



# Equal Opportunity, Harassment, Nondiscrimination, and Non-Academic Misconduct

– POLICY AND RESOLUTION PROCESS –

For all Students, Faculty, and Staff



South Texas  
COLLEGE OF LAW  
— HOUSTON —

PRIVATE AND INDEPENDENT SINCE 1923





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## **Article I. EQUAL OPPORTUNITY, HARASSMENT, NONDISCRIMINATION, AND NON-ACADEMIC MISCONDUCT POLICY AND RESOLUTION PROCESS**

### **Glossary**

- **Advisor** means a person chosen by a party to accompany the party to meetings related to the Title IX resolution process (Process A), to advise the party on that process, or appointed by the law school to conduct cross-examination for the party at any hearing under Process A. For allegations of misconduct that fall under “Process B”, the law school does not provide an advisor for parties, although parties may seek any advisor of their choice, subject to availability and assuming no conflict of interest.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the law school investigate the allegation.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, or retaliation (irrespective of Clery Act Campus Security Authority status).<sup>1</sup>
- **Day** means a business day when the law school is in normal operation, including days when classes may be taught online or in person.
- **Decision-maker** is the person, panel, or Chair in a Formal Grievance Process who hears evidence, determines relevance, makes the Final Determination of whether this Policy has been violated, and assigns sanctions.
- **Directly related evidence** is evidence connected to the complaint but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report or Decision-maker. Compare to ‘Relevant Evidence’ below.
- **Education program or activity** means locations, events, or circumstances where the law school exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs. This also includes any building owned or controlled by a student organization that is officially recognized by the law school.
- **Final Determination** means a conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.
- **Finding** means a conclusion by a preponderance of the evidence that the alleged conduct did or did not occur as alleged, as in a “finding of fact”).
- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by the law school to address conduct that falls within the policies included below, and which complies with the requirements of Title IX regulations found in 34 CFR Part 106.45.
- **Grievance Process Pool** includes any investigators, hearing officers, decision-makers, appeal officers, or advisors appointed by the law school who may perform any or all of these roles (though not at the same time or with respect to the same case). Employees trained to serve in a particular role or outside consultants retained by the law school may serve as members of the “Pool”.

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<sup>1</sup> See Texas Education Code Chapter 51, Subchapter E-2, Section 51.252(c).

- **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within the law school's Formal Grievance process.
- **Investigator** means the person or persons charged by the law school with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Mandated Reporter** means an employee of the law school who is obligated by policy to share knowledge, notice, or reports of harassment, discrimination, or retaliation with the Title IX Coordinator or their supervisor.<sup>2</sup>
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of non-academic misconduct, harassing, discriminatory, or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of the law school explicitly vested with the responsibility to implement corrective measures for non-academic misconduct, harassment, discrimination, or retaliation on behalf of the Law school.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Grievance Process detailed below and defined above.
- **Process B** means the administrative or informal resolution procedures detailed in [Appendix E](#) that apply only when Process A does not, as determined by the Title IX Coordinator. Process B applies to allegations of non-academic misconduct and harassment that do not meet the Title IX threshold but violates other aspects of law school policy.
- **Recipient** means a postsecondary education program that is a recipient of federal funding. For purposes of this policy, Recipient refers to South Texas College of Law Houston ("law school")
- **Relevant evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies** are post-finding actions directed to the Complainant or the community as mechanisms to address safety, prevent recurrence, and restore access to the law school's educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of non-academic misconduct or conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Resolution** means the result of an informal or Formal Grievance Process.
- **Sanction** means a consequence imposed by the law school on a Respondent who is found to have violated this policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 17.b. for greater detail.
- **Title IX Coordinator** is at least one official designated by the law school to ensure compliance with Title IX and the law school's Title IX program. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, investigators, and any member of the Grievance Process Pool, including any outside consultants retained to fulfill one or more of these roles.

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<sup>2</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

## **Section I.1 Rationale for Policy**

South Texas College of Law Houston (or “law school”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected category, and retaliation for engaging in a protected activity.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the law school has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation.

South Texas College of Law Houston values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

## **Section I.2 Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission or employment. At other times, discrimination takes the form of harassment, or in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this non-discrimination policy is reported, the allegations are subject to resolution using the law school’s “Process A” or “Process B,” as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the law school community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the law school community. This community includes, but is not limited to, students,<sup>3</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees. The procedures below may be applied to incidents, to patterns, or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

This policy also applies to allegations of non-academic misconduct. When a violation of the law school’s non-academic misconduct policy is reported, the allegations are subject to resolution using the “Process B” as detailed below in Appendix E.

## **Section I.3 Title IX Coordinator**

The [Assistant Dean of Institutional Compliance](#) serves as the [Title IX Coordinator](#) and ADA/504 Coordinator and oversees implementation of the law school’s Affirmative Action and Equal Opportunity plan, disability compliance, and the law school’s policy on equal opportunity, harassment, and nondiscrimination.

The [Title IX Coordinator](#) has the primary responsibility for coordinating the law school’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy and to address allegations of non-academic misconduct.

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<sup>3</sup> For the purpose of this policy, the law school defines “student” as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the law school.

## **Section I.4 Independence and Conflict-of-Interest**

The Title IX Coordinator manages the Title IX team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. Members of the Title IX team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants or Respondents, generally. Outside consultants may be engaged to serve as members of the Title IX team as needed on a case-by-case basis, at the discretion of the Title IX Coordinator.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the President and Dean, Michael Barry at [mbarry@stcl.edu](mailto:mbarry@stcl.edu). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the [Title IX Coordinator](#).

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the law school's President and Dean, Michael Barry at [mbarry@stcl.edu](mailto:mbarry@stcl.edu). Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the [Title IX Coordinator](#).

## **Section I.5 Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Assistant Dean Wanda T. Morrow  
Title IX/ADA/Section 504 Coordinator  
Office of Institutional Compliance  
South Texas College of Law Houston  
1303 San Jacinto, Room 235T  
Houston, Texas 77002-7006  
Phone: (713) 646-1825  
Email: [TitleIXCoordinator@stcl.edu](mailto:TitleIXCoordinator@stcl.edu)  
[File a report online](#)  
[https://cm.maxient.com/reportingform.php?STCLHouston&layout\\_id=40](https://cm.maxient.com/reportingform.php?STCLHouston&layout_id=40)

**The following administrators are designated as Officials with Authority to address and correct allegations of harassment, discrimination, or retaliation in addition to the Title IX Coordinator:**

- [Vice President, Student Services and Support](#)
- [Senior Director, Human Resources](#)

The law school has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education

400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

Or

Office for Civil Rights (OCR)  
U.S. Department of Education  
1999 Bryan St. Suite 1620  
Dallas, Texas 75201-6810  
Phone: (214) 661-9600  
[OCR.Dallas@ed.gov](mailto:OCR.Dallas@ed.gov)

For complaints involving employees:

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>  
Mickey Leland Building  
1919 Smith Street, 6<sup>th</sup> Floor  
Houston, Texas 77002  
Phone: (800) 669-4000  
Fax: (713) 651-4987

## **Section I.6 Notice/Complaints of Non-Academic Misconduct, Discrimination, Harassment, or Retaliation**

Notice or complaints of non-academic misconduct, discrimination, harassment, or retaliation may be made using any of the following options:

- 1) Report [online](#), using the reporting form posted at [https://cm.maxient.com/reportingform.php?STCLHouston&layout\\_id=40](https://cm.maxient.com/reportingform.php?STCLHouston&layout_id=40).
- 2) File a complaint with, or give verbal notice to, the [Title IX Coordinator](#) or Officials with Authority.

Assistant Dean Wanda T. Morrow  
Title IX/ADA/Section 504 Coordinator  
Office of Institutional Compliance  
South Texas College of Law Houston  
1303 San Jacinto, 235T  
Houston, Texas 77002-7006

Phone: (713) 646-1825

Email: [TitleIXCoordinator@stcl.edu](mailto:TitleIXCoordinator@stcl.edu)

Such a report may be made at any time (including during non-business hours) by using the online link, the telephone number or email [TitleIXCoordinator@stcl.edu](mailto:TitleIXCoordinator@stcl.edu), or by mail to the office address listed for the Title IX Coordinator or any other official listed.

Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. The law school tries to provide supportive measures to all Complainants, which is impossible with an anonymous report that does not identify the Complainant.

Because reporting carries no obligation to initiate a formal response, and as the law school respects Complainant requests to dismiss complaints unless there is a compelling threat to health or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows the law school to discuss or provide supportive measures.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the law school investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the law school) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the law school investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **Section I.7 Supportive Measures**

The law school, through the office of the Title IX Coordinator, will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, and as reasonably available. They are offered without fee or charge to the parties to restore or preserve access to the law school’s education program or activity. These measures are designed to protect the safety of all parties, the law school’s educational environment, and to deter harassment, discrimination, and retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Title IX Coordinator will inform the Complainant, in writing, that they may file a formal complaint with the law school either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The law school will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the law school's ability to provide the supportive measures. The law school will act to ensure as minimal an academic impact on the parties as possible and will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, or other healthcare services for prompt medical attention (including forensic purposes)
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the law school community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

## **Section 1.8 Emergency Removal**

The law school can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the CARE team, using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such removal being imposed, or as soon thereafter as reasonably possible, to show cause why the removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an advisor of their choice when meeting with the Title IX Coordinator for the

show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator and the Vice President, Student Services and Support have discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The law school will implement the least restrictive emergency actions possible considering the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in any activity that is sponsored, funded or supported by the law school.

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

### **Section I.9 Promptness**

All allegations of policy violations under this policy are acted upon promptly by the law school once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. Exceptions and extenuating circumstances can cause a resolution to take longer, but the law school will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in law school procedures will be delayed, law school will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### **Section I.10 Confidentiality/Privacy**

Every effort is made by the law school to preserve the privacy of reports.<sup>4</sup> South Texas College of Law Houston will not share the identity of any individual who has made a report or complaint of harassment, discrimination, retaliation or

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<sup>4</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of law school employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the law school's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the law school's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The law school has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see Section 19. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the



non-academic misconduct; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under that regulation.

In Texas, Chapter 51, Section 5.256 of the Education Code states that unless waived in writing by the alleged victim, the identity of the alleged victim of an incident is confidential and not subject to disclosure under Chapter 552 of the Government Code and may be disclosed only to (a) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings; (b) a law enforcement officer as necessary to conduct a criminal investigation of the report; (c) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or (d) potential witnesses to the incident as necessary to conduct an investigation of the report.

The law school reserves the right to designate which law school officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to the Title IX Coordinator, Campus Security, or the CARE team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, advisors to the parties, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The law school may contact parents/guardians to inform them of situations in which there is a significant and articulable health or safety risk but will usually consult with the student before doing so.

It is the Complainant's right to choose whether to report to law enforcement (with assistance by the Title IX Coordinator, if desired), and the Title IX Coordinator will discuss with the Complainant the importance to seek prompt medical attention, including for forensic purposes, if applicable.

Confidentiality and mandated reporting are addressed more specifically in Section 19.

### **Section I.11 Jurisdiction of the Law School**

This policy applies to the education program and activities of the law school, to conduct that takes place on the campus or on property owned or controlled by the law school, or at law school-sponsored events. The Respondent must be a member of the law school community for this policy to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to the law school's educational program. The law school may also extend jurisdiction to off-campus and to online conduct when the law school administration or the Title IX Coordinator determines that the conduct affects a substantial law school interest.

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individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

Regardless of where the conduct occurred, the law school will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity or has continuing effects on campus or in an off campus sponsored program or activity. A substantial law school interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace or causes social disorder; or
- d. Any situation that is detrimental to the educational interests or mission of the law school.

If the Respondent is unknown or is not a member of the law school community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, the law school can assist in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the law school's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, the law school may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from law school property or events.

All vendors or employers serving the law school through third-party contracts are subject to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator may assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the law school where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **Section I.12 Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the law school's jurisdiction or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures or remedies, or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the law school will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. This Policy only applies to

incidents that occurred after August 14, 2020. For incidents that occurred prior to August 14, 2020, previous versions of this Policy will apply. Those versions are available from the Title IX Coordinator.

### **Section I.13 Online Harassment and Misconduct**

The policies of South Texas College of Law Houston are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the law school's educational program and activities or when they involve the use of law school networks, technology, or equipment.

Although the law school may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the law school, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexting, or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission or anonymity of the Internet or other technology to harm another member of the law school community. Online conduct that harms another member of the law school community or that reflects badly on the individual, the law school, or the legal profession violates this policy and may be subject to discipline as discussed in the section on non-academic misconduct.

### **Section I.14 Policy on Nondiscrimination**

South Texas College of Law Houston adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

The law school does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race,
- Religion,
- Hearing status,
- Sex,
- Pregnancy,
- Creed,
- Ethnicity,
- National origin (including ancestry),
- Citizenship status,
- Physical or mental disability (including perceived disability),
- Age,
- Marital status,
- Family responsibilities,
- Sexual orientation,
- Gender identity,
- Gender expression,
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),

- Predisposing genetic characteristics,
- Domestic violence victim status,
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the law school community whose acts deny, deprive, or limit the educational or employment access, benefits, or opportunities of any member of the law school community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the South Texas College of Law Houston policy on nondiscrimination.

When brought to the attention of the law school, any such discrimination will be promptly and fairly addressed and remedied by the law school according to the appropriate grievance process as described below.

### **Section I.15 Policy on Disability Discrimination and Accommodation**

South Texas College of Law Houston is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the law school, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Assistant Dean of Institutional Compliance has been designated as the law school's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting or overseeing investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status or accommodations will be addressed using the procedures below. For details relating to disability accommodations in the law school's resolution process, see Section 41.

#### **(a) Students with Disabilities**

South Texas College of Law Houston is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the law school.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the [Assistant Dean, Academic Assistance and Counseling](#), who coordinates services for students with disabilities.

The [Assistant Dean, Academic Assistance and Counseling](#) reviews documentation provided by the student and, in consultation with the student and an outside consultant, if needed, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with the law school's applicable policies.

### **(b) Employees with Disabilities**

Pursuant to the ADA, South Texas College of Law Houston will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the law school.

An employee with a disability is responsible for submitting a request for accommodation to the [Senior Director, Human Resources](#) and providing necessary documentation. The Senior Director, Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with the law school's applicable policies.

## **Section I.16 Policy on Discriminatory Harassment and Non-academic Misconduct**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. South Texas College of Law Houston's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under South Texas College of Law Houston policy. When speech or conduct is protected by academic freedom or the First Amendment, it will not be considered a violation of the law school's policy, though supportive measures may be offered to those impacted. All offense definitions encompass actual or attempted offenses.

### **(a) Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by South Texas College of Law Houston policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

South Texas College of Law Houston does not tolerate discriminatory harassment of or by any employee, student, visitor, or third-party, and will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>5</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

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<sup>5</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational law schools Investigative Guidance](#).

When discriminatory harassment rises to the level of creating a hostile environment, South Texas College of Law Houston may also impose sanctions on the Respondent through application of the appropriate grievance process below.

South Texas College of Law Houston reserves the right to address offensive conduct or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not typically result in the imposition of discipline under law school policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, or other informal resolution mechanisms.

## **(b) Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Texas regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

South Texas College of Law Houston has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, or gender identity/expression of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex/gender<sup>6</sup> or that is sexual in nature that satisfies one or more of the following:

### **(c) Quid Pro Quo**

- a. an employee of the law school,
- b. conditions<sup>7</sup> the provision of an aid, benefit, or service of the law school,
- c. on an individual's participation in unwelcome sexual conduct; or

### **(d) Sexual Harassment**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,

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<sup>6</sup> Including sexual orientation and sex stereotypes.

<sup>7</sup> Implicitly or explicitly.

- f. that it effectively denies a person equal access to the law school’s education program or activity.<sup>8</sup>

**(e) Sexual assault**

- a. Any sexual act<sup>9</sup> directed against another person<sup>10</sup>,
- b. without the consent of the Complainant,
- c. including instances in which the Complainant is incapable of giving consent.<sup>11</sup>

**(f) Dating Violence**

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.<sup>12</sup>
  - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
  - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - iii. Dating violence does not include acts covered under the definition of domestic violence.

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<sup>8</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

<sup>9</sup> A “**sexual act**” is specifically defined by federal regulations to include one or more of the following: **1) Forcible rape** – Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant; **2) Forcible Sodomy** – Oral or anal sexual intercourse with another person, forcibly, or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity; **3) Sexual Assault with an Object** - The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity; and **4) Forcible Fondling** - The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, or against that person’s will (non-consensually), or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. **5) Incest – Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Texas law. 6) Statutory Rape – Non-forcible sexual intercourse, with a person who is under the statutory age of consent in Texas, which is 17 years old, although if the victim was at least 14 years old, it is not statutory rape if the other party was not more than three years older.**

<sup>10</sup> This would include having another person touch you sexually, forcibly, or without their consent.

<sup>11</sup> This definition set is not taken from SRS/NIBRS verbatim. This policy substituted Complainant for “victim,” removed references to his/her throughout, defined “private body parts,” removed the confusing and unnecessary term “unlawfully,” and inserted language clarifying that the law school interprets “against the person’s will” to mean “non-consensually.”

<sup>12</sup> See Texas Family Code Title 4, Subtitle A, Chapter 71, Section 71.0021.

**(g) Domestic Violence (“Family Violence” under Texas law)**

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Texas<sup>13</sup>, or
- g. by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Texas.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

**(h) Stalking<sup>14</sup>**

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person’s safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

South Texas College of Law Houston reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

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<sup>13</sup> See Texas Family Code, Title 4, Subtitle A, Chapter 71, Section 71.004

<sup>14</sup> See Texas Penal Code, Section 42.072



## Section I.17 Force, Coercion, Consent, and Incapacitation<sup>15</sup>

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

### Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

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<sup>15</sup> The state definition of consent is found in [Texas Penal Code Sec. 1.07\(11\)](#), which is applicable to criminal prosecutions for sex offenses in Texas but may differ from the definition used on campus to address policy violations. [Included for Clery/VAWA Sec. 304 compliance purposes]

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the law school to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>16</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the law school’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, or the consumption of incapacitating drugs.

## **Section I.18 Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, South Texas College of Law Houston additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- **Sexual Exploitation**, defined as an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy
  - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in

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<sup>16</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography.
- **Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;**
- **Engaging in physical assault, acts of physical violence, injury to the property of others, conduct that intentionally or recklessly imperils the safety of any member of the law school community or person on law school premises or threatening to commit any of the above,**
- **Engaging in behavior that disrupts the educational activities or supporting services of the law school,**
- **Discrimination**, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the law school community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- **Bullying<sup>17</sup>**, defined as:
  - Repeated or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally.

Violation of any other law school policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

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<sup>17</sup> Bullying also includes speech or conduct, including use of social media, text, or e-mail, that is directed toward or that is about a student, a group of students, administrative authorities, advocacy coaches, staff, or full-time or part-time faculty members.

## **Section I.19 Non-academic Misconduct**

Students shall comply with all requirements and instructions of the administrative authorities and full-time and part-time faculty for maintenance of order and decorum on the law school premises, including but not limited to in classrooms, courtrooms, clinics, the library, study rooms, hallways, and all other facilities and property of the law school.

To that end, in addition to misconduct as described in sub-sections (a) through (d) above, students shall not engage in the following instances of non-academic misconduct: (A) misuse of the law school's property or other students' property; (B) violations of the law school's policies regarding use and consumption of drugs and alcohol; (C) use and carrying of weapons; (D) off-campus misconduct; and (E) misconduct regarding the Code's disciplinary process.

A student will violate this policy by engaging in any conduct for the purpose of, or which has the reasonably foreseeable effect of, limiting the ability of any member of the law school community to fully participate in or benefit from any activities of the law school. A student also violates this Code by engaging in conduct that will risk or diminish the health and safety of any member of the law school community or community-at-large. The prohibitions against harassment, bullying, and intimidation do not apply to views or opinions expressed in the classroom that are relevant to the subject being taught and are expressed in a responsible and professional manner. With these prohibitions in mind, the following non-academic misconduct, though not an exhaustive list, violates the Code:

### **A. Misuse of Property**

A student will violate this policy by engaging in any conduct that disrupts the law school's normal operations or damages, in any way, the law school's facilities or property or the property of any member of the law school community. To that end, the following conduct, though not an exhaustive list, will constitute a violation of the Code:

1. A student shall not damage, deface, tamper with, gain access to, share with others, or take without authorization law school property or the property of any member of law school community, which includes, but is not limited to, all furniture, computers, technology owned by the law school, books, and safety devices (fire extinguishers and defibrillators), any database owned by the law school, or personal information of someone other than the student on a law school or personal computer or computerized database.
2. A student shall not gain or attempt to gain unauthorized access to, entry into, or use of any buildings or facilities of the law school.

### **B. Alcohol and Illegal Drugs**

A student violates this Code by engaging in conduct involving alcohol or illegal drugs that will risk or diminish the health and safety of any member of the law school community or community-at-large. With this prohibition in mind, and in addition to the Alcohol Service Policy (see the Student Handbook), Drug Abuse Prevention Policy (see the Student Handbook), and Drug and Alcohol Abuse Prevention Policy (see the Student Handbook), the following conduct shall violate the Student Conduct Code:

1. A student shall not engage in unlawful manufacture, possession, sale, or distribution of illegal drugs while on law school property, while in a classroom at the law school, while representing the law school, or while participating in law school activities on or off law school property.
2. A student shall not consume, possess, or use alcohol or illegal drugs while on law school property, except for alcohol consumption during law school sanctioned, sponsored, or related activities in accordance with the law school's Alcohol Service Policy.
3. A student shall not attend a law school or law school-sponsored class, clinic, competition, conference, seminar, or other educational activity (or represent the law school at any such event) under the influence of alcohol or illegal drugs.

### **C. Firearms and Weapons Misconduct**

1. A student who engages in conduct that violates the law school's Weapons Policy (see the Student Handbook) violates the Code by that conduct and will be disciplined under the procedures at Section V of the Code.

### **D. Off-Campus Misconduct**

1. A student who engages in conduct, including online conduct, not otherwise covered by a Code provision, whether on or off law school premises, which adversely reflects on the student's character or fitness to practice law or adversely affects the law school, its reputation, or any member of the law school community or the community-at-large commits a violation of this Code.

### **E. Misconduct Regarding the Code's Disciplinary Process**

1. A student who in good faith suspects a Code violation has occurred has an obligation to promptly report the suspected violation to a member of the faculty or administrator. A student's failure to do so violates the Code.
2. A student violates the Code by falsely accusing another student of a violation when the accuser knows the accusation is false.

Violation of any other law school policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses and Non-academic Misconduct range from reprimand through expulsion/termination.

## **Section I.20 Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. South Texas College of Law Houston is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for South Texas College of Law Houston or any member of the law school community to take or attempt to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, participated, or refused to participate in any manner, in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided or afforded within Process A that is not provided by Process B. Therefore, the law school vets all complaints carefully to ensure this does not happen and to ensure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **Section I.21 Mandated Reporting and Confidential Resources**

All South Texas College of Law Houston employees (faculty, staff, administrators) are required by Texas law to report actual or suspected discrimination or harassment to appropriate officials immediately, although there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment in a manner that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (or police, if desired by the Complainant), who will act when an incident is reported to them.

The following sections describe the reporting options at South Texas College of Law Houston for a Complainant or third-party (including parents/guardians when appropriate):

### **(a) Confidential Resources**

If a complainant would like the details of an incident to be kept confidential, the complainant may speak with:

#### **Off-campus (non-employees):**

- Licensed professional counselors and other medical providers

- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
  - Texas Forensic Nurse Examiners
- Clergy/Chaplains
- Attorneys

**On-campus confidential resources (law school employees)**

- [Assistant Dean, Student Academic Affairs](#)
- [Senior Director, Student Support](#)

The individuals listed above will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor or when required to disclose by law or court order. Law school employees who have confidential privileges as described above, will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to the student or employee.

**(b) Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant’s anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

An anonymous notice will be investigated by the law school to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the law school’s ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant’s personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, or disabled, depending on state reporting of abuse requirements.<sup>18</sup>

**(c) Mandated Reporters and Formal Notice/Complaints (Texas Education Code Ch. 51)**

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<sup>18</sup> Texas Penal Code Section 32.53 requires any person who believes that a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited to report the circumstances to appropriate authorities.

All employees of South Texas College of Law Houston (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.<sup>19</sup>

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the law school.

Supportive measures may be offered as the result of such disclosures without formal law school action.

Failure of a mandated reporter, as described in this section, to report an incident of sex/gender harassment or discrimination of which they become aware is a violation of Texas law, as well as law school policy and that person can be subject to disciplinary action, up to and including termination, as well as civil and criminal penalties, for failure to comply. Texas Education Code Sec. 51.255 requires the termination of an employee who:

(1) Is required to make a report under Section 51.252 and fails to promptly make the report without good cause, as determined by the institution. Section 51.255(c) requires institutions to terminate the employment of an employee whom the institution determines in accordance with the institution’s internal disciplinary procedure to have failed to report an offense as required under this section.

Knowingly failing to make a required report could be prosecuted as a Class B misdemeanor. Intentional concealment would be an aggravating factor that could be prosecuted as a Class A misdemeanor.

The law also contains civil and criminal immunity for any person who makes a report or assists in an investigation in good faith. Mandated reporters are also granted amnesty for any institutional policy violations that would not ordinarily be punished by suspension or expulsion.

A Mandated Reporter who engages in harassment or other violations of this policy still has a duty to report their own misconduct, though the law school is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

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<sup>19</sup> Texas Education Code Chapter 51, Subchapter #-2, Section 51.252, requires all employees of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution’s Title IX Coordinator. However, a person is not required to make a report concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking, or an incident in which the person received information due to a disclosure made at a sexual harassment, sexual assault, dating violence, or stalking awareness event sponsored by the institution or by a student organization affiliated with the institution.



Finally, it is important to clarify that a Mandated Reporter who is a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **Section I.22 When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the law school proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health or safety that requires the law school to pursue formal action to protect the community.

A compelling risk to health or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, or violence. South Texas College of Law Houston may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the law school's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the law school proceeds, the Complainant (and/or their advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the law school's ability to remedy and respond to notice may be limited if the Complainant does not want the law school to proceed with an investigation or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the law school's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the law school to honor that request, the law school will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the law school, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

### **Section 1.23 Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, or stalking should be aware that under the Clery Act, South Texas College of Law Houston must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The law school will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **Section 1.24 False Allegations and Evidence**

Deliberately false or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under South Texas College of Law Houston policy.

### **Section 1.25 Amnesty for Complainants and Witnesses**

The South Texas College of Law Houston community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to law school officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the law school community that Complainants choose to report misconduct to law school officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, South Texas College of Law Houston maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident<sup>20</sup>.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

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<sup>20</sup> Texas Education Code Chapter 51, Subchapter E-2, Section 51.254 states that a person acting in good faith who reports or assists in the investigation of a report of an incident of sexual harassment, sexual assault, dating violence, or stalking is immune from civil liability, and criminal liability for offenses punishable by fine only, that might otherwise be incurred or imposed as a result of those actions; and may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment. However, this does not apply to a person who perpetrates or assists in the perpetration of the incident.

## **Section 1.26 Federal and State Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA<sup>21</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the director of campus security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include student affairs/student conduct staff, campus security, student organizations staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student or campus activities.

Texas Senate Bill 212 § 51.253 requires publication of a statistical report on the law school’s website in any semester in which five or more reports of sexual harassment, sexual assault, dating violence, or stalking is alleged to have been committed by or against a person who was enrolled at or an employee of the law school at the time of the incident.

The report will not identify any person and will include:

- The number of reports received;
- The number of investigations conducted as a result of those reports;
- The disposition, if any, of any disciplinary processes arising from those reports;
- The number of reports, if any, or which no disciplinary process was initiated; and
- Any disciplinary actions taken under § 51.255.

## **Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders and is particularly time-sensitive. The law school will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at a nearby hospital, ideally within 120 hours of the incident, (sooner is better)
2. Avoid showering, brushing teeth, bathing, washing hands, face, or genital areas, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.

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<sup>21</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

5. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
6. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence. During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

## **Article II. RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (PROCESS “A”)**

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### **Section II.1 Overview**

South Texas College of Law Houston will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator<sup>23</sup> or any other Official with Authority (“OWA”) by applying these procedures, known as “Process A.”

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above involving students, staff, administrator, or faculty members.

If other policies are involved, such as policies on non-academic misconduct, protected class harassment or discrimination other than the offenses described above, please see [Appendix E](#) for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B applies to allegations of non-academic misconduct and to allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator after applying mandatory dismissal and jurisdictional analysis under Title IX.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another).

**All allegations of academic misconduct or other conduct unrelated to incidents covered by this Policy will be addressed through procedures elaborated in the applicable student, faculty or staff handbooks.**

### **Section II.2 Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of this Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the law school needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; or
- 2) An informal resolution (upon submission of a formal complaint); or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The law school uses the Formal Grievance Process to determine whether or not the policy has been violated. If so, the law school, through the Title IX Coordinator, will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

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<sup>22</sup> Formal Grievance Processes enabling students and employees to challenge law school action are exempted from that process and replaced with the resolution process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX.

<sup>23</sup> Anywhere this procedure indicates “Title IX Coordinator,” the law school may substitute a trained designee.

## Section II.3 Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>24</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment typically include:

- Once notice is received, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment (VRA) indicates a compelling threat to health or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures, including CARE team notification and assistance.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assess their request(s) and then implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and if so, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - an incident, or
      - a pattern of alleged misconduct, or
      - a culture/climate issue, based on the nature of the complaint.
    - If alleged misconduct does not fall within the scope of Title IX, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, and refers the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is just procedural and does not limit the law school’s authority to address a complaint with an appropriate process and remedies.

### **a. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE team as part of the initial assessment. A VRA can aid in ten critical or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health or safety;
- Whether the Title IX Coordinator should pursue or sign a formal complaint absent a willing/able Complainant;

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<sup>24</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- Whether the scope of the investigation should include an incident, or pattern of misconduct, or climate of hostility/harassment;
- To help identify potential predatory conduct;
- To help assess or identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer law school about a Respondent;
- Assessment of appropriate sanctions and/or remedies (to be applied post-hearing); and
- Whether a Clery Act Timely Warning is needed.

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

VRAs require specific training and are typically conducted by CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE team. When a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted or predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about the law school's process for VRA can be found below in Appendix D.

#### **b. Dismissal (Mandatory and Discretionary)<sup>25</sup>**

The law school must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy above, even if proved; or
- 2) The conduct did not occur in an educational program or activity controlled by the law school (including buildings or property controlled by recognized student organizations), or the law school does not have control of the Respondent; or
- 3) The conduct did not occur against a person in the United States; or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the law school.<sup>26</sup>

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<sup>25</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

<sup>26</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

The law school may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

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

Upon any dismissal, the law school will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **Section II.4 Counterclaims**

South Texas College of Law Houston is obligated to ensure that the grievance process is not abused for retaliatory purposes. The law school permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith but are, on occasion, made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

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

#### **Section II.5 Right to an Advisor Under “Process A”**

The parties may each have an advisor<sup>27</sup> of their choice present with them for all meetings and interviews within the Title IX resolution process (“Process A”) if they so choose. The parties may select anyone they wish to serve as their advisor if the advisor is eligible and available.<sup>28</sup>

Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

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<sup>27</sup> This could include an attorney, advocate, or support person. The law permits one Advisor for each party. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>28</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.



### **(a) Who Can Serve as an Advisor**

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, or consult with them throughout the resolution process. The parties may choose advisors from within or outside of the law school community.

For Title IX cases utilizing “Process A” that proceed to a formal hearing, the Title IX Coordinator will offer to assign a trained advisor to conduct cross-examination on behalf of any party if the party does not have an advisor. This may be a staff member, or an outside party trained for this purpose. If the parties choose an advisor through the law school, the advisor will have received advisor training and be familiar with the law school’s resolution process.

If the parties choose an advisor from outside the pool of those identified by the law school, the advisor may not have been properly trained and may not be familiar with law school policies and procedures.

Parties also have the right to choose not to have an advisor in the initial stages of the resolution process, prior to a hearing. However, an advisor is required at any live hearing conducted under “Process A” to conduct cross-examination.

**For all complaints not utilizing “Process A”, parties may choose an advisor at any time during the process, but no advisor is provided by the law school except as required under Title IX.**

### **(b) Advisors' Role in Meetings and Interviews**

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The law school cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, the law school is not obligated to provide an attorney to serve as advisor.

### **(c) Advisors in Hearings/Law School-Appointed Advisors for Title IX Proceedings (“Process A”)**

Under current U.S. Department of Education regulations applicable to Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties’ advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an advisor for a hearing, the law school will appoint a trained advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own advisor, but they may not proceed in a live hearing without an advisor. If the party’s advisor will not conduct questioning, the law school will appoint an advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

### **(d) Pre-Interview Meetings**

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

#### **(e) Advisor Violations of Law School Policy**

All advisors are subject to the same law school policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the Title IX Coordinator. Advisors are expected to advise their advisees without disrupting proceedings. The advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the investigator(s) or other Decision-makers except during a hearing proceeding during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.

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

#### **(f) Sharing Information with the Advisor**

The law school expects that the parties may wish to have the law school share documentation and evidence related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The law school also provides a consent form that authorizes the law school to share such information directly with a party's advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the advisor before the law school is able to share records with an advisor.

#### **(g) Privacy of Records Shared with Advisor**

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

### **(h) Expectations of an Advisor**

The law school generally expects an advisor to adjust their schedule to allow them to attend law school meetings when scheduled but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Title IX Coordinator may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

### **(i) Expectations of the Parties with Respect to Advisors**

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

The parties are expected to provide timely notice to the Title IX Coordinator if they change advisors at any time. It is assumed that if a party changes advisors, consent to share information with the previous advisor is terminated, and a release for the new advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing. A hearing will not be delayed due to a change in advisors.

### **(j.) Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

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

Advisors are required to conduct cross-examination for Title IX complaints that proceed to a hearing under Process A. If a party does not have an advisor for a hearing, the law school will appoint a trained advisor for the limited purpose of conducting any questioning of the other party and witnesses. This person may be a member of the faculty or staff, or an outside consultant may be hired for this purpose.

## **Section II.6 Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with law school policy.

While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have

discretion to share their own knowledge and evidence with others if they so choose. South Texas College of Law Houston encourages parties to discuss this with their advisors before doing so.

The Formal Grievance Process is the law school's primary resolution approach, unless Informal Resolution is elected by all parties and the law school. Three options for Informal Resolution are detailed in this section, and the Formal Grievance Process is detailed in the next section.

### **(a) Informal Resolution**

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

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution, should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the law school will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the law school.

The Title IX Coordinator will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **(b) Alternative Resolution Mechanism**

Alternative Resolution is an informal process by which the parties reach a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;

- Civility of the parties;
- Results of violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator is authorized to negotiate a resolution that is acceptable to all parties, or to accept a resolution that is proposed by the parties, usually through their advisors.

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

### **(c) Respondent Accepts Responsibility for Alleged Violations**

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

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the law school are able to agree on responsibility, sanctions, or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of law school policy and implements agreed-upon sanctions or remedies, in coordination with other appropriate administrator(s), as necessary.

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

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

## **Section II.7 Formal Grievance Process (Process A)**

The Formal Grievance Process (Process A) relies on external third parties trained to carry out the formal grievance process and trained staff members to facilitate that process.

### **(a) a. Roles**

External third parties or employees who are properly trained may serve in one or more of the following roles, at the discretion of the Title IX Coordinator:

- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in those resolution approaches.
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **(b) Third Party Appointment**

The Title IX Coordinator selects and oversees training for employees who assist in Process A and works with external third parties to provide trained personnel to serve as Hearing Officers or Decision-maker in Process A. Employees and external third parties in these roles act with independence and impartiality.

### **(c) Training**

Contracted third parties and employees serving a role in the formal grievance process receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of the law school's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses under this policy
- How to apply definitions used by the law school with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, or retaliation allegations

All employees of the law school participating in the grievance process and all external third parties engaged for this purpose receive specific training relevant to their role in the process. The materials used to train The Title IX Coordinator and employees in these roles are publicly posted here: <https://atixa.org/2020-regulations-requirement-posting-of-training-materials/>. The specific training received by the Title IX team relevant to their individual roles is available upon request to the Title IX Coordinator. Copies of the training slides for each training attended are available for review upon request to the Title IX Coordinator, however the materials are proprietary and may not be reproduced or distributed.

## **Section II.8 Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

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

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official law school records, or emailed to the parties' law school-issued email or designated accounts. Once mailed, emailed, or received in-person, notice will be presumptively delivered.

### **Section II.9 Resolution Timeline**

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

### **Section II.10 Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints trained employees or contracts with external third parties to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

### **Section II.11 Ensuring Impartiality**

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

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

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

The law school operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **Section II.12 Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.



The law school will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **Section II.13 Delays in the Investigation Process and Interactions with Law Enforcement**

The law school may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties or witnesses, or accommodations for disabilities or health conditions.

The law school will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The law school will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the Title IX Coordinator will implement supportive measures as deemed appropriate.

Law school action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **Section II.14 Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible

- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the law school does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and legal counsel for their review and feedback.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

### **Section II.15 Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the law school are expected to cooperate with and participate in the law school's investigation and resolution process. Failure of such witnesses to cooperate with or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, natural or health disasters) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determines that timeliness, efficiency, or other reasons dictate a need for remote interviewing. The law school will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

### **Section II.16 Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio or video record interviews, all involved parties should be made aware of audio or video recording. Texas has a “one-party consent” law that requires that only one party to the conversation has to consent to the audio or video recording. Interviews held via Zoom are typically recorded.

### **Section II.17 Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

### **Section II.18 Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers utilizing an external entity that provides such services. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the nature and context of the alleged misconduct.

### **Section II.19 Hearing Panel/Decision-maker Composition**

The Title IX Coordinator will designate a single Decision-maker or a three-member panel to conduct the hearing as Decision-makers. If a panel is used, one member of the panel will be designated as the Chair by the Title IX Coordinator.

Decision-makers will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate sit in throughout the resolution process if a substitute is needed for any reason.

Those who have served as Investigators may be witnesses at the hearing and therefore may not serve as Decision-makers. Those who are serving as advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

## **Section II.20 Evidentiary Considerations in the Hearing**

Any evidence that the Decision-makers determine is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the law school uses a progressive discipline system. This information is only considered at the sanction stage of the process.

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

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

## **Section II.21 Notice of Hearing**

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

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- A description of any technology that will be used to facilitate the hearing. (Zoom, recording, etc.)
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an advisor of their choosing at the hearing and will be

required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an advisor, and the Title IX Coordinator will appoint one to ask questions. Each party must have an advisor present at a hearing under this process (Process A). There are no exceptions.

- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>29</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review only during any sanction determination after a finding of responsibility for a policy violation.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether or not parties can bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the law school and remain within the 60-90 business day goal for resolution.

## **Section II.22 Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend a live hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

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

## **Section II.23 Pre-Hearing Preparation**

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

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

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

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<sup>29</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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

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

### **Section II.24 Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their advisors to invite them to submit the questions or topics they (the parties or their advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing.

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

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/advisors, with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the parties to establish the format.

### **Section II.25 Hearing Procedures**

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

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator (usually the Title IX Coordinator), the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when a student organization is the Respondent), advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

### **Section II.26 Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

### **Section II.27 The Order of the Hearing – Introductions and Explanation of Procedure**

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

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

### **Section II.28 Investigator Presents the Final Investigation Report**

If needed, the Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their advisors). The Investigator(s) will be available during the hearing process but are not present during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and advisors and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

### **Section II.29 Testimony and Questioning**

Once the Investigator(s) present their report and answer any questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of

submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the advisors if the Chair chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

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

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

### **Section II.30 Refusal to Submit to Cross-Examination and Inferences**

Cross-examination is an all or nothing proposition, meaning that if any relevant question is refused, no statements of that party or witness are admissible. Only if a party or witness is willing to submit to cross-examination, and answer all questions, will their statements prior to or at the hearing be fully admissible.

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

Whether a party or witness does or does not answer questions from the Decision-maker(s), their statements will be admissible as long as they are willing to submit to cross-examination questions, even if they are not asked such questions. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If collateral charges of policy violations other than sexual harassment, discrimination, or retaliation are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as



long as the opportunity for questioning is afforded to all parties through their advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

### **Section II.31 Recording Hearings**

Hearings (but not deliberations) are recorded by the law school for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their advisors, and appropriate administrators of the law school will be permitted to listen to the recording or review a transcript of the hearing in a controlled environment determined by the Title IX Coordinator, upon request. No person will be given or be allowed to make a copy of the recording without the permission of the Title IX Coordinator.

### **Section II.32 Deliberation, Decision-making, and Standard of Proof**

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

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by appropriate administrators and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required by law school policy.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions or recommendations.

This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **Section II.33 Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome may then be reviewed by legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within 5 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official law school records, or emailed to the parties' law school-issued email or otherwise approved account. Once mailed, emailed, or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the law school from the receipt of the misconduct report to the determination, including all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the law school is permitted to share such information under state or federal law; any sanctions issued which the law school is permitted to share according to state or federal law; and whether any remedies will be provided to the Complainant to ensure access to the law school's educational or employment program or activity (this detail regarding remedies is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the law school to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## **Section II.34 Statement of the Rights of the Parties ([see Appendix C](#))**

### **Section II.35 Sanctions/Responsive Actions**

Factors considered when determining sanctions or responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, or retaliation
- The need to remedy the effects of the discrimination, harassment, or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **(a) Student Sanctions**

The following are the usual sanctions<sup>30</sup> that may be imposed upon students or organizations singly or in combination<sup>31</sup>:

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any law school policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either law school-sponsored or external counseling to better comprehend the misconduct and its effects.
- **Probation:** A written reprimand for violation of law school policy, providing for more severe disciplinary sanctions if the student or organization is found in violation of any law school policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period not to exceed two years or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at South Texas College of Law Houston. [Texas HB 449 requires notations on a student's transcript for suspensions or expulsions resulting from a finding of responsibility for violating the sexual harassment policy.]
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend law school-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** The law school may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The law school reserves the right to revoke a degree previously awarded from the law school for fraud, misrepresentation, or other violation of law school policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including law school registration) for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the law school may assign any other sanctions as deemed appropriate.

## **(b) Employee Sanctions/Responsive/Corrective Actions<sup>32</sup>**

Responsive actions for an employee who has engaged in harassment, discrimination, or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*

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<sup>30</sup> law school policies on transcript notation will apply to these proceedings.

<sup>31</sup> Subject to law school's Organizational Code of Conduct.

<sup>32</sup> Certain actions relating to faculty require faculty approval.

- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer or Reassignment*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the law school may assign any other sanctions as deemed appropriate.

### **Section II.36 Withdrawal or Resignation While Charges Pending**

**Students:** Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the law school, the resolution process ends, as the law school no longer has disciplinary jurisdiction over the withdrawn student.

However, the law school will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, or retaliation. The student who withdraws or leaves while the process is pending may not return to the law school. A hold will be placed on their ability to be readmitted. They may also be barred from law school property and events.

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

**Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the law school no longer has disciplinary jurisdiction over the resigned employee.

However, the law school will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the law school, and the records retained by the Title IX Coordinator will reflect that status.

All law school responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### **Section II.37 Appeals**

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator and will Chair the appeal. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **(a) Grounds for Appeal**

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

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

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

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

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

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

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

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

### **(b) Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions included separation, South Texas College of Law Houston may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

### **(c) Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding or sanction(s).
- The Appeal Chair may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultations will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the Appeal Chair may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the law school or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Section II.38 Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, or retaliation, remedy the effects, or prevent reoccurrence.

These remedies/actions may include, but are not limited to:

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

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the law school to the Respondent to ensure no effective denial of educational access.

The law school will maintain the privacy of any long-term remedies, actions, or measures, provided privacy does not impair the law school's ability to provide these services.

### **Section II.39 Failure to Comply with Sanctions, Remedies, or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, or termination from the law school.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **Section II.40 Recordkeeping**

South Texas College of Law Houston will maintain for a period of seven years records of:

1. Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;

3. Any remedies provided to the Complainant designed to restore or preserve equal access to the law school's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. South Texas College of Law Houston will make these training materials publicly available on the law school's website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the law school's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

South Texas College of Law Houston will also maintain all records in accordance with state and federal laws.

#### **Section II.41 Disabilities Accommodations in the Resolution Process**

South Texas College of Law Houston is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the law school's resolution process.

Anyone needing such accommodations or support should contact the [Assistant Dean of Academic Assistance and Counseling](#) (students) or [Senior Director of Human Resources](#) (employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **Section II.42 Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, or retaliation and will be reviewed and updated annually by the Title IX Coordinator. The law school reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the law school website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes.



This policy and these procedures were approved by the South Texas College of Law Board of Directors and are effective August 18, 2022. They were reviewed and reapproved by the South Texas College of Law Board of Directors on August 31, 2022.

Article III. **APPENDIX A: POLICY EXAMPLES**

Some examples of possible sexual harassment include:<sup>33</sup>

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened. (Quid pro quo)
- A student repeatedly sends graphic, sexually-oriented jokes and pictures around campus via social media to hundreds of other students. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and, eventually drops a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.
- Chris has recently transitioned from male to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a gay bar some distance from campus and sees Dr. Mukembo at the bar. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts that out Dr. Mukembo as gay and raise questions about whether they are sexually involved with students. Dr. Mukembo contacts the Title IX Office and alleges that Chris is sexually harassing him.

Examples of Stalking

- Students A and B were friends with benefits. Student A wanted a more serious relationship, which caused student B to break it off. Student A could not let go, and pursued student B relentlessly. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a sexual picture, making it look as if they had sent out a picture of themselves, though it was not them. This caused them considerable embarrassment and social anxiety. They changed their passwords,

only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being “a prude.” He brings up several rumors that he has heard about how she performed oral sex on several other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to “jerk him off” (hand to genital contact). Amanda would have never done it but for Bill’s incessant advances. He feels that he successfully seduced her and that she wanted to do it all along but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn’t want it, she could have left. [Coercion]
- Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it’s a lot. After the party, he walks John to his apartment, and John comes on to Kevin, initiating sexual activity. Kevin asks John if he is really up to this, and John says yes. They remove each other’s clothes, and they end up in John’s bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can’t help but notice that John seems groggy and passive, and he thinks John may have even passed out briefly during the sex, but he came to again. When Kevin runs into John the next day, he thanks him for the great night. John remembers nothing and decides to make a report to the Dean. [Incapacitated]

#### Examples of Retaliation:

- Student-advocate A alleges sexual harassment by an advocacy coach; the coach subsequently cuts the student-advocate from the moot court team without a legitimate justification.
- A student from Organization A participates in a sexual misconduct investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.



## Article IV. APPENDIX B: A FRAMEWORK FOR INFORMAL RESOLUTION (IR)

The process for IR after receipt of a formal written complaint includes:

1. A response based on supportive measures; and/or
2. A response based on a Respondent accepting responsibility; and/or
3. A response based on alternative resolution, which could include various approaches and facilitation of dialogue.

Alternative resolution approaches such as mediation, restorative practices, and transformative justice, etc., are being used more often by colleges and universities. These approaches are typically not used to resolve allegations of sex offenses, but may be effectively used in certain situations, with the agreement of both parties.

Here are principles to be considered for supporting various approaches to informal resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but should only rarely and cautiously be considered for violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- **Situations involving dangerous patterns or significant ongoing threat to the community are not resolved by IR.**
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversionary-based resolution (although a formal complaint must be filed if you are within Section 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternate Resolution approaches to IR must be facilitated by the law school or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the informal resolution process will be deemed to have failed.
- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. No evidence elicited within the “safe space” of the IR facilitation is later admissible in the formal resolution unless all parties consent.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a wide restorative circle approach to ensure confidentiality.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the Title IX Coordinator before determining that an incident is appropriate for resolution by IR.
- IR can result in an accord or agreement between the parties (Complainant, Respondent, law school) which is summarized in writing by and enforced by the law school. These can be part of the accord/agreement.
- IR can result in the voluntary imposition of safety measures, remedies, or agreed-upon resolutions by the parties, that are enforceable by the law school. These can be part of the accord/agreement.

- IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by the law school as part of the accord/agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- While a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the Title IX Coordinator.
- Institutions must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches, to ensure they are civil, age-appropriate, culturally-competent, reflective of power imbalances, and maximize the potential for the resolution process to result in catharsis, restoration, remedy, etc., for the harmed party(ies).

## **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, or retaliation made in good faith to law school officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by law school officials.
- The right to have law school policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by law school officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by law school officials of options to notify proper law enforcement authorities, including on-campus security and local police, and the option(s) to be assisted by law school authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by law school security and other law school officials.
- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a law school-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic and/or working situations after an alleged incident of discrimination, harassment, or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Visa/immigration assistance
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options.
- The right to have the law school maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the law school's ability to provide the supportive measures.

- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right to have inadmissible prior sexual history or irrelevant character excluded as evidence by the decision-maker.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of all relevant and directly related evidence obtained by the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and a ten (10) business day period to review the report and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received at least eight hours of relevant annual training. Outside consultants trained in these procedures may fill one or more of these roles.
- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, or hearings that are closed to the public.
- The right to petition that any law school representative in the process be recused on the basis of disqualifying bias or conflict of interest.
- The right to have an advisor of their choice to accompany and assist the party in all meetings or interviews associated with the resolution process. Except as required under Sec. 106.45 of Title IX regulations to conduct cross-examination in a live hearing under this section, the law school is not obligated to provide an advisor.
- The right to have the law school compel the participation of faculty and staff witnesses.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and any sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the law school is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the law school.



- The right to a fundamentally fair resolution as defined in these procedures.

## Article V. APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)

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

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and at South Texas College of Law Houston, by CARE team members, which include staff members from campus security, student conduct, academic assistance and counseling, and human resources.

A VRA occurs in collaboration with the CARE team and must be understood as an on-going process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

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

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

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the CARE team. The CARE team will perform the assessment according to the specific nature of the Title IX case

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the CARE team manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

The VRA is conducted independently from the Title IX process, informed by it but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The CARE team conducts the VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, or immediate risk to health and/or safety of an individual or the community.



## **Article VI. APPENDIX E: PROCESS B**

### **Section VI.1 For Allegations of Non-academic Misconduct, Harassment, or Discrimination outside of 106.45**

- Process B is applicable for all instances of non-academic misconduct, or for allegations of harassment or discrimination when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.
- South Texas College of Law Houston can substitute any alternative process instead of Process B, if desired.
- VAWA Section 304 requirements apply to Process B or any alternative process for reports that fall under VAWA.
- Title IX requirements outside of Section 106.30 (based on the original 1975 regulations, the 2001 Revised Guidance, etc.) may also be applicable to Process B

### **Section VI.2 RESOLUTION PROCESS<sup>34</sup> FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, NONDISCRIMINATION, AND NON-ACADEMIC MISCONDUCT**

South Texas College of Law Houston will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination that is received by the Title IX Coordinator<sup>35</sup> or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties. This process also applies to allegations of non-academic misconduct. Allegations of academic misconduct or other law school policy violations will be addressed through the appropriate policy as outlined in the appropriate student, faculty, or staff handbook.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

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<sup>34</sup> The Equity Resolution Process as outlined in this document applies to all claims of non-academic misconduct, harassment, sexual misconduct, or discrimination for any student or employee who wishes to challenge institutional action or appeal an institutional decision related to harassment, sexual misconduct, or discrimination, notwithstanding grievance processes as described in other conduct policies.

<sup>35</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

## (a) Initial Assessment

Following intake, receipt of notice, or a complaint of an alleged violation of the law school's non-academic misconduct or nondiscrimination Policy, the Title IX Coordinator<sup>36</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment typically include:

- The Title IX Coordinator reaches out to the Complainant to offer appropriate supportive measures.
- The Title IX Coordinator advises the Complainant of their right to have an advisor of their choice present for any meetings. **For allegations of misconduct that fall under Process B, the law school does not provide advisors for parties.**
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
  - If a supportive response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and if so, which informal mechanism is available and may serve the situation best and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
    - Incident, and/or
    - A potential pattern of misconduct, and/or
    - A culture/climate issue.
- In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE team as part of the initial assessment. A VRA can aid in ten critical or required determinations, including:
  - Interim suspension of a Respondent who is a threat to health/safety;
  - Whether the Title IX Coordinator should pursue Administrative Resolution absent a willing/able Complainant;
  - Whether to put the investigation on the footing of incident, pattern, and/or climate;
  - To help identify potentially predatory conduct;
  - To help assess/identify grooming behaviors;
  - Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;
  - Whether to permit a voluntary withdrawal by the Respondent;
  - Whether to impose transcript notation or communicate with a transfer law school about a Respondent;
  - Assessment of appropriate sanctions/remedies;
  - Whether a Clery Act Timely Warning or trespass order is needed.

More about the law school's process for VRA can be found in [Appendix D](#).

Based on the initial assessment, the law school will initiate one of these responses:

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<sup>36</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- Supportive Response – measures to help restore the Complainant’s education access, as described in the Policy.
- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.
- Administrative Resolution – investigation of alleged policy violation(s) and a comprehensive investigation report summarizing the investigation and all evidence, subject to a determination by the Title IX Coordinator (for harassment, discrimination, or retaliation), or by the appropriate administrator (for non-academic misconduct), and the opportunity to appeal to an Appeal Panel or Appeal Decision-maker.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, the law school will promptly implement effective remedies designed to end the discrimination or misconduct, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator, or appropriate administrator for non-academic misconduct. If, at any point during the initial assessment or investigation, the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

## **(b) Resolution Process Administrators**

The resolution processes rely on trained administrators to carry out the resolution process. These administrators are trained in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To facilitate Informal Resolution
- To investigate allegations
- To serve on a Decision-maker panel or as a Decision-maker
- To serve on an Appeal panel or as an Appeal Decision-maker

The Title IX Coordinator carefully vets resolution administrators for potential conflicts of interest or disqualifying biases which allows administrators to act with independence and impartiality.

Training for resolution administrators is organized by the Title IX Coordinator, including a review of law school policies and procedures as well as applicable federal and state laws and regulations so that they can appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

Resolution Administrators also receive training specific to their role. This training includes, but is not limited to:

- The scope of the law school’s Non-academic Misconduct, Discrimination, and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially, by avoiding prejudice of the facts at issue, conflicts of interest, and bias
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

### **(c) Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. The law school is obligated to ensure that any process is not abused for retaliatory purposes.

The law school permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

### **Section VI.3 Advisors**

While parties are allowed to have an advisor of their choice accompany them for all meetings/interviews/hearings held under this section, the law school does not provide advisors to parties under Process B. Any fees charged by an advisor under this process will be paid by the party who brings the advisor, and not by the law school.

#### **(a) Expectations of an Advisor**

The law school expects an advisor to adjust their schedule to allow them to attend law school meetings when planned, but law school may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.

The law school may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose advisors are disruptive or who do not abide by law school policies and procedures may face the loss of that advisor or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting law school meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

#### **(b) Expectations of the Parties with Respect to Advisors**

Each party may choose an advisor<sup>37</sup> who is eligible and available<sup>38</sup> to accompany them throughout the process. The advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change advisors during the process and is not obligated to use the same advisor throughout.

The parties are expected to inform the Investigators of the identity of their advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) or the Title IX Coordinator if they change advisors at any time.

Upon written request of a party, the law school will copy the advisor on all communications between the law school and the party. The advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

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<sup>37</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within this process, though they can be advised externally.

<sup>38</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.



At the discretion of the Title IX Coordinator, more than one advisor may be permitted to the parties, upon request, but only one advisor may be physically present. For equity purposes, if one party is allowed another advisor, the other party must be allowed one to as well.

### **(c) Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

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

Complainants may wish to contact organizations such as:

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

## **Section VI.4 Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with law school policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they choose but are encouraged to discuss with their advisors first before doing so.

### **(a) Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution, or when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

#### **i. Alternate Resolution**

Alternate Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. Both parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternate Resolution process, though the parties may agree to accepted conditions or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

#### ii. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of law school Policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the misconduct, harassment, discrimination, or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

#### **(b) Administrative Resolution**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Equal Opportunity, Harassment, Nondiscrimination, and Non-academic Misconduct Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given [at least 48 hours] in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one

or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official law school records, or emailed to the parties' law school-issued or designated email account. Email is the primary method of delivery.

Once mailed, emailed, or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

The law school aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) days of determining that an investigation should proceed.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the [President and Dean](#).

Investigations are completed expeditiously, normally within 10-20 business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

The law school will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The law school may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the law school's resolution process are being investigated by law enforcement. The law school will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

Law school action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

## **Section VI.5 Investigation**

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with the Title IX Coordinator, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- In conjunction with the Title IX Coordinator, prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties
- Notice should inform the parties of their right to have the assistance of an advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses
- Gather, assess, and synthesize evidence
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 days and incorporate that response into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator or legal counsel for review and feedback

- Provide the final report to the Title IX Coordinator without making a finding, conclusion, determination, or recommendation.

### Determination

Within two to three days of receiving the Investigator's recommendation, the Title IX Coordinator or a trained, designated Decision-maker<sup>39</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The Title IX Coordinator or Decision-maker may invite and consider impact statements from the parties when determining appropriate sanction(s), if any. Impact statements are considered only upon a finding of "Responsible" for a policy violation.

The Title IX Coordinator then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties. This Notice of Outcome will be sent via email to the law school-issued email account and may also be sent to the physical address on file with the law school.

### **Section VI.6** Additional Details of the Investigation Process

#### **(a)** Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of the law school are expected to cooperate with and participate in the law school's investigation and resolution process. Failure of a witness to cooperate with or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

#### **(b)** Remote processes

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determines that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. Where remote technologies are used, the law school makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

#### **(c)** Recording

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect

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<sup>39</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated to ensure there is no conflict of interest. Outside consultants may be utilized for the roles of investigator or decision-maker, as deemed necessary by the Title IX Coordinator.

to audio or video record interviews, all involved parties should be made aware of audio and/or video recording. Texas has a “one-party consent” law that requires that only one party to the conversation consents to the recording.

#### **(d) Evidence**

Any evidence that is relevant and credible may be considered, including an individual’s prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

#### **(e) Sexual history/patterns**

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; or (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties).

#### **(f) Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations or findings, when that information suggests potential pattern or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

#### **(g) Character witnesses**

Character witnesses or evidence may be offered. The investigation and any hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **(h) Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, in consultation with other administrators as appropriate, determines sanction(s) or responsive actions, which are promptly implemented to effectively to stop the non-academic misconduct, harassment, discrimination, or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three business days of the resolution, ideally simultaneously, but without considerable time between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official law school records; or emailed to the parties’ law school-issued or designated email account. Once mailed, emailed, or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which the law school is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings

to the extent the law school is permitted to share under state or federal law.

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in Section [11](#) below.

## **Section VI.7** Sanctions

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the misconduct, discrimination, harassment, or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of the misconduct, discrimination, harassment, or retaliation
- The need to remedy the effects of the misconduct, discrimination, harassment, or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

### **(a)** Student Sanctions

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

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any law school policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Probation:** A written reprimand for violation of law school policy, providing for more severe disciplinary sanctions if the student or organization is found in violation of any law school policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at law school. At the discretion of the Title IX Coordinator, this sanction may be noted as a Disciplinary Suspension on the student's official transcript.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend law school-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.

- ***Withholding Diploma and/or Official Transcripts:*** The law school may withhold a student’s diploma and/or official transcripts for a specified period of time, and/or deny a student participation in commencement activities, if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation. The law school must provide information regarding a determination of responsibility for a violation under this policy to another institution where a Respondent seeks to enroll, upon request.
- ***Revocation of Degree:*** The law school reserves the right to revoke a degree previously awarded from the law school for fraud, misrepresentation, or other violation of law school policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- ***Organizational Sanctions:*** Deactivation, loss of recognition, loss of some or all privileges (including law school registration), for a specified period of time.
- ***Other Actions:*** In addition to or in place of the above sanctions, the law school may assign any other sanctions as deemed appropriate.

**(b) Employee Sanctions<sup>40</sup>**

Responsive actions for an employee who has engaged in harassment, discrimination, or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the law school may assign any other sanctions as deemed appropriate.

**Section VI.8 Withdrawal or Resignation While Charges are Pending**

Students: The law school does not permit a student to withdraw if that student has an allegation pending for violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination. The law school may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any law school responses to future inquiries regarding employment references for that individual will include the former employee’s unresolved status.

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<sup>40</sup> Certain sanctions relating to faculty may require faculty approval.



## **Section VI.9 Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within 5 business days of the delivery of the written finding of the Title IX Coordinator or Decision-maker. Any party may appeal the findings only under the grounds described below.

A three-member appeals panel will be designated by the Title IX Coordinator from those who have not been involved in the process previously. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, failure to correctly apply the evidentiary standard).
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the law school has designated for this offense and the cumulative record of the Respondent.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 5 business days. These responses or appeal requests will be shared with each party. The Appeal Chair will review the appeal request(s) within 5 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the appeal Chair dismisses the appeal.

When the Appeal Chair finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Panel to substitute their judgment for that of the original Investigator(s) or Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Panel.
- Sanctions imposed as the result of Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/ externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within 5 business days of the outcome of the appeal without significant

time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.

- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural or substantive error cannot be cured by the original Investigator(s) or Title IX Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to the law school or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Section VI.10 Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties or the campus community to stop the harassment, discrimination, or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

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

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by the law school to the Respondent.

### **Section VI.11 Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

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

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **Section VI.12 Recordkeeping**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept indefinitely, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

### **Section VI.13 Statement of the Rights of the Parties ([see Appendix C](#))**

### **Section VI.14 Disabilities Accommodation in the Resolution Process**

South Texas College of Law Houston is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at the law school. Anyone needing such accommodations or support should contact the Assistant Dean, Student Academic Assistance and Counseling (students) or Senior Director of Human Resources (employees), who will review the request and, in consultation with the person requesting the accommodation, and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

### **Section VI.15 Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. The law school reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the law school website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

**Procedures** in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

**Policy** in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This policy and these procedures were implemented on August 19, 2022, and approved by the South Texas College of Law Houston Board of Directors. They were reviewed and reapproved by the Board of Directors on August 31, 2022.

Rev. 8/19/2022