

Sexual Misconduct Procedures (2019-2020)

Initial Response to Reports

Once the Title IX Coordinator receives a report, the Title IX Coordinator or a designee will contact the person who is reported to have experienced sexual harassment or sexual misconduct to explain their rights under this policy and provide information about resources that are available to them, such as no contact orders and other interim measures.

Confidentiality

Information gathered during the investigation and adjudication process will only be shared with University officials with a need to know the information. Unless waived in writing, the identity of the complainant will only be disclosed as necessary to conduct an investigation, hearing, and appeal, as well as to law enforcement as necessary to conduct a criminal investigation.

Basic information may be shared confidentially within the University as required to comply with reporting obligations under federal and state law. Basic information that does not identify any person will also be shared in reports on the University's website in order to comply with the requirements of Texas law.

Informal Resolution

In some instances, allegations of a violation of this policy may be resolved informally. Informal resolutions require the agreement of the parties and the approval of the Title IX Coordinator. In an informal resolution, the parties may agree that the person alleged to have violated the policy will participate in training or other conditions included in the agreement. Informal resolutions entered into before the investigator(s) make a recommendation are not an admission of responsibility or a university determination of a policy violation. Neither party has the right to appeal after they have entered into an informal resolution.

Investigative Roles

A pool of specially trained faculty and staff members will alternately serve in the following roles.*

Process Advisor: Each student in a case will be assigned a trained faculty or staff process advisor to assist in navigating the process and answering questions on policy and procedure.

Investigator: One or more investigators will be assigned to each case. The investigator(s) will be assigned from the pool and the Title IX Coordinator may also serve as an investigator.

Hearing Panelists: A Hearing Panel will consist of two faculty/staff and a trained student from the Student Conduct Panel, as assigned by the Dean of Students or their designee.

Hearing Facilitator: A Hearing Facilitator may be selected from the voting members of the Hearing Panel

or be a trained faculty or staff member appointed as an additional non-voting member of the Panel.

* In cases where a conflict of interest may arise, alternates are available.

Initiating a Formal Complaint

A reporting student has the right to submit a formal complaint requesting a full investigation of the alleged violations of this policy. The Complainant has the opportunity to provide a written or verbal complaint. There is no time limit to initiate a formal complaint, but the University's ability to investigate allegations and impose sanctions against someone found responsible for violating the policy may decrease with the passage of time. The Title IX Coordinator will review the formal complaint and may decline to investigate the complaint if it does not describe a violation of this policy. Before the Title IX Coordinator makes this decision, they will discuss the complaint with the Complainant and suggest other options for assistance, if applicable.

Support People

Both the reporting student (Complainant) and the responding student (Respondent) may be accompanied by the advisors and/or support people of their choice during any meeting or proceeding. The student will be required to sign a release to allow these support people to receive information about the case. These support people can be friends, parents, and/or an attorney. If a support person is an attorney, an attorney for the university will be present as well. Support people may not speak on behalf of the student or make a presentation, but they may ask to briefly suspend any meeting, interview or proceeding to consult with the student. In order to preserve the integrity of the process, if a support person is also a witness in the case, their testimony and evidence should be obtained before they attend any meeting or proceeding as a support person. Accommodations, including the scheduling of meeting, interviews or hearings, will not be made for support people if they unduly delay the process. Support people are expected to behave with decorum and may be asked to leave if they do not.

Investigation

If the Title IX Coordinator determines there is a basis for an investigation, the Respondent will be notified of the allegation and provided a general description of the conduct alleged to constitute the violation. One or more Investigators will be assigned to investigate the allegation. The University will strive to complete an investigation under this policy within 60 days of receiving a formal complaint; however, the length of investigations may vary and the timeline may be extended at the discretion of the Investigator(s).

Generally, the Investigator(s) will interview the Complainant, the Respondent, and relevant witnesses, and will gather and review other information related to the allegation(s) as part of the investigation process. Both the Complainant and Respondent will have the opportunity to be interviewed, provide written statements, identify witnesses, and provide documentary and other evidence for consideration. Those interviewed will have the opportunity to review their own statements and make comments. The

Investigator(s) have sole discretion to determine how and when information will be shared with the parties and witnesses during the investigation process.

At the conclusion of the investigation, the Investigator(s) will draft a summary report of the investigation that will include proposed findings on responsibility and sanction recommendations, if applicable. Responsibility will be determined by a preponderance of the evidence standard. The parties will have the opportunity to review the proposed report and the evidence used to support the report, and will also have the opportunity to provide comments about the proposed summary report. The Investigators will review the comments from the parties and make changes to the summary report if they determine they are necessary. The report will be forwarded to the Dean of Students' Office for a hearing.

In some instances, an investigation may be terminated or a case may not be referred for a hearing, including but not limited to if a Complainant drops their complaint, the parties agree to informal resolution, or both parties agree in writing to accept the Investigator's/Investigators' recommendations as to the finding and sanction as the final result of the case. In all cases, the University reserves the right to continue the process in the best interest of the health and safety of the greater University community.

The Complainant and Respondent are expected to provide all relevant information during the investigation. If a party wishes to present new information after the report has been forwarded to the hearing panel, the Hearing Facilitator will confer with the Investigator(s) to determine whether the information was available at the time of the investigation and whether the information was likely to have significantly impacted the Investigator's/Investigators' determination of responsibility. The investigation may be reopened before proceeding with a hearing.

Hearing Procedure

Upon receipt of the final summary report, the Dean of Students or designee will convene a Hearing Panel and appoint a Hearing Facilitator to oversee the hearing. The role of the Hearing Panel is to review the work of the Investigator(s) and recommend a finding and sanction to the Dean of Students based on a preponderance of the evidence, and not to reinvestigate the allegations. The Complainant, Respondent, and witnesses, if any, will have an opportunity to attend the hearing, but are not required to do so.

In the hearing, the Complainant and the Respondent may make opening statements, primarily to address issues raised in the report and explain why they agree or disagree with the report. The Hearing Panel may question the Investigator(s), the parties, and any witnesses present at the hearing. The parties may submit questions to the hearing panel before and during the hearing to be asked of the Investigator(s), other party, and witnesses who are present at the hearing. The Hearing Facilitator will review the questions and determine whether to ask the questions submitted. Support People are not permitted to speak on behalf of a party or to question any witness, investigator, or the panel during a hearing. The parties may make a closing statement to respond to any issues raised in the hearing. If the panel rejects the recommendations or adjusts the sanctions, they must do so within the framework of the policy and cite clear evidence to support the adjustments.

When the panel has finished asking questions and hearing from the parties, they will confer to reach their decision. The panel will recommend a finding and sanction to the Dean of Students. The Dean of

Students or designee will determine whether or not to accept, reject, or modify the Hearing Panel's findings and recommendations and make the decision in the case. The parties will simultaneously be notified in writing of the outcome and any options for appeal.

Past History

The past sexual history or sexual character of a party will not be considered in hearings unless such information is determined to be highly relevant by the Hearing Panel Chair. All such information sought to be admitted by a party or the University will be presumed irrelevant until a determination of relevance is made, in advance of the hearing, by the Hearing Facilitator, and in consultation with the Hearing Panel. Demonstration of a pattern, repeated, and/or predatory behavior by the responding student, including previous findings in any legal or campus proceeding, may be relevant to the finding, not just the sanction. The parties will be notified if any such information is deemed relevant and will be introduced into the process.

Sanctions

Individuals found responsible for violating this policy will be sanctioned. Not all forms of sexual misconduct are equally serious offenses, and the University reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense and taking into account any previous campus conduct code violations. The University may also impose restrictions (such as no contact orders) or educational remedies (such as training) at its discretion, whether or not a party is found responsible for violating the policy. Variation from the guidelines below is possible but must be explained in writing:

- Any student found responsible for violating the policy provisions on Sexual Harassment, Sexual Exploitation, Stalking or Retaliation will likely receive one of the following sanctions: warning, general warning, probation, probation with suspension of privileges, suspension, or expulsion.
- Any student found responsible for violating the policy provisions Intimate Partner Violence, or Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive one of the following sanctions: probation, probation with suspension of privileges, suspension, or expulsion.
- Any student found responsible for violating the policy on Non-consensual Intercourse will likely receive a sanction of suspension or expulsion.

Appeals

Both parties have the right to appeal the Dean of Students' decision on responsibility and/or sanction within five days.

Appeal requests are limited to the following grounds:

1. A procedural or substantive error occurred that significantly impacted the outcome of the case (e.g. substantiated bias, material deviation from established procedures, etc.);
2. New evidence, not previously known at the time of the investigation or hearing, could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included; and
3. The sanctions imposed are substantially disproportionate to the severity of the violation.

This appeal will be reviewed and decided by the Vice President for Student Life or their designee, who may request any existing or new information they deem necessary to resolve the appeal. The decision of the Vice President for Student Life or designee is the final decision in the case and is not subject to further review within the University.