Students can undergo a sexual assault forensic exam (SAFE) performed by a sexual assault nurse examiner (SANE) to preserve physical evidence with *or without* police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, a SANE may still collect evidence up to 4 days following a sexual assault. With the examinee's consent, the physical evidence collected during this medical exam can be used in a criminal investigation. To undergo a SAFE, go to University Medical Center or Covenant Hospital.

Anyone who experiences any form of Sexual Misconduct should also preserve other evidence relevant to the incident reported, such as items of clothing, photographs, phone records, text messages, social media activity, computer records, and other documents.

### *Making a Report*

At Texas Tech, students can make a report in a variety of ways. Reports are private, and will not be shared with law enforcement, other students, faculty, non-SCRSM staff or parent/family members without express consent.

- Filing an incident report (a report that is not a Formal Complaint) allows the institution to provide Supportive Measures to all Parties and does not necessarily result in the initiation of a Grievance Process. Students who report incidents involving themselves will be offered individualized Supportive Measures.
- Filing an incident report online: A report can be made by visiting the online reporting form via the University Title IX & Sexual Misconduct website ([http://www.depts.ttu.edu/titleix/students/Report\\_an\\_Incident.php](http://www.depts.ttu.edu/titleix/students/Report_an_Incident.php)). This report can also be completed anonymously. Please note that reporting anonymously may limit the university's ability to stop the alleged conduct, collect evidence or initiate the Grievance Process.
- Contacting a SCRSM staff member directly: Meet with a staff member in person, speak over the phone, or communicate via email. Staff members can answer questions about the policies/procedures and describe options available to students.
  - Title IX Coordinator- Dr. Kimberly Simón; Student Union Building 232, 806.834.1949, [kimberly.simon@ttu.edu](mailto:kimberly.simon@ttu.edu) or [titleix@ttu.edu](mailto:titleix@ttu.edu)
  - Case Manager- Meredith Holden; Student Union Building Room 232; 806.834.5556, [meredith.holden@ttu.edu](mailto:meredith.holden@ttu.edu)

- CARE Coordinators- Student Union Building Room 232; 806.742.7233
- Complete a report via mail: Reports of incidents of Sexual Misconduct may be mailed to Kimberly Simón, Box 42031, Lubbock, TX 79409.
- Make an anonymous report: Staff members are available to assist a student in making an anonymous report. Anonymous reports can help put a student in touch with resources even if they are not sure they would like to proceed with formal reporting and investigation procedures. Anonymous reports can be made through the Case Manager and CARE Coordinators in SCRSM. These staff members can be reached by calling 806.742.7233 or visiting the Student Union Building, Suite 232.
- Make a confidential report: Students may make a confidential report to licensed clinical and/or mental health professionals acting in their professional roles. These employees are encouraged to provide their students with information and guidance regarding University reporting options and available resources but will not report or otherwise refer incidents to SCRSM without the student's express permission. Confidential reports may be made to the Student Counseling Center, the Family Therapy Clinic, the Psychology Clinic, and Student Health Services on campus. Students can make confidential reports off campus to Voice of Hope, and other licensed clinical and mental health providers.

While there is no deadline to file a report, to promote timely and effective review, the University strongly encourages individuals who believe they have experienced Sexual Misconduct to come forward promptly with their complaints and to seek assistance from the University. Delays in reporting can greatly limit the University's ability to stop the Sexual Misconduct, collect evidence, and/or take effective action against individuals or organizations accused of violating the policy.

*NOTE: if a Respondent has left campus, either by withdrawing or graduating, prior to a report being filed, the University's ability to investigate and/or adjudicate may be limited.*

## **5. Supportive Measures**

The University may take immediate action to eliminate hostile environments and address any effects on the Complainant and community prior to the initiation of any Investigation and/or formal Grievance Process. These measures will be taken to minimize the burden on the Complainant while respecting the due process rights of the Respondent. Supportive Measures for involved students may include, but are not limited to, counseling services, medical assistance, modifications to on-campus housing, modifications to parking permissions, academic support referrals, modifications to academic or work situations, instituting a No Contact Order between the parties in a complaint, and reporting criminal behavior to the Texas Tech Police Department, Lubbock Police Department, or other local law enforcement agency. Additionally, the University may pursue Emergency Removal, altering the University status of the Respondent. Other Supportive Measures may be implemented and will be evaluated on a case- by-case basis. Supportive Measures may be kept in place through the

conclusion of any review, Investigation, resolution, or Appeal process. Supportive Measures can be implemented regardless of whether or not the Complainant pursues a Formal Complaint or criminal action. SCRSM is available to help students understand the Grievance Process and identify resources.

Supportive Measures may be implemented after a determination of responsibility in Grievance Proceedings to restore and preserve equal educational opportunities to the Complainant.

Complainants and Respondents who are the subjects of a reported incident of Sexual Misconduct (sexual harassment, sexual assault, dating violence, or stalking) will be allowed to drop a course in which they are both enrolled without any academic penalty.

#### *No Contact Order*

When initial inquiry indicates persistent and potentially escalating conflict between members of the University Community, a No Contact Order may be issued as a remedial, non-punitive deterrent to further conflict or situational complication. A No Contact Order will be issued by SCRSM via the student's official Texas Tech email. The notice serves as an official directive that the student(s) have no contact with the other listed parties. Contact cannot occur in person, by telephone, email, text message or other electronic means of communication, or through a third party (other than an attorney). Should contact need to occur, the student should coordinate with the Case Manager or Investigator. This notice may also come with other information related to changes in class schedule or other restrictions to facilitate the No Contact Order.

Failure to comply with the No Contact Order may result in disciplinary action, including possible suspension or expulsion. Violations of No Contact Orders may also result in Emergency Removal pending the completion of a Grievance Process. The term of a No Contact Order is one year from the date of issuance, or the graduation of one or both parties, whichever comes first.

**SCRSM staff will make all reasonable efforts to communicate directly with students prior to the issuance of a No Contact Order. A No Contact Order will not be issued in incidents involving a Complainant or Respondent who is not a student at the University.**

#### *Emergency Removal*

The University shall conduct an individualized safety and risk analysis to determine if an individual poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct that justifies removal. Where the University finds that a Respondent poses an immediate threat to the physical health or safety of any student or individual, the University may remove the Respondent prior to the conclusion of the Grievance Process to protect the safety of the University Community where an immediate threat exists. The University shall provide the Respondent with notice and an

opportunity to challenge the decision in writing to the Title IX Coordinator immediately following the removal. The University maintains discretion in altering and removing terms of the Emergency Removal.

Through an Emergency Removal, a student may be denied access to University Student Housing and/or the University campus/facilities/events. As determined appropriate by the Title IX Coordinator or designee, this restriction may include classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the Title IX Coordinator or designee and with the approval of, and in collaboration with, the appropriate Dean(s), alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding student.

Students are informed of the Emergency Removal by the official notice procedures outlined in this section. Emergency Removal is not a sanction. It is taken in an effort to protect the safety and well-being of the Complainant, Respondent, and/or other members of the University Community. Emergency Removal is preliminary in nature; it is in effect only until the Grievance Process has been completed. However, violations of Emergency Removal may result in additional allegations of the *Code of Student Conduct*. A student who receives an Emergency Removal may request a meeting with the Vice Provost of Student Affairs or designee to challenge an Emergency Removal.

Regardless of the outcome of this meeting, the University may still proceed with an Investigation and adjudication.

The Title IX Coordinator or designee will initiate the appropriate Grievance Process to address the disruptive behavior within three (3) University working days from the date of Emergency Removal. Initiation of the appropriate Grievance Process includes but is not limited to informing parties that an investigation has begun via a “Notice of Formal Complaint” letter.

#### *Non-Student Supportive Measures*

SCRSM, in conjunction with the Texas Tech Police Department, may issue a Criminal Trespass to any individual(s) or guest of the University whose presence could significantly disrupt the normal operations of the University, or who is alleged to have violated University policies and/or is deemed to pose a threat to the physical and/or emotional well-being of a student or other members of the University Community.

*Note: Students of Texas Tech University may be held responsible for actions of their guests.*

### **6. Rights and Responsibilities**

Prior to participating in the Grievance Process, a student will be provided a [Student Rights and Responsibilities document](#). This document will be reviewed and acknowledged by the student prior to an interview with the Investigator. The Student Rights and Responsibilities document informs the student of their rights to be exercised before and during the

## Grievance Process.

Subject to applicable law, information gathered by the University during the course of the Investigation and Grievance Process may only be shared with faculty, staff, students, and/or advisors who are directly involved in the incident or necessary to the Grievance Process.

Information gathered may also be disclosed in compliance with a judicial order or lawfully issued subpoena.

Involved parties have the right to, and are encouraged to, be accompanied by an advisor of their choice during all meetings, proceedings, and/or disciplinary Hearings at which the individual is present. CARE Coordinators may also attend any meeting or Hearing in addition to the student's advisor.

A student has the right to:

1. A reasonably prompt, fair, and equitable process. The process for addressing a Formal Complaint under the Grievance Process will be concluded within the reasonably prompt timeframe of 120 business days. There may be certain circumstances that allow for limited extensions of this timeframe for good cause. For such extensions of time or delays, there must be written notice to both the Complainant and Respondent of the delay/extension and the reason for the action;
2. A presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process;
3. File a Formal Complaint to begin the Grievance Process;
4. Be accompanied by an advisor to any meeting or Hearing.
5. Refrain from making any statement relevant to the Investigation. Students are expected to cooperate with the University Grievance Process but may elect not to participate in the Investigation process, either in part or entirely. If a student fails or refuses to provide information during the Investigation, they will not be allowed to present new information during the Hearing. The rationale for this policy is to prevent either party from presenting new evidence at the Hearing that was available during the investigative process for the purpose of disadvantaging the other party.  
*NOTE: See Pre-Hearing Process, below, for details on inclusion of new, previously unavailable information after conclusion of the investigative process.*
6. The opportunity to provide information and evidence in support of their case;
7. Receive a written copy of the Notice of Formal Complaint relevant to their case, and have adequate time to prepare for interviews;
8. Access and utilize Supportive Measures whether or not a Formal Complaint is filed;
9. Know the range of sanctions that may be imposed for a Code of Student Conduct violation;
10. Know the Texas Tech University Grievance Process, where to find it, and have SCRSM staff answer any questions;
11. Know that any information provided by the student may be used in a Grievance

Process; and

12. Know that if a student makes any false or misleading statements during the Grievance Process, that student could be subject to disciplinary action.

It is the student's responsibility to:

1. Be responsive to all correspondence from the University;
2. Provide information they wish to be included that is relevant to the incident or situation. The Investigator will not accept investigative materials, statements, evidence, directly from an advisor of choice and will not communicate with the advisor of choice on behalf of a student;
3. Present their own information throughout the Grievance Process. Advisors are not permitted to participate directly unless authorized by a University Official;
4. Be honest and provide true and accurate information during the Grievance Process; and
5. Review the Code of Student Conduct in order to fully understand all aspects of the Grievance Process.

### *Advisors*

All students involved in the Grievance Process have the right to be accompanied by one advisor of choice to any meeting or Hearing. The Advisor must sign, and adhere to, the Advisor Expectation document. An advisor may be, but is not required to be, an attorney. If an advisor for a student is an attorney, an attorney from the Office of General Counsel may attend any meeting or Hearing.

In Non-Title IX Sexual Misconduct cases, a witness, anyone who may have a conflict of interest, or anyone who may have any participatory role in the process may not be allowed to serve as an Advisor. Students who are currently separated from the University as the result of a disciplinary process may be excluded from serving as an advisor. In Non-Title IX Sexual Misconduct Hearings, the role of the advisor will be limited to advising only and will not be allowed to actively participate in the Hearing.

In Title IX Sexual Misconduct Cases, each Complainant and Respondent must have an advisor present at the Hearing, and each is entitled to select an advisor of their choice. Each party must inform the University at least ten (10) days prior to the Hearing whether the party intends to select and bring an advisor of their choice to the Hearing. If a Complainant or Respondent does not have an advisor of their choice present at the Hearing, the University will provide without fee or charge to that party, an advisor of the University's choice. Advisors appointed or provided by the University shall act only in a capacity as an advisor for the Title IX Grievance Process and not in a capacity as legal counsel for any party. The advisors' only permissible roles at the Hearing are to advise the party and to conduct cross-examination on behalf of that party.

## **7. Amnesty**

The University will not take any disciplinary action against a student who in good faith reports being the victim of, or witness to, an incident of Sexual Misconduct for a violation of the *Code of Student Conduct* occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the Grievance Process regarding the incident.

Amnesty will be extended to the Complainant, Respondent, and witnesses who provide statements during an investigation and disclose their own personal drug or alcohol use. Amnesty will not be extended in situations where substances were used to facilitate sexual misconduct. Abuse of amnesty provisions can result in a violation of the *Code of Student Conduct*. The *Code of Student Conduct* amnesty provisions do not influence criminal proceedings or charges.

The University may provide educational options to students to address any concerning behavior as part of the afforded amnesty or in lieu of conduct proceedings. Amnesty does not preclude students from being required to meet with University staff and to participate in conditions such as counseling, alcohol assessments, and other requirements.

SCRSM may assist with questions related to amnesty provisions, and the final determination regarding amnesty in all Sexual Misconduct cases will be made by the Title IX Coordinator or designee.

## **8. Responding to Incident Reports**

Upon notice or receipt of an incident report regarding Sexual Misconduct or gender-based harassment/discrimination, the Case Manager or designee will contact the named Complainant via their official TTU email and request a meeting to gather and review information about the nature of the report, and to review Supportive Measures and the Grievance Process. When health and safety are potentially at risk, the Case Manager may call the student on the phone number listed in their student record. In the event that the Complainant does not respond to communication, the Case Manager will send a second email communication. Complainants are not required to respond or participate in any meetings with the SCRSM staff.

### *Intake*

Once a Complainant has made contact with the office, the Case Manager or designee will schedule an Intake Meeting with the Complainant. During this Intake, the Case Manager or designee will collect any additional demographic information, review this policy and the available options, and facilitate any requested Supportive Measures. If the Complainant does not return contact or requests to not meet with the SCRSM staff, the case may be closed. If the Complainant requests only Supportive Measures, the Case Manager contacts the appropriate campus parties to address the needs, and then the case may be closed. If a Complainant wishes to make a statement or file a Formal Complaint (pursue an Investigation), the Case Manager or

Title IX Coordinator will appoint an Investigator.

When a Complainant is identified but is reluctant to file a Formal Complaint and/or the Grievance Process entirely, the University will make every attempt to follow the wishes of the Complainant while weighing the interests of the campus community and the possibility of a continuing threat. If the Complainant does not want to participate in the Grievance Process but has no aversion to the University pursuing action with respect to the named Respondent, the institution may investigate the incident in the same manner that an anonymous complaint may be investigated. If the Complainant does not want the University to pursue the report in any respect, the University may investigate further if Title IX Coordinator determines there is reason to believe that a significant continuing threat to the campus community exists. In determining whether to investigate the incident, the institution shall consider the seriousness of the alleged incident, whether the University has received other reports of incidents committed by the alleged perpetrator(s), whether the alleged incident poses a risk of harm to others, and any other factor the institution deems relevant. If the University decides not to investigate the incident, the University shall take any steps deemed necessary to protect the health and safety of the University Community in relation to the incident. SCRSM will attempt to inform the Complainant of the decision to investigate, or not investigate, the reported incident.

When an initial report of misconduct by a third party does not identify the involved parties or the involved parties are not available, SCRSM will attempt to identify the unknown parties.

*NOTE: While in most cases of Sexual Misconduct the University will not move forward without a Formal Complaint signed by the Complainant, the Title IX Coordinator or designee may proceed with the Grievance Process on a case-by-case basis if the alleged behavior involves pattern, predation, threat, or violence (PPTV) that may significantly impact the University Community.*

#### *Filing a Formal Complaint*

A Formal Complaint is a document signed by a Complainant or the Title IX Coordinator alleging Sexual Misconduct against a Respondent requesting that the University investigate the allegation(s) of Sexual Misconduct. While incidents may be reported by any third party, only the Complainant or Title IX Coordinator may initiate the Grievance Procedure through the Formal Complaint. A Formal Complaint is also required for any individuals wishing to pursue an Informal Resolution.

When a Formal Complaint is filed, SCRSM provides written notice to the Respondent with three (3) business days for the Respondent to prepare a response before an initial interview. The Notice of Formal Complaint includes information about the Grievance Process, the Informal Resolution Process, the allegations and any details known at the time (such as the name of the Complainant, location, date, and time of the alleged incident(s)), and the specific section(s) of the *Code of Student Conduct* the Respondent is alleged to have violated. The Complainant also receives a copy of the Notice of Formal Complaint.

### *Review of Formal Complaints*

When a Formal Complaint is received, SCRSM will evaluate jurisdiction and mandatory and discretionary dismissal described below, assess appropriate Supportive Measures for both parties, evaluate the need for Emergency Removal, and initiate the Grievance Process.

- a. Mandatory Dismissal- SCRSM shall dismiss a Formal Complaint in the following situations:
  - i. For Title IX Sexual Misconduct
    - i. The allegation does not describe conduct that would constitute Title IX Sexual Misconduct as defined, even if proven;
    - ii. The Title IX Sexual Misconduct did not occur in the University's Education Program or Activity; or
    - iii. The Title IX Sexual Misconduct did not occur against a person in the United States.
  - ii. For Non-Title IX Sexual Misconduct
    - i. The allegation describes conduct that would not constitute Non-Title IX Sexual Misconduct as defined, even if proven.
    - ii. The Respondent is not a member of the University Community
- b. Permissive Dismissal- SCRSM may dismiss a Formal Complaint in the following situations:
  - i. The Complainant notifies the Title IX Coordinator in writing that they wish to withdraw the Formal Complaint or some allegations in the Formal Complaint;
  - ii. The Respondent is no longer enrolled in or employed by the University; or
  - iii. Circumstances exist that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or the allegations.
- c. Application of Other Policies Upon Dismissal- If SCRSM dismisses a Formal Complaint or any of the allegations in the Complaint, the office must promptly send written notice of the dismissal and the reason(s) for the dismissal simultaneously to the Complainant and Respondent. Dismissal of a Title IX Sexual Misconduct Formal Complaint does not preclude action under other policies, such as Non-Title IX Sexual Misconduct or the *Code of Student Conduct*.
- d. Appeal of Dismissal Decision- Any party can appeal the dismissal decision following the criteria and procedures listed below under Section D.10 - *Appeals*.
- e. Right to Consolidate Complaints- The University may consolidate Formal Complaints as to allegations of Title IX Sexual Misconduct: (1) against more than one Respondent, (2) by more than one Complainant against one or more Respondents, or (3) by one party against the other party, where the allegations of Title IX Sexual Misconduct arise out of the same facts or circumstances.

### *Withdrawal During a Formal Complaint*

In accordance with state law, if a student withdraws or graduates from the University pending a Formal Complaint alleging the student violated the *Code of Student Conduct* by committing sexual harassment, sexual assault, dating violence, or stalking, the institution:

- (1) May not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and

- (2) Shall expedite the institution's disciplinary process as necessary to accommodate both the Respondent's and Complainant's interest in a speedy resolution.
- (3) On request from another institution, the University shall provide to the requesting institution information relating to a determination that a student enrolled violated the institution's *Code of Student Conduct* by committing sexual harassment, sexual assault, dating violence, or stalking.

After a Formal Complaint has been filed and an Investigator has been appointed, the Investigator will inquire, gather and review information about the reported misconduct, and will evaluate the accuracy, credibility, and sufficiency of the information.

If it is determined that the information reported, even if factually correct, does not meet the criteria of a policy violation, an allegation will not be issued and the complaint will be dismissed. However, the Title IX Coordinator may determine that a Policy Clarification and/or Referral Meeting is warranted, which may result in a Policy Clarification being issued to involved parties to clarify the policy in question. A Policy Clarification is not considered a Sanction.

#### *General Requirements of the Grievance Process*

- (1) **Equitable Treatment of Parties:** The University shall treat Complainants and Respondents equitably by: (a) offering Supportive Measures, (b) providing remedies to a Complainant where a determination regarding responsibility for Title IX Sexual Misconduct has been made against the Respondent, (c) executing the Grievance Process in compliance with this Section before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against the Respondent; and (d) providing the parties with the same opportunities to have others present during any proceeding under the Grievance Process, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.
- (2) **No Conflicts of Interest:** The Grievance Process requires the Title IX Coordinator, Investigator, Hearing Panel members, appeal officers, and facilitators of an Informal Resolution process be free of conflicts of interest or bias against a party.
- (3) **Presumption of Non-Responsibility; Standard of Evidence.** There will be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process. The standard of evidence under the Grievance Process shall be a preponderance of the evidence.
- (4) **Objectivity:** Credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness. The University shall require an objective evaluation of all relevant evidence, both inculpatory and exculpatory.
- (5) **Privileged Information:** The University, Complainant, Respondent, Title IX Coordinator, Investigator, Hearing Panel members, or facilitators of an Informal

Resolution process cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege and the University has obtained that party's voluntary, written consent to do so for the Grievance Process under this regulation. Such privileged documents include, among other things, documents that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party.

### **9. Title IX Sexual Misconduct Grievance Process**

This section applies exclusively to Title IX Sexual Misconduct. Any other form of Sexual Misconduct is governed by section 10 below.

#### *Notices:*

University will provide notices as required, including but not limited to:

- (1) Notice of Formal Complaint: The University shall provide written notice to Complainant and Respondent upon receipt of a Formal Complaint with sufficient details known at the time and with sufficient time to prepare a response before an initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Misconduct, and the date and location of the alleged incident, if known. Such notice shall also include notice of the following: (a) this Grievance Process, including the University's Informal Resolution process; (b) that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process; (c) that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; (d) that the parties may inspect and review evidence; and (e) any applicable provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process.
- (2) Non-response to Formal Complaint: In the event that a student fails to respond to the Notice of Formal Complaint, an administrative hold may be placed on the student's record to prevent further registration and transcript receipt. The administrative hold may remain until such time as the Investigator receives an appropriate response. Failure to comply with or respond to a notice issued as part of a Grievance Procedure and/or failure to appear will not prevent an Investigator from proceeding with the Grievance Process.
- (3) Notice of Additional Allegations: If additional allegations are later included within the scope of the investigation under this Grievance Process, supplemental notice of such allegations shall be provided at that time.
- (4) Notice to All Parties of Hearings, Interviews, or Meetings. The University shall

provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all Hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

- (5) Written Notice Via University Email. Any person entitled to written notice under this regulation will receive such notice to their University email address. In the event a person is entitled to notice who does not have a University email address, written notice will instead be provided to an email address provided by such person.

#### *Investigation of Formal Complaint*

When initial inquiry indicates a concurrent police Investigation is occurring, the Investigator will, where possible, collaborate with the Texas Tech Police Department during the Investigation. Elements of this collaborative Investigation may include the Investigator coordinating with responding officers at the scene of the incident, joint interviews with police detectives, and evidence sharing. The Investigator may not have access to evidence provided to or in possession of the Texas Tech Police Department. Students involved in the Grievance Process should provide to the Investigator any evidence they wish to be included in the Investigative report.

During the Investigation, the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility is on the University and not on the parties. Complainants and Respondents are encouraged to present witnesses and evidence, including fact and expert witnesses, and other inculpatory and exculpatory evidence that they believe should be considered. The University has the right to exclude any purported expert witness who intends to present non-relevant evidence from participation in the Grievance Process. The University retains the discretion to determine whether the content presented by an expert witness falls within the scope of their expertise, the relevance of that content to the Investigation, and whether or not the witness is in fact an expert in the field. Investigators cannot compel witnesses to cooperate with the Investigation process and do not have subpoena powers which could be used to collect evidence. The University will make all reasonable efforts to obtain relevant information such as surveillance video footage, University card swipe access and other information that may be available to the Institution. The University cannot obtain information that is protected by a legally recognized privilege without the party's voluntary written consent. The University shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, therapist/mental health professional, or other professional/paraprofessional providing treatment to the party, unless the party gives voluntary written consent.

At any point in the Investigation, either party may request to initiate the Informal Resolution process. This process is contingent upon the voluntary agreement of both the Complainant and Respondent, with the concurrence of the Title IX Coordinator or designee. More information about the Informal Resolution process can be found under the *Resolution Phase*

section below.

Once the Investigation is complete, the Investigator will compile the relevant information and evidence into an Investigation Report, which may include a timeline of the event(s), statements from interviews, physical and electronic evidence, a breakdown of the discrepancies in the various interviews, and credibility considerations. The Investigator will document any physical or electronic evidence in a manner that is conducive and does not obstruct concurrent or forthcoming police Investigations. Complainants and Respondents will have an equal opportunity to inspect and review any evidence obtained as part of the Investigation that is directly related to the allegations raised in the Formal Complaint. The University shall send each party and their advisor the evidence subject to inspection and review in an electronic format or hard copy, and the parties shall have at least ten (10) days to submit a written response, which the Investigator will consider prior to the completion of the Investigation Report.

The completed Investigation Report will fairly summarize the relevant evidence, and will be sent to the Complainant and Respondent and their advisor in electronic format or hard copy, for their review and written response, at least ten (10) days prior to the Hearing. Comments will be submitted as a supplement to the Investigation Report. In order to protect confidentiality students may be given an electronic password protected copy of the Investigation Report which may be redacted. Any new evidence identified after completion of the Investigative Report that a party intends to present, introduce, or use at the Hearing must be provided to the Title IX Coordinator at least five (5) days prior to the Hearing and to the other party at least three (3) days prior to the Hearing. Failure to comply with this provision may result in the new evidence being excluded from consideration during the Hearing and decision-making process.

Should students not participate in the Investigative Process, the Grievance Process may continue without their participation. The Investigator may assign allegation(s) to the Respondent based on the information that the Investigator collected without the student's participation, if appropriate.

### *Resolution Phase*

Options for resolving Formal Complaints under the Title IX Sexual Misconduct Grievance Process include:

#### *(1) Informal Resolution*

After the Complainant and Respondent have been provided written notice of a Formal Complaint, the University may offer and facilitate the Informal Resolution Process. The procedures utilized in the Informal Resolution process must be agreed upon by obtaining the parties voluntary, written consent, with concurrence from the Title IX Coordinator or designee. The parties must mutually agree in writing to all aspects of any resolution reached through the Informal Resolution process, including any restrictions or conditions that may

be agreed upon by the parties with concurrence from the Title IX Coordinator or designee. Either party may withdraw from the Informal Resolution process at any time prior to final resolution, and resume the Grievance Process with respect to the Formal Complaint. Informal Resolution agreements will be maintained in accordance with University policies. Should either party violate the terms of the Informal Resolution, the matter may be referred for adjudication. The Informal Resolution will be binding and final with no opportunity to appeal

## *(2) Hearings*

If the Formal Complaint is not dismissed or resolved by Informal Resolution, then the Formal Complaint will proceed to a live Hearing. Complainants and Respondents will first complete the Pre-Hearing Process.

### **a. Pre-Hearing Process**

The Title IX Coordinator or designee shall appoint a Resource Person who facilitates the Pre-Hearing and Hearing. The Resource Person is a staff member in SCRSM that did not serve as the Investigator. The Resource Person is a non-voting participant in the Hearing process. The Resource Person assures that University procedures are followed throughout the Hearing. The Resource Person may:

- Prepare Hearing materials;
- Record the Hearing proceedings;
- Escort participants into the Hearing room, grant breaks for participants, and distribute materials;
- Ensure proper decorum throughout the Hearing;
- Ensure the procedural soundness of the Hearing;
- Provide the conduct history of the Respondent during the sanctioning phase, if necessary;
- Transcribe the findings of the Hearing Panel;
- Compile the Post-Hearing documentation;
- Deliver notification to the parties.

*NOTE: In Title IX Sexual Misconduct Hearings, the Title IX Hearing Officer may also assume some duties of the Resource Person.*

In preparation for the Pre-Hearing Meeting, students and their advisors will be notified of a date, time, and location of the Hearing via written Notification of Hearing sent to the student's official assigned Texas Tech University email address, delivered via Certified Mail to the student's last known address, or personally delivered to the student. University email is the University's primary means of communication with students. Complainants and Respondents will meet with their Resource Person to complete the Pre-Hearing Meeting. In the meeting with the Resource Person, parties will review documents including the Hearing Panel composition, Hearing Script, Opening, Closing, and Impact Statements,

and Appeal Procedures. Following the Pre-Hearing, Students are responsible for all communication delivered to their University email address. Should students not participate in the Pre-Hearing Process, the Grievance Process may continue without their participation and may result in a Hearing.

Students may indicate whether a Panel Hearing or Sanction Only Hearing is preferred. (Please see Hearings section below for a description of each Hearing type.) However, the Title IX Coordinator or designee has the sole discretion in all cases to designate whether a Panel Hearing or Sanction Only Hearing will be held notwithstanding the student's preference.

In cases requiring a Hearing Panel, the Resource Person will share the pool of staff trained for Hearing Panels. Students will be given the opportunity to request to strike any member of the Hearing Panel whose impartiality may be in question. In order to request a strike of a member of the Hearing Panel, the student must provide the Resource Person with a reasonable and substantiated rationale for the request. Once the composition of the Hearing Panel is set, the Resource Person will schedule the Panel Hearing.

If a student discovers new, previously unavailable information during the time after the Pre- Hearing but before the Hearing, the student should inform the Resource Person and the Resource Person will inform the Investigator immediately. If the new information is relevant to the consideration of the case, the Investigator will determine whether the new information should be included in the Investigation Report or presented verbally during the Administrative or Panel Hearing. If there is new evidence introduced, other involved parties would also be given the opportunity to provide a response to any new evidence that will be presented in the Administrative or Panel Hearing.

At the discretion of the Title IX Coordinator or designee, a review of the case may occur at any point during the investigation or Grievance Process for clarification of procedural processes and may be remanded to investigation or adjudication if deemed necessary.

#### **b. Hearings**

Upon completion of the Pre-Hearing, the University may proceed to a Hearing and issue a finding and accompanying Sanctions, if applicable. After proper notice has been given to the parties, a party's failure or refusal to respond within the allotted timeframe may not prevent the Grievance Process from proceeding to a Hearing or a Hearing Body from rendering a final determination regarding responsibility. If the Respondent accepts responsibility for the allegations issued in the Investigation Report, the Respondent may request a Sanction Only Hearing.

Hearings are closed to the public. In Sexual Misconduct cases, both the Complainant and Respondent have the right to be present at the Hearing; however, they do not have the right to be present during deliberations. Arrangements can be made so that the

Complainant, Respondent and any witnesses appear virtually at the Hearing, with technology enabling participants to simultaneously see and hear each other. To request changes in the scheduled Hearing time or to participate virtually, students should contact their Resource Person prior to the Hearing.

### ***Title IX Sexual Misconduct Hearings***

[System Regulation 07.06.A Attachment 2](#) outlines the full Title IX Sexual

*Misconduct Hearing Procedures.*

The University will appoint a four-member Hearing Panel. The Title IX Hearing Officer will be one of the four members and will serve as the Hearing Panel Chair. The Hearing Panel will be the decision-maker that objectively evaluates all relevant evidence and renders a determination regarding responsibility after the live Hearing. The determination regarding responsibility will be made by a majority vote of the Hearing Panel. The Hearing Panel will not include the University Title IX Coordinator or an Investigator involved in the matters considered at the Hearing. The Hearing Panel has the right and responsibility to ask questions and elicit information from parties and witnesses on its own initiative to aid in obtaining relevant evidence both inculpatory and exculpatory.

All parties, and participants in a Title IX Hearing must be physically or virtually present in a manner where all participants can simultaneously see and hear each other.

Each Complainant and Respondent must have an advisor of their choice present at the Title IX Hearing. Each party must notify SCRSM at least ten (10) days prior to the Hearing whether the party intends to select and bring an advisor of their choice to the Hearing. If a Complainant or Respondent does not have an advisor of their choice present at the Hearing, the University will provide without fee or charge an advisor of the University's choice. The advisors' only permissible roles at the Hearing are to advise the party and to conduct cross-examination on behalf of the party.

The University will adopt rules of order and decorum provided for and enforced by the Title IX Hearing Officer. Such rules will include, but are not limited to, time limits, Hearing order, and requirements that participants not badger a witness, and repetition of the same question may be deemed irrelevant by the Hearing Officer; no party be asked questions in an abusive or intimidating manner; and questioning shall be relevant, respectful, and non-abusive. Each Hearing shall be no more than four (4) hours in length, unless the Hearing Officer determines that exceptional circumstances exist justifying a longer Hearing.

The University will create a record of the Hearing and make it available to the parties for inspection and review upon request.

At the direction of the Hearing Officer, Complainants and Respondents will have an opportunity to offer their own opening and closing statement, subject to time limits set by the Hearing Officer.

Each party will have an opportunity to present evidence to the Hearing Panel. The Hearing

Officer will be responsible for making determinations regarding evidence, including relevance. Information that will be deemed not relevant includes, without limitation, information protected by a legal recognized privilege; questions or evidence about the Complainant's sexual predisposition or prior sexual behavior (unless 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).

Direct Examination may be conducted by the Title IX Hearing Officer or the Hearing Panel. Cross-examination must be conducted directly orally, and in real time by the party's advisor of choice and never by a party personally. Only relevant cross-examination and other questions, including those challenging credibility, may be asked of a party or witness.

Before a participant answers a cross-examination or other question, the Title IX Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

After a determination regarding responsibility and before a decision regarding Sanctions, the Hearing Panel may request, and the parties may provide impact statements for consideration.

After the Hearing, the Hearing Panel will issue a written determination regarding responsibility that will include: (1) identification of the allegations potentially constituting Title IX Sexual Misconduct; (2) a description of the procedural steps taken throughout the Grievance Process; (3) findings of fact supporting the determination regarding responsibility; (4) conclusions regarding the application of the University's applicable conduct policy to the facts of the alleged conduct; (5) a statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any disciplinary Sanctions imposed on the Respondent, and whether Remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided by the University to the Complainant; (6) a statement that the University's procedures are permissible bases to for the Complainant and Respondent to appeal; and (7) a statement that the determination may be appealed by the parties following the procedures listed below. The University will provide the written determination to the parties simultaneously within five (5) University working days. The written determination regarding responsibility becomes final when the time period to file an appeal has expired, or when the appeal decision has been sent to the parties.

### ***Sanction Only Hearing***

If the student accepts responsibility for the allegations issued in the Investigation Report, the student may request a Sanction Only Hearing. During a Sanction Only Hearing, the Investigation Report and finding are presented to the Hearing body by the Investigator. During presentation of the Investigation Report and finding, the Respondent and the Complainant are not allowed to dispute the facts or details of the case. The Hearing Panel may ask clarifying questions regarding aggravating and mitigating factors related to the incident.

Both the Respondent and the Complainant may be present and both the Respondent and the Complainant may provide impact statements prior to sanctioning. Mitigating factors as well as a character statement may also be presented by the Respondent and may be considered by the Hearing body. Simultaneous notification of the outcome of the Sanction Only Hearing will be provided to the student(s) within five (5) University working days of the conclusion of the Sanction Only Hearing. Decisions made through the Sanction Only Hearing may be appealed by the students by utilizing the Appeal Procedures outlined below. In Sanction Only Hearings, students may appeal the sanction(s), and can only appeal on the following grounds, “the sanction imposed substantially varies from the range of sanctions normally imposed for similar infractions.” A student may only choose a Hearing Panel for Sanction Only Hearings for potentially separable offenses.

### ***Sanctions***

A Hearing Panel may impose sanctions as a result of a Title IX Sexual Misconduct Panel Hearing when a student is found responsible.

The potential sanctions are listed in the Sanctioning Grid on the Title IX website at <http://www.depts.ttu.edu/titleix/>. The grid is provided only as a guideline for administering sanctions by the Hearing Panel. The Hearing Panel may deviate from the grid for sufficient reason. Implementation of the disciplinary Sanction(s) will begin when the time period to file an appeal has expired or when the appeal decision has been sent to the parties.

All records related to the disciplinary process will remain on file in SCRSM for a minimum of seven (7) years from the date of report. All records related to the Grievance Process resulting in suspension and/or expulsion will remain on file indefinitely.

If a student is found responsible for violating the *Code of Student Conduct*, sanctions may be imposed and can include, but are not limited to the following:

- (1) Disciplinary Reprimand - The disciplinary reprimand is an official written notification using the notice procedures outlined in this section to the student that the action in question was Misconduct.
- (2) Disciplinary Probation - Disciplinary Probation is a period of time during which a student’s conduct will be observed and reviewed. The student must demonstrate the ability to comply with University policies, rules, and/or standards and any other requirement stipulated for the probationary period. The status of Disciplinary Probation will be shown on the student’s academic record, including the transcript through the duration of the probationary period. Further instances of Misconduct under the *Code of Student Conduct* during this period may result in additional sanctions.
- (3) Time-Limited Disciplinary Suspension - Time-Limited Disciplinary Suspension is a specific period of time in which a student is not allowed to participate in class, University related activities, or be present on campus property. The status of Disciplinary Suspension will be shown on the student’s academic record, including the transcript. Disciplinary Suspension is noted on the student’s transcript by the phrase “Disciplinary Suspension” and will include the period of time in which the student is/was suspended from the University. In most instances, the notation of Disciplinary Suspension will remain on the transcript permanently. A student

has the ability to petition to remove a Disciplinary Suspension notation in the following instances: 1) the student is eligible to reenroll in the institution or 2) the Title IX Coordinator or designee determines that good cause exists to remove the notation. A Disciplinary Suspension of a student will indicate the date on which the suspension period begins and the earliest date the application for student readmission will be considered. The Title IX Coordinator or designee may deny a student's readmission, if the student's Misconduct during the suspension would have warranted additional disciplinary action. If the student has failed to satisfy any Sanction that was imposed prior to application for readmission, the Title IX Coordinator or designee may recommend denial of readmission of a student. On denial of a student's readmission, the Title IX Coordinator or designee will set a date when another application for readmission may again be made. An administrative hold will be placed on the student's record to prevent registration during the Disciplinary Suspension.

*NOTE: For information pertaining to academic courses taken at another higher education institution during time-limited disciplinary suspension, please refer to OP 34.21 located at <http://www.depts.ttu.edu/opmanual/OP34.21.pdf>*

- (4) Disciplinary Expulsion - Disciplinary Expulsion occurs when the student is permanently withdrawn and separated from the University. This status of Disciplinary Expulsion will be shown permanently on the student's academic record, including the transcript. Disciplinary Expulsion is noted on the student's transcript by the phrase, "Expulsion" and the date in which the student's expulsion became effective. In most instances, the notation of Disciplinary Expulsion will remain on the transcript permanently. A student has the ability to petition to remove a Disciplinary Expulsion notation in the following instances: 1) the student is eligible to reenroll in the institution or 2) the Title IX Coordinator or designee determines that good cause exists to remove the notation. An administrative hold will be placed on the student's record to prevent future registration.

#### Conditions

A condition is an educational or personal element that is assigned by a Hearing Panel. Costs associated with conditions may be the responsibility of the student. Some examples of conditions include, but are not limited to:

- (1) Personal and/or academic counseling intake session;
- (2) Discretionary educational conditions and/or programs of educational service to the University and/or community;
- (3) Residence hall relocation and/or contract review/cancellation of residence hall contract and/or use of dining facilities;
- (4) Restitution or compensation for loss, damage or injury, which may take the form of appropriate service and/or monetary or material replacement;
- (5) Monetary assessment owed to the university;
- (6) Completion of an alcohol or drug education program;
- (7) Completion of a sexual misconduct education program;
- (8) Referral to Raider Restart;
- (9) Referral to the BASICS Program for assessment.

## Restrictions

A restriction is an additional component of a disciplinary sanction. A restriction is usually an educational component that is to occur in conjunction with the sanctions and will usually be time specific. Some examples of restrictions include, but are not limited to:

- (1) Revocation of parking privileges;
- (2) Denial of eligibility for holding office in registered student organizations;
- (3) Denial of participation in extracurricular activities;
- (4) Prohibited access to University facilities and/or prohibited direct or indirect contact with members of the University Community;
- (5) Loss of privileges on a temporary or permanent basis.

## **10. Non-Title IX Sexual Misconduct Grievance Process**

This section applies exclusively to Non-Title IX Sexual Misconduct. Any other form of Sexual Misconduct is governed by section 8 above. *Please note- all Discriminatory Harassment incidents are resolved utilizing the Non-Title IX Sexual Misconduct Grievance Process described below.*

### *Notices*

University will provide notices as required, including but not limited to:

- (1) Notice of Formal Complaint: The University shall provide written notice to Complainant and Respondent upon receipt of a Formal Complaint with sufficient details known at the time and with sufficient time to prepare a response before an initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Non-Title IX Sexual Misconduct, and the date and location of the alleged incident, if known. Such notice shall also include notice of the following: (1) this Grievance Process, including the University's Informal Resolution process; (2) that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process; (3) that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney; (4) that the parties may inspect and review evidence; and (5) any applicable provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process.
- (2) Non-response to Formal Complaint: In the event that a student fails to respond to the Notice of Formal Complaint, an administrative hold may be placed on the student's record to prevent further registration and transcript receipt. The administrative hold may remain until such time as the Investigator receives an appropriate response. Failure to comply with or respond to a notice issued as part of a Grievance Procedure and/or failure to appear will not prevent an Investigator from proceeding with the Grievance Process.
- (3) Notice of Additional Allegations: If additional allegations are later included within the scope of the investigation under this Grievance Process, supplemental notice of such allegations shall be provided at that time.
- (4) Notice to All Parties of Hearings, Interviews, or Meetings. The University shall provide, to a party whose participation is invited or expected, written notice of the date, time, location,

participants, and purpose of all Hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

- (5) Written Notice Via University Email. Any person entitled to written notice under this regulation will receive such notice to their University email address. In the event a person is entitled to notice who does not have a University email address, written notice will instead be provided to an email address provided by such person.

### *Investigation of Formal Complaint*

When initial inquiry indicates a concurrent police Investigation is occurring, the Investigator will, where possible, collaborate with the Texas Tech Police Department during the Investigation. Elements of this collaborative Investigation may include the Investigator coordinating with responding officers at the scene of the incident, joint interviews with police detectives, and evidence sharing. The Investigator may not have access to evidence provided to or in possession of the Texas Tech Police Department. Students involved in the Grievance Process should provide to the Investigator any evidence they wish to be included in the Investigative report.

During the Investigation, the burden of proof and burden of gathering evidence sufficient to reach a determination regarding responsibility is on the University and not on the parties. Complainants and Respondents are encouraged to present witnesses and evidence, including inculpatory and exculpatory evidence that they believe should be considered. The University cannot compel witnesses to cooperate with the Investigation process and does not have subpoena powers which could be used to collect evidence. The University will make all reasonable efforts to obtain relevant information such as surveillance video footage, University card swipe access and other information that may be available to the Institution. The University cannot obtain information that is protected by a legally recognized privilege without the party's voluntary written consent. The University shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, therapist/mental health professional, or other professional/paraprofessional providing treatment to the party, unless the party gives voluntary written consent.

At any point in the Investigation, either party may request to initiate the Informal Resolution process. This process is contingent upon the voluntary agreement of both the Complainant and Respondent, with the concurrence of the Title IX Coordinator or designee. More information about the Informal Resolution process can be found under the *Resolution Phase* section below. Once the Investigation is complete, the Investigator will compile the relevant information and evidence into an Investigation Report, which may include a timeline of the event(s), statements from interviews, physical and electronic evidence, a breakdown of the discrepancies in the various interviews, and credibility considerations. The Investigator will document any physical or electronic evidence in a manner that is conducive and does not obstruct concurrent or forthcoming police Investigations. Complainants and Respondents will have an equal opportunity to inspect and review any evidence obtained as part of the Investigation that is directly related to the allegations raised in the Formal Complaint. The University shall send each party the evidence subject to inspection and review in an electronic

format or hard copy, and the parties shall have at least ten (10) days to submit a written response, which the Investigator will consider prior to the completion of the Investigation Report.

The completed Investigation Report will fairly summarize the relevant evidence, and will be sent to the Complainant and Respondent in electronic format or hard copy, for their review at least ten (10) days prior to the Hearing. In order to protect confidentiality students may be given an electronic password protected copy of the Investigation Report which may be redacted. Any new evidence identified after completion of the Investigative Report that a party intends to present, introduce, or use at the Hearing must be provided to the Title IX Coordinator at least five (5) days prior to the Hearing and to the other party at least three (3) days prior to the Hearing. Failure to comply with this provision may result in the new evidence being excluded from consideration during the Hearing and decision-making process.

Should students not participate in the Investigative Process, the Grievance Process may continue without their participation. The Investigator may assign allegation(s) to the Respondent based on the information that the Investigator collected without the student's participation, if appropriate.

#### *Referral Meeting*

A University official may request a meeting with a student in order to discuss a referral made to SCRSM or other administrative departments when the referral may not be deemed a violation of the *Code of Student Conduct*, but when the Title IX Coordinator or designee determines the referral warrants a discussion. The purpose of the discussion is to clarify concerns of the involved parties, to offer assistance to all involved parties, and to explain to the Respondent that repeated referrals may warrant an Investigation.

#### *Informal Resolution*

After the Complainant and Respondent have been provided written notice of a Formal Complaint, the University may offer and facilitate the Informal Resolution Process. The procedures utilized in the Informal Resolution process must be agreed upon by obtaining the parties voluntary, written consent, with concurrence from the Title IX Coordinator or designee. The parties must mutually agree in writing to all aspects of any resolution reached through the Informal Resolution process, including any restrictions or conditions that may be agreed upon by the parties with concurrence from the Title IX Coordinator or designee. Either party may withdraw from the Informal Resolution process at any time prior to final resolution, and resume the Grievance Process with respect to the Formal Complaint. Informal Resolution agreements will be maintained in accordance with University policies. Should either party violate the terms of the Informal Resolution, the matter may be referred for adjudication. The Informal Resolution will be binding and final with no opportunity to appeal

### *Informal Conference*

An Informal Conference is a form of Informal Resolution. If after the Investigation, the Respondent accepts responsibility for the allegations of the *Code of Student Conduct* outlined in an Investigation Report, the student can choose to resolve the issue informally. Should the Respondent wish to participate in the Informal Conference process, both the Complainant and the Respondent must agree to both the finding and the Sanctions as recommended by the Investigator. The case may only be reopened if new material, previously unavailable is presented.

Written notification of the outcomes and Sanctions, if applicable, of the Informal Conference will be provided simultaneously to the student(s) and appropriate University Administrators within five (5) university working days of the Informal Conference.

### *Hearings*

If the Formal Complaint is not dismissed or resolved by Informal Resolution, then the Formal Complaint will proceed to a live Hearing. Complainants and Respondents will first complete the Pre-Hearing Process.

#### **a. Pre-Hearing Process**

The Title IX Coordinator or designee shall appoint a Resource Person who facilitates the Pre-Hearing and Hearing. The Resource Person is a staff member in SCRSM that did not serve as the Investigator. The Resource Person is a non-voting participant in the Hearing process. The Resource Person assures that University procedures are followed throughout the Hearing. The Resource Person may:

- Prepare Hearing materials;
- Record the Hearing proceedings;
- Escort participants into the Hearing room, grant breaks for participants, and distribute materials;
- Ensure proper decorum throughout the Hearing;
- Ensure the procedural soundness of the Hearing;
- Provide the conduct history of the Respondent during the sanctioning phase, if necessary;
- Transcribe the findings of the Hearing Panel;
- Compile the Post-Hearing documentation;
- Deliver notification to the parties.

In preparation for the Pre-Hearing Meeting, students will be notified of a date, time, and location of the Hearing via written Notification of Hearing sent to the student's official assigned Texas Tech University email address, delivered via Certified Mail to the student's last known address, or personally delivered to the student. University email is the University's primary means of communication with students. Complainants and Respondents will meet with their Resource Person to complete the Pre-Hearing Meeting. In the meeting with the Resource Person, parties will review documents including the Hearing Panel composition, Hearing Script, Opening, Closing, and Impact Statements, and Appeal Procedures. Following the Pre-Hearing, Students are

responsible for all communication delivered to their University email address. Should students not participate in the Pre-Hearing Process, the Grievance Process may continue without their participation and may result in a Hearing.

Students may indicate whether an Administrative Hearing, Panel Hearing or Sanction Only Hearing is preferred. (Please see Hearings section below for a description of each Hearing type.) However, the Title IX Coordinator or designee has the sole discretion in all cases to designate whether an Administrative Hearing, Panel Hearing, or Sanction Only Hearing will be held notwithstanding the student's preference.

In cases requiring a Hearing Panel, the Resource Person will share the pool of staff trained for Hearing Panels. Students will be given the opportunity to request to strike any member of the Hearing Panel whose impartiality may be in question. In order to request a strike of a member of the Hearing Panel, the student must provide the Resource Person with a reasonable and substantiated rationale for the request. Once the composition of the Hearing Panel is set, the Resource Person will schedule the Panel Hearing.

If a student discovers new, previously unavailable information during the time after the Pre-Hearing but before the Hearing, the student should inform the Resource Person and the Resource Person will inform the Investigator immediately. If the new information is relevant to the consideration of the case, the Investigator will determine whether the new information should be included in the Investigation Report or presented verbally during the Administrative or Panel Hearing. If there is new evidence introduced, other involved parties would also be given the opportunity to provide a response to any new evidence that will be presented in the Administrative or Panel Hearing.

At the discretion of the Title IX Coordinator or designee, a review of the case may occur at any point during the investigation or Grievance Process for clarification of procedural processes and may be remanded to investigation or adjudication if deemed necessary.

## **b. Hearings**

Upon completion of the Pre-Hearing, the University may proceed to a Hearing and issue a finding and accompanying Sanctions, if applicable. After proper notice has been given to the parties, a party's failure or refusal to respond within the allotted timeframe may not prevent the Grievance Process from proceeding to a Hearing or a Hearing Body from rendering a final determination regarding responsibility. If the Respondent accepts responsibility for the allegations issued in the Investigation Report, the Respondent may request a Sanction Only Hearing.

Hearings are closed to the public. Both the Complainant and Respondent have the right to be present at the Hearing; however, they do not have the right to be present during deliberations. Arrangements can be made so that the Complainant, Respondent and any witnesses appear virtually at the Hearing, with technology enabling participants to simultaneously see and hear each other. To request changes in the scheduled Hearing time or to participate virtually, students should contact their Resource Person prior to the Hearing.

The University will adopt rules of order and decorum provided for and enforced by the Resource Person. Such rules will include, but are not limited to, time limits, Hearing order, and requirements that participants not badger a witness, and repetition of the same question may be deemed irrelevant by the Hearing Officer; no party be asked questions in an abusive or intimidating manner; and questioning shall be relevant, respectful, and non-abusive. Each Hearing shall be no more than four (4) hours in length, unless the Resource Person and/or Hearing Panel Chairperson determines that exceptional circumstances exist justifying a longer Hearing.

The University will create a record of the Hearing and make it available to the parties for inspection and review upon request.

The Investigator will present the Investigation Report, evidence, witnesses, allegation(s), and questions for deliberation. The Complainant and Respondent may make an opening statement about key points of the case. During the opening statement phase of the Hearing, the Complainant and the Respondent may not make character statements about themselves or others and may not make impact statements. The Complainant and Respondent may make comments about the facts of the case. The Panel may ask questions of the Investigator, Complainant, Respondent, and any witnesses. Students will be permitted to question the statements and evidence presented by the other involved parties, including the Investigator, who may supplement the Investigation Report. Upon request students may have the Resource Person or Panel Chairperson read their questions for other parties. Impact statements will be halted if they are shared prior to the Sanctioning phase of the Hearing. In the event the Resource Person of the Hearing removes a student due to misconduct (Complainant, Respondent, or witnesses), the alleged misconduct will be forwarded to the Title IX Coordinator for additional processing, as appropriate.

*NOTE: Questions that are deemed objectionable, inappropriate, and/or irrelevant may be rejected.*

Following the Hearing, the Hearing Panel will deliberate and render a decision regarding the alleged misconduct. Should the Hearing Panel have any questions for the Investigator, the Complainant, and/or the Respondent during deliberations, the Hearing will reconvene so that all parties have the opportunity to hear and respond to other parties' responses. Upon the finding of responsibility for any of the allegations, impact statements will be presented to the Hearing Panel. After the presentation of the impact statements, the Hearing Panel will return to deliberations to determine any Sanctions. Simultaneous notification of outcomes of the Panel Hearing will be provided to the student(s) in writing within five (5) University working days, or as soon as practical, following the Panel Hearing. Decisions made through the Panel Hearing may be appealed by students utilizing the Appeal Procedures outlined below in section 10.

- (1) Administrative Hearing - An Administrative Hearing is the process of adjudicating allegations of violations of the *Code of Student Conduct* by an Administrative Hearing Officer. The Administrative Hearing Officer is assigned by the Title IX Coordinator or designee. The

Administrative Hearing Officer makes the decision of responsibility and assigns Sanctions, as appropriate. Simultaneous written notification of the outcome of the Administrative Hearing will be provided to the student within five (5) University working days of the conclusion of the Administrative Hearing. Decisions made through the Administrative Hearing may be appealed by students by utilizing the Appeal Procedures outlined below.

- (2) Panel Hearing - A Panel Hearing is the process of adjudicating allegations of violations of the *Code of Student Conduct* by a Hearing Panel. For each Panel Hearing, a Panel of three (3) members will be chosen from the available pool by the Title IX Coordinator or designee. Following the Hearing, the Hearing Panel will deliberate and render a decision regarding the alleged misconduct, as well as determine any Sanctions, if applicable. Simultaneous notification of outcomes of the Panel Hearing will be provided to the student(s) in writing within five (5) University working days, or as soon as practical, following the Panel Hearing. Decisions made through the Panel Hearing may be appealed by students utilizing the Appeal Procedures outlined below.
- (3) Sanction Only Hearing - If the student accepts responsibility for the allegations issued in the Investigation Report, the student may request a Sanction Only Hearing, by either an Administrative Hearing Officer or a Hearing Panel. During a Sanction Only Hearing, the Investigation Report and finding are presented to the Hearing body by the Investigator. During presentation of the Investigation Report and finding, the Respondent and the Complainant are not allowed to dispute the facts or details of the case. The Administrative Hearing Officer or Hearing Panel may ask clarifying questions regarding aggravating and mitigating factors related to the incident.

Both the Respondent and the Complainant may be present and both the Respondent and the Complainant may provide impact statements prior to sanctioning. Mitigating factors as well as a character statement may also be presented by the Respondent and may be considered by the Hearing body. Simultaneous notification of the outcome of the Sanction Only Hearing will be provided to the student(s) within five (5) University working days of the conclusion of the Sanction Only Hearing. Decisions made through the Sanction Only Hearing may be appealed by the students by utilizing the Appeal Procedures outlined below. In Sanction Only Hearings, students may appeal the sanction(s), and can only appeal on the following grounds, “the sanction imposed substantially varies from the range of sanctions normally imposed for similar infractions.” A student may only choose a Hearing Panel for Sanction Only Hearings for potentially separable offenses.

### ***Sanctions***

A Hearing Panel may impose sanctions as a result of a Title IX Sexual Misconduct Panel Hearing when a student is found responsible.

An Administrative Hearing Officer or Hearing Panel may impose sanctions as a result of a Non-Title IX Sexual Misconduct Panel Hearing when a student is found responsible. The potential sanctions are listed in the Sanctioning Grid on the Title IX website at <http://www.depts.ttu.edu/titleix/>. The grid is provided only as a guideline for administering sanctions by the Administrative Hearing Officer or Hearing Panel. The Administrative Hearing Officer or Hearing Panel may deviate from the grid for sufficient reason. Implementation of the disciplinary Sanction(s) will begin when the time period to file an

appeal has expired or when the appeal decision has been sent to the parties.

All records related to the disciplinary process will remain on file in SCRSM for a minimum of seven (7) years from the date of report. All records related to the Grievance Process resulting in suspension and/or expulsion will remain on file indefinitely.

If a student is found responsible for violating the *Code of Student Conduct*, sanctions may be imposed and can include, but are not limited to the following:

- (1) **Disciplinary Reprimand** - The disciplinary reprimand is an official written notification using the notice procedures outlined in this section to the student that the action in question was Misconduct.
- (2) **Disciplinary Probation** - Disciplinary Probation is a period of time during which a student's conduct will be observed and reviewed. The student must demonstrate the ability to comply with University policies, rules, and/or standards and any other requirement stipulated for the probationary period. The status of Disciplinary Probation will be shown on the student's academic record, including the transcript through the duration of the probationary period. Further instances of Misconduct under the *Code of Student Conduct* during this period may result in additional sanctions.
- (3) **Time-Limited Disciplinary Suspension** - Time-Limited Disciplinary Suspension is a specific period of time in which a student is not allowed to participate in class, University related activities, or be present on campus property. The status of Disciplinary Suspension will be shown on the student's academic record, including the transcript. Disciplinary Suspension is noted on the student's transcript by the phrase "Disciplinary Suspension" and will include the period of time in which the student is/was suspended from the University. In most instances, the notation of Disciplinary Suspension will remain on the transcript permanently. A student has the ability to petition to remove a Disciplinary Suspension notation in the following instances: 1) the student is eligible to reenroll in the institution or 2) the Title IX Coordinator or designee determines that good cause exists to remove the notation. A Disciplinary Suspension of a student will indicate the date on which the suspension period begins and the earliest date the application for student readmission will be considered. The Title IX Coordinator or designee may deny a student's readmission, if the student's Misconduct during the suspension would have warranted additional disciplinary action. If the student has failed to satisfy any Sanction that was imposed prior to application for readmission, the Title IX Coordinator or designee may recommend denial of readmission of a student. On denial of a student's readmission, the Title IX Coordinator or designee will set a date when another application for readmission may again be made. An administrative hold will be placed on the student's record to prevent registration during the Disciplinary Suspension.

*NOTE: For information pertaining to academic courses taken at another higher education institution during time-limited disciplinary suspension, please refer to OP 34.21 located at <http://www.depts.ttu.edu/opmanual/OP34.21.pdf>*

- (4) Disciplinary Expulsion - Disciplinary Expulsion occurs when the student is permanently withdrawn and separated from the University. This status of Disciplinary Expulsion will be shown permanently on the student's academic record, including the transcript. Disciplinary Expulsion is noted on the student's transcript by the phrase, "Expulsion" and the date in which the student's expulsion became effective. In most instances, the notation of Disciplinary Expulsion will remain on the transcript permanently. A student has the ability to petition to remove a Disciplinary Expulsion notation in the following instances: 1) the student is eligible to reenroll in the institution or 2) the Title IX Coordinator or designee determines that good cause exists to remove the notation. An administrative hold will be placed on the student's record to prevent future registration.

### Conditions

A condition is an educational or personal element that is assigned by an Administrative Hearing Officer or Hearing Panel. Costs associated with conditions may be the responsibility of the student. Some examples of conditions include, but are not limited to:

- (1) Personal and/or academic counseling intake session;
- (2) Discretionary educational conditions and/or programs of educational service to the University and/or community;
- (3) Residence hall relocation and/or contract review/cancellation of residence hall contract and/or use of dining facilities;
- (4) Restitution or compensation for loss, damage or injury, which may take the form of appropriate service and/or monetary or material replacement;
- (5) Monetary assessment owed to the university;
- (6) Completion of an alcohol or drug education program;
- (7) Completion of a sexual misconduct education program;
- (8) Referral to Raider Restart;
- (9) Referral to the BASICS Program for assessment.

### Restrictions

A restriction is an additional component of a disciplinary sanction. A restriction is usually an educational component that is to occur in conjunction with the sanctions and will usually be time specific. Some examples of restrictions include, but are not limited to:

- (1) Revocation of parking privileges;
- (2) Denial of eligibility for holding office in registered student organizations;
- (3) Denial of participation in extracurricular activities;
- (4) Prohibited access to University facilities and/or prohibited direct or indirect contact with members of the University Community;

- (5) Loss of privileges on a temporary or permanent basis.

## 11. Appeal Procedures

In Sexual Misconduct cases, either the Complainant or Respondent may appeal the determination of responsibility or the Sanction(s) imposed in an Hearing by submitting a written petition to the Title IX Coordinator or designee within three (3) University working days of the delivery of the written decision. If a student selects a Sanction Only Hearing, the student may appeal the sanction and can only appeal on the following grounds, “the sanction(s) imposed substantially varies from the range of sanctions normally imposed for similar infractions.” An appeal may not be filed on behalf of the student by a third party, including an advisor.

The petition must clearly set forth the grounds for the appeal, together with the evidence upon which the appeal is based. A disagreement with the decision alone shall not constitute grounds for appeal. The only proper grounds for appeal, and the only issues that may be considered on appeal are as follows:

- (1) A procedural irregularity occurred that significantly impacted the outcome of the Hearing (e.g. material deviation from established procedures.);
- (2) The discovery of new evidence, not reasonably available at the time the determination regarding responsibility or dismissal, was made that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included;
- (3) The Title IX Coordinator, Investigator(s), or decision maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- (4) The sanctions imposed substantially varies from the range of sanctions normally imposed for similar infractions.

*NOTE: Lack of participation at any part of the Investigation or Grievance Process does not constitute new evidence.*

Upon the filing of written appeal, the University will give written notice of the appeal to the other party. That party will have three (3) University working days to respond to the appeal.

The Title IX Coordinator will select an Appeal Officer in each case. The Appeal Officer shall not be the same person as any of the Administrative or Hearing Panel members that reached the determination of responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.

The Appeal Officer may submit the written appeal and response to the original Hearing Body, and that Body may submit its response in support of the appeal or original decision to the Title IX Coordinator or designee within three (3) University working days. The Appeal Officer will first review the appeal to determine if the appeal is timely and properly

final.

If the Appeal Officer determines that (1) the Sanctions imposed substantially vary from the range of sanctions normally imposed for similar infractions, or (2) the Appeal identifies a procedural/substantive error or new evidence that was unavailable at the original Hearing, and the error or new evidence would have substantially impacted the decision of the Administrative Hearing Officer or Hearing Panel, they may:

- (1) Modify the finding and/or increase, decrease, or otherwise modify the sanctions;
- (2) Remand the case to the original Hearing Body;
- (3) Remand the case to a new Hearing Body; or
- (4) Remand the case to SCRSM for additional review.

SCRSM shall make all reasonable efforts to simultaneously notify the parties of the status of the Appeal throughout the appellate process and notify the student(s) of the result of their appeal using the written notification procedures within five (5) University working days from receipt of all responses. If necessary, the Appeal Officer will notify the parties should they need additional time to determine the outcome of the appeal. The decision of the designated appeal officer is final and cannot be appealed.

If the Appeal Officer remands the decision to a new Hearing Body, the decision of that Hearing Body is final and may not be appealed by the original appealing party. If a party did not appeal the original decision and believes criteria for an Appeal is met, they may appeal this decision following the procedures described above. When sanctions are final, appropriate University Administrators may be notified of the student's sanctions.

## **12. Former Student Conduct & Readmission**

A former student who engages in Sexual Misconduct that is a violation of the *Code of Student Conduct* may be subject to conduct procedures prior to reenrollment, a bar against readmission, revocation of a degree, and withdrawal of a diploma.

A student who has had an administrative hold placed on their records under this section must request readmission from the Title IX Coordinator or designee at least three (3) weeks prior to any Texas Tech University Office of Admissions application deadlines for the semester or summer session in which the student wishes to re-enroll. The student may be required by the Title IX Coordinator or designee to submit evidence in writing supportive of his/her present ability to return to the University. The University will evaluate the student's request and supporting documentation with primary consideration given to satisfying all conditions specified at the time of suspension or withdrawal. If approval is granted by the Title IX Coordinator or designee for the removal of the administrative hold, the student must then complete the regular University readmission procedures.

## **13. Retaliation and False Information**

Retaliation against an individual who reports a potential violation in good faith under this

policy, assists someone with a report of a violation, or participates or refuses to participate in any manner in an investigation or in the resolution of a complaint made under this policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to threats, intimidation, coercion, discrimination, reprisals, or adverse actions related to an individual's employment or education. The University will take appropriate steps to ensure that an individual who, in good faith, reports, complains about, or participates or refuses to participate in an investigation pursuant to this policy will not be subjected to retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to report the incident to SCRSM using the same procedure outlined in Section D. Individuals who are found to have retaliated under this policy will be subject to disciplinary action, up to and including termination of employment, expulsion from the University, or being barred from University premises and events.

An individual found to have knowingly and in bad faith provided false or malicious information may be subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply 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.

#### **14. Confidentiality**

Texas Tech is committed to ensuring confidentiality during all stages of the Grievance Process. The confidentiality of the Complainant, the Respondent, the Reporting Party, any individuals who have sought guidance about this policy or have participated in an Investigation or incident will be honored by the University to the extent possible without compromising the University's commitment and obligation to investigate allegations of misconduct, to protect the University Community, and to the extent allowed by law. Unless waived in writing by the individual, the identity of aforementioned individuals:

- (1) Is confidential and not subject to disclosure under Chapter 552, Government Code;  
and
- (2) May be disclosed only to:
  - a. University Employees or individuals under contract with the University to which the report is made who are necessary for an Investigation of the report or other related Hearings;
  - b. a law enforcement officer as necessary to conduct a criminal investigation of the report;
  - c. a health care provider in an emergency, as determined necessary by the University;
  - d. the Responding Party, to the extent required by other law or regulation; and
  - e. potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law or regulation.

In some exceptional circumstances, where the incident in question presents a continuing threat to the University Community, the University may be required to investigate irrespective of the Complainant's desire to pursue allegations of Sexual Misconduct, and may be required to issue a "timely warning" to the campus community as required by the Clery Act. Timely warnings do not include personally identifiable information of involved parties.

However, because the University also has an obligation to maintain an environment free of Sex Discrimination and Sexual Misconduct, all University employees have mandatory reporting and response obligations and may not be able to honor a Complainant's request for confidentiality. The Title IX Coordinator or designee will evaluate requests for confidentiality. The willful and unnecessary disclosure of confidential information by anyone, including the Complainant or Respondent, or their advisor, may affect the integrity of the investigation.

Students may make confidential reports to the University Student Counseling Center, Family Therapy Clinic, Psychology Clinic or Student Health Services. Complainants may also make confidential reports to Voice of Hope or to other licensed clinical and/or mental health professionals acting in their professional role of providing those services, including medical providers employed by the University. Information may be shared by the clinical and/or medical provider only with the Complainant's or Respondent's consent.

Absent consent from the Complainant, disclosures to a healthcare provider, mental health care provider, or other medical provider acting in the course and scope of their employment with the University shall only state the type of incident reported and may not include any information that would violate an expectation of privacy. These Employees are encouraged to provide Complainants with information and guidance regarding University reporting options and available resources. This Subsection does not affect the Employee's duty to report an incident under any other law or regulation under which they maintain their licensure.

The following Confidential Resources are available to Texas Tech Students:

CONTACT	PHONE	WEBSITE
Student Counseling Center	806-742-3674	<a href="http://www.depts.ttu.edu/scc//">http://www.depts.ttu.edu/scc//</a>
Family Therapy Clinic	806-742-3074	<a href="http://www.depts.ttu.edu/hs/mft/clinical_services.php">www.depts.ttu.edu/hs/mft/clinical_services.php</a>
Psychology Clinic	806-742-3737	<a href="http://www.depts.ttu.edu/psy/clinic/">www.depts.ttu.edu/psy/clinic/</a>
Employee Assistance Program	806-743-1327	<a href="https://www.ttuhs.edu/centers-institutes/counseling/default.aspx">https://www.ttuhs.edu/centers-institutes/counseling/default.aspx</a>
Student Health Services	806-743-2848	<a href="https://www.depts.ttu.edu/studenthealth/">https://www.depts.ttu.edu/studenthealth/</a>
Crisis HelpLine	806-742-5555	<a href="https://www.depts.ttu.edu/scc/For_Students/crisis.php">https://www.depts.ttu.edu/scc/For_Students/crisis.php</a>
Voice of Hope-Rape Crisis Center	806-763-7273	<a href="https://www.voiceofhopelubbock.org/">https://www.voiceofhopelubbock.org/</a>

**15. Interference with an Investigation**

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

- (1) Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information;
- (2) Divulging confidential information;
- (3) Removing, destroying, or altering documentation relevant to the investigation;
- (4) Providing false or misleading information to the investigator, or encouraging others to do so; or
- (5) Making a report under this policy that, after investigation is found not to have been made in good faith.

**16. Training and Education**

Texas Tech’s commitment to preventing and raising awareness of the harm resulting from the conduct prohibited in this policy includes providing primary prevention and awareness programs for all incoming students and new Employees, ongoing education to both

Employees and students, and emailing information regarding this policy to students at the beginning of each academic semester. This policy is published on the University's website and information regarding this policy and related policies is included in orientation materials for new students, faculty, and staff. All incoming first year and transfer students must attend an Orientation session, and must additionally complete an online education module. Failure to complete this required training may result in a hold being placed on the student's account. All employees must attend Equal Opportunity non-discrimination and sex/gender discrimination training including sexual assault, sexual harassment, and campus crime mandated reporter training within the first 30 days of employment and receive supplemental training every two years.

Other appropriate compliance training sessions will also be conducted on an ongoing basis. Training sessions will include information on how and where to report incidents of prohibited conduct, resources available, as well as risk reduction and safe and positive options for bystander intervention. In addition, University Employees and administrators responsible for implementing this policy, including the Title IX Coordinator, Title IX Deputy Coordinators, Investigators, Hearing Officers, and Appeal Officers receive annual training about offenses, investigatory procedures, due process requirements, impartiality, conflicts of interest, informal resolution process, and University policies related to or described in this policy.

Title IX Coordinators, Investigators, Hearing Officers, and Appeal Officers shall receive adequate and unbiased training on the application of the Sexual Misconduct policy, and the Grievance Process, including, where appropriate, how to conduct Hearings, the use of technology, and how to make relevancy decisions. All materials used to train these staff members are publicly available on the [Title IX & Sexual Misconduct website](#).