

# **University of Mary Hardin-Baylor**

## **Policy Regarding Sexual Harassment & Sexual Violence: Reporting and Resolving Grievances**

### **Statement of Non-Discrimination on the Basis of Sex**

The University of Mary Hardin-Baylor maintains the following policy on sex discrimination and sexual harassment in compliance with Title IX of the Education Amendments of 1972 and the Title IX regulations in 34 CFR Part 106. The University provides notice of this policy to applicants for admission and employment, students, and employees to the extent required by law.

The University does not unlawfully discriminate in its programs and activities on the basis of sex and complies with state and federal laws prohibiting sex discrimination. The requirement not to discriminate on the basis of sex applies to admissions, except undergraduate admissions as provided by Title IX.

As a non-profit Christian institute of higher learning, the University exercises its rights under state and federal law to use religion as a factor in making employment decisions. Some regulations issued under Title IX relating to discrimination on the basis of sex are not consistent with the University's religious tenets and do not apply to the University (34 CFR § 106.12(a)).

Questions or inquiries about the application of the University's policy prohibiting sexual harassment or the application of Title IX and the Title IX regulations to the University's programs and activities may be addressed to the Assistant Secretary of the Department of Education or to:

Susan Owens

Vice President for Policy and Risk Management, Title IX Coordinator and Non-Discrimination Compliance Officer

Sanderford Administrative Complex

900 College Street, Belton, Texas 76513,

254-295-4527, [susan.owens@umhb.edu](mailto:susan.owens@umhb.edu)

Dr. Brandon Skaggs

Vice President for Student Life and Deputy Title IX Coordinator

Bawcom Student Union Building

900 College St.

Belton, Texas 76513

(254) 295-4496, [bskaggs@umhb.edu](mailto:bskaggs@umhb.edu)

## **Section 1: Overview**

The specific definition of words in this policy, when capitalized, are found in Section Three and/or on Attachment A.

### **Harassment and Retaliation Are Prohibited**

The University strives to create a campus environment that is free of unlawful discrimination and harassment for all of its students and employees. Students and employees who violate the University's discrimination and harassment policies are subject to disciplinary sanctions as described in this policy and may be subject to criminal charges.

No University employee or student shall retaliate in any way against a person for making a complaint, testifying, assisting, or participating in any manner in an investigation or complaint proceeding. Retaliatory actions which are prohibited include intimidation, threats, coercion, or discrimination against any such individual. Complaints of retaliation will be investigated by the University under the same complaint processes and standards, which applied to the original underlying complaint.

### **Harassment**

Harassment is verbal or physical conduct by any individual, which creates an intimidating, offensive, or hostile environment. If harassment involves age, race, color, sex, gender, disability, national origin, or religion, it may be a form of illegal discrimination. Harassment is contrary to the Christian standards of conduct expected of all members of the University community. The University strictly prohibits harassment directed at any student, employee, or visitor to UMHB, whether or not that conduct is illegal in the eyes of the law.

#### **Examples of harassment include:**

1. Communicating verbally or non-verbally, through any medium of communication, offensive or degrading jokes, comments or gestures to, about, or in the presence of another person.
2. Degrading jokes, comments or gestures to, about or in the presence of another person.
3. Using abusive language or directing abusive conduct toward a particular person or group
4. Communicating rumors, defamatory statements or inflammatory comments, verbally or non-verbally, through any medium of communication concerning a particular person or group.
5. Harassment, including verbal and nonverbal behaviors that convey insulting, hostile and degrading attitudes about persons based on their gender.
6. Bullying (any kind of conduct, speech, gesture, communication or other act which causes or is intended to cause one to suffer fear of physical harm, alarm, intimidation, humiliation or embarrassment, or which creates a hostile environment). Bullying can be a form of unlawful harassment. Whether the conduct is illegal or not, bullying is prohibited by the University.
7. Sexual Harassment, including sexual violence (see below for more information).
8. Retaliation for having reported the harassment.

## **Sexual Harassment**

One kind of sexual harassment occurs when decisions about a student's grades, educational opportunities, or University employment depend on the student's response to sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. At other times, sexual harassment may create an environment which is hostile to education or University employment. Even a single instance, if sufficiently severe, may constitute sexual harassment (for example, in the case of dating violence or a sexual assault). Conduct can be sexual harassment whether or not any harassment or hostile feelings were intended.

### **Forms of Sexual Harassment**

Sexual harassment may take many forms, including but not limited to:

**Verbal Conduct** such as epithets, derogatory comments, slurs or unwanted sexual advances, invitations or comments. Other examples include such conduct as persistent, unwanted sexual or romantic attention; discussing or rating another's sexual attributes, attractiveness, or clothing; or asking or commenting about someone's sexuality or sex life.

**Visual/Electronic Conduct** such as derogatory posters, cartoons, calendars, drawings, pictures, or text, whether disseminated through hard copy or electronically through e-mail, internet, or other mediums.

**Physical Conduct** that is sexual in nature and directed at an individual because of his/her sex, such as unnecessary touching, patting, hugging or brushing against another's body; assault; blocking normal movement; or interference with work.

**Threats and Demands** to submit to sexual requests in order to keep a job, or academic status, or to avoid some other loss or consequence, and offers of job benefits or academic opportunity in return for sexual favors.

## **Other Sexual Misconduct**

The University is guided by the understanding that human sexuality is a gift from the creator God and that the purpose of this gift includes the procreation of human life and the uniting and strengthening of the marital bond in self-giving love. These purposes are to be achieved through heterosexual relationships within marriage. In addition to sexual harassment, sexual assault, dating violence, domestic violence, or stalking, misuses of God's gift will be understood to include, but not be limited to, incest, adultery, fornication, and homosexual behavior.

UMHB will strive to deal in a constructive and redemptive manner with all who fail to live up to this high standard. Nothing will be done to encourage abortions or other drastic actions that might bring great harm to those involved. Dealing individually with each case, efforts will be made to counsel and assist those involved. Constructive forgiveness will guide all efforts. Consistent with the statement of UMHB concerning sexual misconduct, the University shall thoroughly review the facts and circumstances of each allegation of sexual misconduct involving a student and determine if the allegation is supported by credible evidence. The University may impose a sanction against the individual that is appropriate for the act committed. In doing so, the University shall offer

counsel and assistance to the individual so that the sanction imposed may be a catalyst for redemption in his or her life.

The sanctions the University may impose against a student for an act of sexual misconduct are those set forth in the student disciplinary policy section of the UMHB Student Handbook entitled "Sanctions for Misconduct" and range from censure to expulsion.

The sanctions the University may impose against an employee for an act of sexual misconduct or other violations of the University's policies includes loss of merit raise, ineligibility for promotion, demotion, suspension, reduction in pay and any other available sanction, up to and including termination of employment.

### **On and Off-Campus Conduct**

Students and employees are expected to comply with the University's policies that prohibit sexual harassment, sexual misconduct, sexual assault, domestic violence, dating violence, and stalking, whether on or off campus. Any student who witnesses or experiences such conduct on campus or off-campus is encouraged to report the matter as described in the Reporting section of this policy.

## **Section 2: Sexual Violence**

### **Sexual Assault, Dating Violence, Domestic Violence, and Stalking**

Sexual violence refers to a broad range of physical sexual acts perpetrated without a person's consent, including where a person is incapable of giving consent due to an intellectual or other disability or to the victim's use of drugs or alcohol. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. As well as being serious violations of the University's code of student conduct, dating violence, domestic violence, sexual assault, and stalking are crimes under Texas law.

Sexual assault, dating violence, domestic violence, and stalking are defined for the purposes of the University's policy on sexual harassment and sexual violence in Section Three of this policy and also in Attachment A. In accordance with the federal Violence Against Women Act (VAWA), the definitions of these crimes under Texas law are included in the University's annual security report. Every student and employee are provided notice of and access to the annual security report.

### **Consent**

#### **The Importance of Consent**

Engaging in conduct of a sexual nature without the consent of both persons involved may constitute sexual assault. Consent is an active agreement to engage in a certain act or be exposed to a certain situation. Sexual activity without meaningful, explicit, and ongoing consent may be a violation of state and local law. This includes forcing, threatening or coercing an individual into sexual contact under duress and/or against his or her free will. When consent is requested verbally or physically, the absence of any explicit verbal or physical response constitutes lack of consent. Consent can be withdrawn at any time, but once consent has been established a person who

changes his or her mind should communicate the withdrawal of consent through words or actions.

**A person may be incapable of giving consent due to age, an intellectual or other disability, being asleep or unconscious, or being under the influence of drugs or alcohol. If a person is incapacitated (that is, lacking the physical or mental ability to make informed, rational judgments) to the extent that he or she cannot understand the fact, nature, or extent of the sexual situation, there can be no consent. Consent for sexual activity is absent if a sober, reasonable person in the position of the person who is initiating further sexual activity would have known that the other person was incapable of consent.**

**Because incapacity may be difficult to discern, it is better to err on the side of caution. When in doubt, assume the other person is incapacitated and unable to give effective consent. The responsibility for establishing true consent falls on the initiator of further sexual activity, even if that person has also been drinking. Being intoxicated or drunk is never a defense to a complaint of violating the University's policy on sexual misconduct.**

### **Section 3: Reporting Sexual Harassment or Sexual Violence**

#### **Emergency Reporting**

If you have immediate concerns for your safety, first call 911, then call the Campus Police at 254-295-5555. If you witness or experience any emergency involving sexual assault, dating violence, domestic violence, stalking or any other crime of violence, first call 911, then call the Campus Police. More information about reporting emergencies and crimes is included in Section Six of the Student Handbook and on the Campus Police webpage.

#### **Reporting to University Authorities**

Any person who has experienced or observed unwelcome conduct relating to sex discrimination, including sexual harassment, sexual assault, dating violence, domestic violence, or stalking can make a report to University authorities identified below whether or not the person reporting is the person who may be the object of conduct being reported. The report will be promptly forwarded confidentially to the Title IX Coordinator so that important information can be provided to the Complainant regarding options, complaint procedures, and supportive measures.

Some examples of matters which are appropriate for a complaint within this section include:

- A complaint of sex discrimination or sexual harassment, sexual assault, dating violence, domestic violence, or stalking carried out by University employees, other students, or third parties.
- A complaint of gender inequity in any program of the University, including athletics.
- A complaint of any violation of the University's policy against discrimination or harassment (see page 2 of this policy).

A report may be made:

- in person during normal business hours;

- at any time during or outside of normal business hours by mail, telephone, or email;
- through the University's REPORT IT online system (including anonymous reports); or
- at any time using any other means that results in the Title IX Coordinator receiving the verbal or written report;

to the following UMHB Title IX officials:

Susan Owens

Vice President for Policy and Risk Management, Title IX Coordinator and Non-Discrimination Compliance Officer

Sanderford Administrative Complex

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254-295-4527, [susan.owens@umhb.edu](mailto:susan.owens@umhb.edu)

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Students and employees are encouraged to report such conduct before it becomes severe or pervasive, so that the University can take appropriate steps to prevent the situation from creating an environment which is hostile to education or the workplace.

See section on **How To Report** below for more information.

### **Mandatory Employee Reporting**

A University employee 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 is alleged to have been committed by or against a person who was a student enrolled at UMHB or an employee of UMHB at the time of the incident must promptly report the incident directly to the Title IX Coordinator or Deputy Title IX Coordinator. Employees who are themselves the target of sexual harassment are encouraged, but not required, to report the harassment.

**Graduate Assistants, Resident Assistants and Cru Leaders** are also required to report directly and immediately to the University's Title IX Coordinator, Deputy Title IX Coordinator, or the Dean of Students any incident they have information about regarding sexual harassment, sexual assault, domestic violence, dating violence, or stalking committed by or against a University employee or student, whether on or off campus.

An employee designated by the University to receive confidential reports from students should not report any information that would violate a student's expectation of privacy. See section on **Confidential Reporting** below for more information.

## **Amnesty for Voluntary Student Reports of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking**

The University wishes to encourage good faith reports of sexual harassment or sexual violence. Therefore, the University will not pursue disciplinary action against a student enrolled at the University who makes a good faith report to the University as a complainant or as a witness to an incident of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

This amnesty for voluntary reporting applies only to conduct occurring at or near the time of the reported incident, regardless of the location at which the incident occurred or the outcome of the University's resolution process. Amnesty for voluntary reporting in this context applies to any violations of the Code of Student Conduct, including personal consumption of alcohol or other drugs (underage or illegal), except that amnesty does not apply to the reporting student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, domestic violence, or stalking.

The University may investigate to determine whether a report was made in good faith. A grant of amnesty does not preclude non-disciplinary action in response to a student's misconduct, such as testing, assessment or educational discussion in response to alcohol or other drug use.

### **How to Report**

If a complaint is made in writing, the following information should be included (these elements can be discussed in the meeting if the complaint is made in person):

1. A description of the problem which is the basis for the complaint.
2. When the conduct which is the basis of the complaint occurred.
3. The names and contact information, if known, of any persons whose conduct has created the problem or the complaint.
4. The names and contact information, if known, of any persons who can provide information about or confirmation of the complaint.
5. What, if any, consequences or effects the problem is causing for the complainant.
6. The action or solution requested in order to resolve the complaint.

The University will take appropriate steps to eliminate sexual harassment as quickly as possible. Supportive measures may be provided by the University at any time before, during, or after any investigation and any related disciplinary process has been completed. For a more complete discussion of supportive measures, see page 14 of this policy.

## **Reporting to Local Law Enforcement**

Any student or employee who is the victim of **sexual assault, dating violence, domestic violence, stalking** or other conduct which may constitute a crime may also make a law enforcement report by contacting the Belton Police Department by phone or in person:

Belton Police Department  
711 East 2nd Ave., Belton, Texas  
Call 911 or (254) 933-5840

If you request, the Title IX office will help you report the incident to the Belton Police Department. Any investigation conducted by the Belton Police Department, or any other law enforcement agency to which it may refer you, will be done separate and apart from a University investigation.

## **Reporting is a Student's Choice**

Although students who are victims have the right not to make an official report, UMHB encourages students to report sexual harassment, sexual assault, dating violence, domestic violence or stalking to the University if the student wishes to file a grievance, and/or to the Belton Police Department, if the student wishes to file a criminal complaint. If a student chooses report, he/she is encouraged to do so as soon as possible, enabling the University or the Belton Police Department to act quickly and thoroughly. Filing a report with the Belton Police Department does not constitute filing a report with the University.

Filing a report will not obligate the student to prosecute, but it will help the University take steps to provide a safer campus for the student and others. With the student's report, the University can keep a more accurate record of the number of incidents involving students; determine whether there is a pattern of crime with regard to a particular location, method, or assailant; and alert the campus community to potential danger.

Students may also submit complaints to the Department of Education Office for Civil Rights.

## **Confidential Reporting**

UMHB understands that many victims have a strong desire for their report to be treated confidentially. If a student requests that his or her name not be disclosed to the accused person or that the University not investigate or take disciplinary action against the accused person, the University will carefully consider the request and honor it if possible. However, in such a case the University's response may be limited by law or the inability to conduct an investigation.

If the University determines that it can keep a report confidential, all reasonable steps will still be taken to respond to the complaint consistent with the request for confidentiality. The University will provide the complainant supportive measures as described below, which may include changes to a housing situation, class schedule, etc. Any request for confidentiality can be withdrawn at any time, and the University will proceed with any appropriate course of action.

Honoring a request not to reveal a complainant's name to an accused person, not to conduct an investigation, or not to punish the accused person will limit the University's ability to respond fully to the complaint and take any appropriate disciplinary action.

There are situations in which the University must override a request for confidentiality in order to meet its obligations under federal law to provide an educational environment, which is safe and free from sexual harassment. If the accused person has been accused before of committing similar acts or if the circumstances indicate that the accused person is likely to harm others, the Title IX Coordinator may be required to file a Formal Complaint and University may be required to investigate the report and take appropriate action to make the campus safe.

Except as may be permitted by law or as necessary to carry out the grievance procedure, the University must keep confidential the identity of:

- any individual who has made a report or complaint of sex discrimination;
- any individual who has made a report or filed a Formal Complaint of Sexual Harassment;
- any Complainant;
- any individual who has been reported to be the perpetrator of sex discrimination;
- any Respondent; and
- any witness.

A person who wants to be assured that a report will be kept confidential can:

1. Make an anonymous electronic report to the University of an allegation of sexual harassment, sexual assault, dating violence, domestic violence, or stalking committed against or witnessed by the student or employee, regardless of the location at which the alleged offense occurred. The report can be made using the **REPORT IT!** link found in this policy and at the bottom right corner of the University's Internet home page.
2. Make an anonymous complaint or report to an outside pastor, therapist, doctor, or attorney who is legally obligated to maintain patient or client confidentiality. Students who choose this option are requested to ask the professional to make a confidential report to the University without including facts that would reveal the student's identity.
3. Students can elect to make a report to a University-designated Confidential Resource. The University has designated limited categories of employees as Confidential Resources with whom students may speak confidentially about sexual harassment or sexual violence. These Confidential Resources are:
  - UMHB Student Counseling Center Licensed Counselors when acting in their professional role in the provision of counseling.
  - UMHB Student Health Center Registered Nurses when acting in their professional role in the provision of healthcare services to a student.
  - The Dean of Spiritual Life when acting within a ministerial or pastoral role in the provision of services to a student.

Unless given permission to disclose more information by the complainant, these Confidential Resources will only disclose the type of incident, date, and location if known, and not reasonably calculated to disclose personally identifiable information about the individual, but will not disclose the individual's name or other identifying details to the Title IX Coordinator.

When employees designated as Confidential Resources receive information outside of the scope of their professional or ministerial roles, the employees are required to share all information with the Title IX Coordinator.

While the University will probably not be able to take any disciplinary action against a person who is accused through an anonymous or confidential report, reporting may allow University officials to have a better picture of crime on the campus and warn the campus community about methods or patterns of crimes or other incidents.

## **Preserving Evidence**

### **Electronic Evidence (may be applicable to any type of complaint)**

Remember to preserve electronic evidence. Text messages, emails, voicemails, records of recent phone calls, and posts on social media may all provide critical evidence and should not be deleted from your cellphone, computer, or other device. Police or University investigators can help you document and preserve electronic evidence. Texts, photos, screenshots and/or audio/video recordings may be helpful to establish consent, lack of consent, or lack of the inability to give consent.

### **Physical Evidence (for complaints regarding sexual violence)**

Even if you have no immediate intention to report an incident of sexual violence to the police, preserving evidence will be important in case you later decide to press criminal charges or pursue University disciplinary action against another person. Physical evidence may also help you obtain an order from a court or the University requiring the other person involved to stay away from you.

If you have been sexually assaulted, it is better if you DO NOT shower or bathe, douche, wash hands, use the toilet, brush your teeth, change clothing, or wash clothing or bedding. If you change clothes, carefully place all clothing worn at the time (or bedding) into a paper bag.

It may be helpful for you to immediately write down everything you can remember about the incident, including specific information on where the incident occurred; what the assailant(s) looked like (e.g., height, weight, scars, tattoos, hair color, clothes); any unusual odor; any noticeable signs of intoxication; anything the assailant(s) said during the assault; what kinds of sexual activities were demanded and/or carried out; if weapons, threats, or physical force were used; any special traits noticed (e.g., limp, speech impediments, accent, use of slang, lack of erection, etc.); any description of vehicles involved in the incident, etc. Writing it down will not only aid you in recalling details should you choose to report, it also can be empowering as it allows you an element of control in a situation where control had previously been taken away.

### **Medical Evidence (for complaints regarding sexual violence)**

At a hospital, a sexual assault examination (also known as a forensic examination) can be conducted to gather evidence, whether or not you intend to press criminal charges. This procedure includes a physical exam where a doctor or a trained nurse collects the evidence of the assault. You will need to bring an extra set of clothing. The clothing worn during the assault may be collected as evidence.

If you believe you have been drugged, traces of the drug may still be detected for up to 96 hours after ingestion (depending on dosage and individual metabolism). The chances of getting proof are best when the sample is obtained quickly. In general, evidence collection is best if done immediately following an assault. The more time that passes between the sexual assault and medical collection of evidence, the less likely it is that the evidence will be useful in the prosecution of a criminal case.

Whether or not criminal charges are pursued, victims of sexual violence are encouraged to seek an immediate medical exam to be tested for sexually transmitted diseases and treated for any injuries.

### **Section Three:**

## **How the University will Process and Classify a Report of Sex Discrimination, Sexual Harassment, or Sexual Violence**

**Initial Response** When the Title IX Coordinator receives a complaint involving sex discrimination, sexual harassment, sexual violence, or other sexual misconduct (whether on or off campus), or if the University has actual knowledge of Sexual Harassment in an Education Program or Activity (as defined by Title IX), the Title IX Coordinator is responsible for coordinating a University response that is prompt and reasonable in light of the known circumstances and includes at least the following:

- Treating Complainants and Respondents equitably;
- Promptly contacting the Complainant to discuss the availability of Supportive Measures;
- Offering Supportive Measures to the Complainant whether or not the Complainant files a Formal Complaint;
- Considering the Complainant's wishes with respect to Supportive Measures;
- Explaining to the Complainant the process for filing a Formal Complaint; and
- Following the University's grievance procedure before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

The University will provide students or employees who report being victims of sexual assault, dating violence, domestic violence, or stalking with a written explanation of their rights and options, regardless of whether the offense occurred on campus. The explanation will include written notification of counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims (within the University and in the community), and the availability of changes to academic, living, transportation, and working situations, or Supportive Measures regardless of whether the student or employee files a Formal Complaint or makes a report to law enforcement.

**Definitions.** As required by Title IX and the Violence Against Women Act, the University defines dating violence, domestic violence, sexual assault, and stalking as follows:

*Dating Violence:* violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship 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. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

*Domestic Violence:* felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Texas, or by any other person against an adult or youth

victim who is protected from that person's acts under the domestic or family violence laws of Texas.

*Sexual Assault:* An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including: rape, fondling, incest, and statutory rape.

- (1) Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral genital contact of another person without Consent.
- (2) Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without Consent.
- (3) Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (4) Statutory rape is sexual intercourse with a person who is under the statutory age of consent. [Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.]

*Stalking:* engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) fear for his or her safety or the safety of others; or
- (2) suffer substantial emotional distress.

For purposes of this definition of stalking, course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

## **Sexual Harassment Complaints and Title IX**

The University is required to handle certain types of complaints of sexual harassment or sexual violence according to specific requirements of the federal law known as Title IX (see Attachment A). Other complaints are handled under the General Grievance Procedures of this policy (see Attachment B), or under the general codes of conduct processes.

**Students and employees making a complaint do not need to decide which procedure will apply to their complaint.** The Title IX Coordinator is responsible for determining the proper procedure for resolving all complaints of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, whether a complaint is initially made to the Title IX Coordinator or any other University authority.

### **When Title IX Applies to a Complaint of Sexual Harassment**

By law, a complaint of sexual harassment must be handled under the University's Title IX Grievance Procedure (see Attachment A) if:

A document is filed by a student or employee complainant requesting the University to investigate conduct on the basis of sex that satisfies one or more of the following:

1. A University employee conditioning the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking.

AND

ALL of the following conditions are met:

1. The conduct occurred in a UMHB Education Program or Activity;
2. The conduct occurred against a person in the United States;
3. The complainant is attempting to participate in the University's education program, either as a student or employee;
4. The respondent is enrolled or employed by the University at all times during the grievance procedure; and
5. There are no specific circumstances which prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations in it.

If the Title IX Coordinator determines that the complaint appears to meet all of these requirements, the University will begin to investigate the complaint under the procedures described in Attachment A of this policy.

**Other Complaints of Sexual Harassment or Sexual Misconduct**

In response to VAWA, Texas law, and the University's rules regarding student and employee conduct, the University has separate rules for handling the following types of conduct if they do not fall under the University's Title IX Grievance Procedure, as explained in the preceding paragraph and on Attachment A. Such conduct includes:

1. Complaints of unwelcome, sex-based verbal or physical conduct that:
  - a. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
  - b. in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a person's ability to participate in or benefit from the University's educational programs or activities.
2. Sexual assault.
3. Dating violence.
4. Domestic violence.
5. Stalking.

If the University becomes aware of an allegation of such conduct, whether by reason of a complaint or otherwise, the allegation will be investigated and resolved under the **General Grievance Procedures (Attachment B)**. Any appropriate University official may also pursue charges against a student under the procedures described in the Student Misconduct and Discipline section of the Student Handbook.

If the University becomes aware, by reason of the complaint or otherwise, of alleged conduct by

an employee that does not constitute Sexual Harassment as defined by Title IX, but violates other University policies, the University may impose disciplinary sanctions on the employee, up to and including termination of employment.

### **Supportive Measures**

The University will offer Supportive Measures as appropriate, as reasonably available, and without fee or charge to the Complainant, the Respondent, or a person who may become a Respondent before or after the filing of a Formal Complaint, including where no Formal Complaint has been filed.

Supportive Measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University's educational environment, or deter sexual harassment.

The following are examples of Supportive Measures the University may make available, but other similar measures may also be provided:

1. Additional excused absences from classes or leaves of absence.
2. Extensions of deadlines or other course-related adjustments.
3. Academic support services, such as free tutoring.
4. Providing an escort to move safely between classes and activities.
5. Providing parking closer to residence or classes.
6. Modifications of work or class schedules.
7. Mutual no-contact orders (prohibiting contact with another Party in person or by phone, email, text message, social network, or other means, including a third person).
8. Adjustments to campus housing assignments.
9. Adjustments to campus work assignments.
10. Counseling services.
11. Increased security and monitoring of certain areas of the campus.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

### **Confidentiality of Supportive Measures**

The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the University's ability to provide the Supportive Measures.

### **Emergency Removal and Administrative Leave**

When there is an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of Sexual Harassment, the University may remove any Respondent from the University's Education Program or Activity on an emergency basis during the pendency of the grievance procedure and issue any necessary related no-trespass and no-contact orders. The Title IX Coordinator will make the decision to remove based on an individualized safety and risk analysis. The Title IX Coordinator may consult with other

University personnel, departments, or teams to assist in the individualized assessment and risk analysis. In the event of a removal, the University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

The Title IX Coordinator or Vice President for Human Resources may place a non-student employee Respondent on administrative leave during the pendency of a grievance process under this section. This provision for administrative leave or emergency removal does not modify any of the Respondent's rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

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**Attachment A** – Grievance Procedures for Formal Complaints of Sexual Harassment and Sexual Violence Classified as Title IX

**Attachment B** - General Grievance Procedures for Complaints of Sexual Harassment and Sexual Violence NOT Classified as Title IX

## **ATTACHMENT A**

### **Grievance Procedures for Formal Complaints of Sexual Harassment and Sexual Violence Classified as Title IX**

#### **Definitions**

The following words in this policy, when capitalized, mean the following:

*Complainant:* an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

*Consent:* an active agreement by a person to engage in a certain act or be exposed to a certain situation, given by a person who has the legal capacity to give consent. Under Texas law, a sexual assault is without the consent of the other person if:

- (1) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
- (2) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- (3) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
- (4) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
- (5) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
- (6) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
- (7) the actor is a public servant who coerces the other person to submit or participate;
- (8) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
- (9) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
- (10) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code (VTCA, Penal Code § 22011).

*Dating Violence:* violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship 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. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

*Decision-maker:* the person or persons designated by the University to conduct the Hearing and make a determination on the allegations in a Formal Complaint. No Decision-maker will be a Title IX Coordinator or the Investigator.

*Document:* a document or electronic submission (such as by email or a form generated by a person using REPORT IT) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

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

*Education Program or Activity:* a location, event, or circumstance over which the University exercises (or, during the relevant time, exercised) substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including any building owned or controlled by a student organization that is officially recognized by the University.

*Facilitator:* A person who serves to facilitate an informal resolution of a Formal Complaint through mediation, arbitration, restorative justice, or a similar process.

*Formal Complaint:* a document which:

- is filed by a Complainant or signed by the Title IX Coordinator; and
- if filed by the Complainant, he or she is participating in or attempting to participate in the University's education program; and
- alleges Sexual Harassment against a Respondent; and
- requests that the University investigate.

*Hearing:* The live hearing before a Decision-maker for the purpose of presenting evidence regarding the allegations in a Formal Complaint and allowing for questioning and cross-examination of Parties and witnesses by the Parties' advisors, all in order that the Decision-maker can determine responsibility.

*Investigative Report:* The written report created by the Investigator that fairly summarizes all relevant evidence obtained during the investigation of a Formal Complaint.

*Investigator:* The person designated by the University to investigate a Formal Complaint. If more

than one person is designated, this term refers to all of the investigators.

*Party:* Either the Complainant or the Respondent.

*Parties:* All Complainants and all Respondents with respect to a complaint of Sexual Harassment or with respect to multiple Formal Complaints which have been consolidated.

*Respondent:* An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

*Sexual Assault:* An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including: rape, fondling, incest, and statutory rape.

- (1) Rape is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral genital contact of another person without Consent.
- (2) Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without Consent.
- (3) Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (4) Statutory rape is sexual intercourse with a person who is under the statutory age of consent. [Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.]

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

- (1) A University employee conditioning the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

*Stalking:* engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) fear for his or her safety or the safety of others; or
- (2) suffer substantial emotional distress.

For purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

*Supportive Measures:* non-disciplinary, non-punitive individualized services offered to the Complainant or the Respondent (or one who may become a Respondent) before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

*Witness:* A person who is identified by a Party or the University as having information relevant to a Formal Complaint.

## **General Provisions**

The University will:

1. Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent.
2. Presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance procedure.
3. Follow this grievance procedure before the imposition against the Respondent of any disciplinary sanctions or other actions that are not Supportive Measures.
4. Provide any Party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.
5. Design remedies to restore or preserve equal access to the University's Education Program or Activity. Remedies may include the same individualized services described as Supportive Measures, however remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
6. Require all persons who serve as the Title IX Coordinator, Investigator, Decision-maker, Appeal Decision-maker, or Facilitator not to have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
7. Ensure that Title IX Coordinators, investigators, decision-makers, and Facilitators receive appropriate training. Part of the training will include how to serve impartially and avoid prejudgment of the facts, conflicts of interest, and bias.
8. Apply the preponderance of the evidence standard in making determinations with respect to all Formal Complaints, whether against students, faculty, or non-faculty employees.

## **Notice of Allegations**

Upon receiving a Formal Complaint, the University will provide all known parties written notice that includes at least the following:

1. The University's grievance procedure, including any informal resolution process.
2. All allegations which may constitute Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance procedure.
4. A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
5. A statement that the Parties may inspect and review evidence.
6. A statement that the University's code of conduct prohibits any student or employee

knowingly making false statements or knowingly submitting false information during the grievance procedure.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice, the University will provide notice of the additional allegations to Parties whose identities are known.

## **Mandatory Dismissal of a Formal Complaint**

If the conduct alleged in the Formal Complaint 1) would not constitute Sexual Harassment even if proved, 2) did not occur in an Education Program or Activity, or 3) did not occur against a person in the United States, then the University must dismiss the Formal Complaint as a complaint of Sexual Harassment under Title IX or this grievance procedure.

## **Optional Dismissal of a Formal Complaint**

Except as provided below, the University may dismiss all or part of a Formal Complaint 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 in it;
2. the Respondent is no longer enrolled or employed by the University; or
3. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations in it.

If the allegations in the Formal Complaint may result in the Respondent becoming ineligible to reenroll for a reason that is neither academic nor financial, the University may terminate the formal Grievance Procedures for Title IX Complaints but may not terminate the disciplinary process until it makes a final determination of responsibility and eligibility to reenroll.

If all or part of a Formal Complaint is dismissed, the University must promptly and simultaneously send written notice of the dismissal and reason(s) for it to the Parties.

## **Consolidating Formal Complaints**

The University may consolidate Formal Complaints:

1. as to allegations of Sexual Harassment against more than one Respondent; or
2. by more than one Complainant against one or more Respondents; or
3. by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

Where a grievance procedure involves more than one Complainant or more than one Respondent, singular references to “Party,” “Complainant,” or “Respondent” include the plural, as applicable.

## **Advisors**

### **Designated Advisors and University-Appointed Advisors**

A Party may designate an advisor of his or her choice, and the advisor may be an attorney. The University will not limit the choice or presence of an advisor for either a Complainant or a

Respondent in any meeting or Title IX grievance proceeding.

The University will appoint an advisor for any Party who does not have one present in the Hearing. University-appointed advisors serve at no cost to a Party. However, advisors appointed by the University serve for the limited purpose of conducting cross-examination at the Hearing. University-appointed advisors are not required to be attorneys or have a level of competency comparable to that of another Party's designated advisor. An advisor is not required to perform any function beyond relaying a Party's desired questions to the other Party and witnesses.

A Party may find that having an advisor is helpful throughout the grievance procedure and not just at the Hearing. Both Parties are encouraged to designate an advisor.

Because the University is required to provide certain information to a Party's advisor, each Party must notify the Title IX Coordinator in writing if he or she has designated an advisor. A Party may obtain an advisor or change the identity of the Party's advisor at any time.

#### Rules for Advisors

Except during a Hearing, the role of the advisor is limited to providing support, guidance, or advice to the Complainant or Respondent throughout the grievance procedure. The following rules apply to all advisors, including advisors appointed by the University:

1. Advisors are not to answer questions posed directly to any Party or witness, nor otherwise interfere with questioning by the Investigator. An advisor may request reasonable opportunities to confer with the Party being advised.
2. During meetings, a Party and the advisor may talk quietly with each other.
3. Advisors do not have the right to question witnesses except in a Hearing.
4. Advisors may not present opening statements, closing statements, or arguments.
5. Advisors cannot disclose to other persons any confidential student information which is disclosed to the advisor in the course of the grievance procedure.
6. Advisors must act in a respectful manner at all times; bullying, yelling, and abusive conduct are never permitted.
7. Parties and advisors must not disturb the Hearing or any other proceeding by loudly conferring with one another.
8. Advisors must comply with the decisions and directions of the Decision-maker.

If a Party's advisor (whether designated by the Party or appointed by the University) refuses to comply with these rules, including rules relating to decorum, the University may require the Party to designate a different advisor or, if no other advisor is designated, to accept an advisor appointed by the University to conduct cross-examination on behalf of the Party. The University may remove from any proceeding advisors who become disruptive or who do not abide by the restrictions on their participation.

### **Informal Resolution**

At any time after a Formal Complaint has been filed but before reaching a determination regarding responsibility, the University may facilitate an informal resolution process, such as mediation or restorative justice, which does not involve a full investigation and adjudication. Informal resolution may be particularly appropriate if the facts alleged in a Formal Complaint are not

contested or the Respondent has admitted, or wishes to admit responsibility. Before the University and the Parties can proceed with an informal resolution the University must notify the Parties in writing disclosing:

1. the allegations;
2. the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
3. that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance procedure with respect to the Formal Complaint; and
4. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University must obtain the Parties' voluntary, written consent to proceed with an informal resolution process. The formal procedures for resolving a Formal Complaint will normally be suspended during the informal resolution process. If the informal process produces a resolution that is agreed upon by the Parties in writing, the grievance procedure shall end, and no investigation or Hearing shall occur.

The University:

1. may not require any person to waive the right to an investigation and adjudication of a Formal Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right;
2. may not require the Parties to participate in an informal resolution process;
3. may not offer an informal resolution process unless a Formal Complaint has been filed; and
4. may not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Harassment against a student.

## **Investigating Formal Complaints**

### **The University's Responsibilities**

The University will designate one or more investigators to investigate the allegations in the Formal Complaint. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the Parties. The University shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived it. If the Investigator makes any determinations regarding credibility, those determinations may not be based on a person's status as a Complainant, Respondent, or witness.

The University may restrict who can be present during any meeting or proceeding related to the grievance procedure, including meetings or interviews conducted by the Investigator. However, both the Complainant and the Respondent will have the same opportunities to have others present during any grievance proceeding.

### **Equal Opportunity to Present and Review Evidence**

In the course of the investigation, all Parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The University does not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.

Before completing the Investigative Report, the Investigator will send to each Party and the Party's advisor, if any, all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including:

1. evidence upon which the University does not intend to rely in reaching a determination regarding responsibility; and
2. inculpatory or exculpatory evidence, whether obtained from a Party or another source.

The evidence will be subject to inspection and review by both Parties and may be provided in an electronic format, a hard copy, or a mixture of both. Each Party will have at least ten (10) days to submit a written response to the evidence. This written response shall be the Party's final opportunity to identify and present witnesses and other inculpatory and exculpatory evidence.

If the Investigator finds that Party has provided new evidence (including witnesses) directly related to the allegations, the Investigator will provide the new evidence to both Parties, and permit an additional ten (10) days for each Party to respond to the new evidence. The Investigator will consider the Parties' written responses to the evidence before completing the Investigative Report.

#### Medical and Treatment Records

In gathering evidence, except with the Party's voluntary, written consent the University cannot access, consider, disclose, or otherwise use a Party's records that are:

1. made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity; and
2. made and maintained in connection with the provision of treatment to the Party.

#### The Investigation Report

After the time for a Party's written response to the evidence has expired, the Investigator will create an Investigative Report that fairly summarizes all of the relevant evidence gathered in the course of the investigation.

At least ten (10) days prior to the Hearing, the Investigator will send each Party and each Party's advisor a copy of the Investigative Report in an electronic format or a hard copy. A Party or a Party's advisor may make a written response to the Investigative Report by providing a copy to the Investigator and the Title IX Coordinator no later than noon of the last business day before the day of the Hearing. The Title IX Coordinator will provide a Party's written response, if any, to the other Party. A copy of the Investigative Report and all written responses by the Parties will be provided to the Decision-maker prior to the Hearing.

## **Pre-Hearing Procedures**

#### When Hearings Are Required

A live hearing must be held with respect to a Formal Complaint unless the Formal Complaint has

been dismissed or the Parties want to resolve the case through an informal resolution process without a completed investigation or adjudication.

#### Preparing for the Hearing

At least ten (10) days before the Hearing, the University will notify each Party and advisor in writing of the date, time, location, and participants for the Hearing, including the name of each witness whom the University will request to appear at the Hearing (in person or virtually) for the purpose of providing evidence. The Hearing may be conducted with all participants physically present in the same location or, at the University's discretion, any or all Parties, witnesses, and other participants may appear virtually, with technology enabling participants simultaneously to see and hear each other.

#### Requesting Separate Rooms

At the request of either Party, the University will provide for the Hearing to occur with the Parties located in separate rooms using technology enabling the Decision-maker and Parties to simultaneously see and hear the Party or the witness answering questions. In order to have sufficient time to make the appropriate arrangements, a Party's request to be in a separate room must be made in writing to the Title IX Coordinator at least five (5) business days before the Hearing.

#### Attendance by Advisors

If a Party does not have an advisor present at the Hearing, the University must provide the Party an advisor of the University's choice without fee or charge to that Party. Unless the University grants a delay for good cause shown, the University shall appoint an advisor for a Party whose designated advisor is absent from the Hearing. The advisor is not required to be an attorney, and shall be responsible to conduct cross-examination on behalf of that Party.

#### Attendance of Parties and Witnesses; Delay for Absent Witness

The University is prohibited by law from requiring any Party or witness to appear at the Hearing, or from engaging in any act that would intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, grievance proceeding, or Hearing.

For these reasons, the University is not responsible if a Party or witness fails to appear at the Hearing, and the Hearing may proceed in the absence of the Party or witness. The University may grant a Party's reasonable request to delay the Hearing if that Party or an important witness is unable to attend the Hearing. A request for a delay should be made *as soon as possible* in the manner described below in the section entitled Temporary Delays or Extensions.

## **Hearings**

#### Convening the Hearing

The Decision-maker shall convene the Hearing at the appointed time. In order to maintain privacy and the integrity of the process, witnesses will not be in the Hearing room or attending by technological means except when providing evidence or being cross-examined. Parties and witnesses will not be "sworn in," but may be reminded that providing false information in

connection with the Hearing is a violation of the University's code of conduct for students or expectations for employees.

### Questioning Parties and Witnesses

Each Party's advisor will be given an opportunity to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the Party's advisor, and never by a Party personally.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-maker may ask both advisors to provide reasons why a question should or should not be considered relevant. The Decision-maker will instruct all Parties and witnesses not to answer any question until the Decision-maker has allowed the question.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

1. 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
2. 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.

The Decision-maker shall not permit any questions, nor the introduction of any evidence, that would involve the disclosure of information protected under a legally-recognized privilege under state law unless the person holding the privilege has waived it.

Because the University's grievance procedure is not a civil proceeding or state action, there is no right against self-incrimination. However, the Decision-maker cannot draw an inference regarding responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.

### Availability of Evidence

The University will make all of the evidence that was subject to inspection and review by the Parties in connection with the preparation of the Investigative Report available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination. Parties must notify the Title IX Coordinator at least three (3) business days prior to the Hearing regarding any physical evidence, transcripts, recordings, or other items requested to be physically available at the Hearing.

### Conducting the Hearing

The Hearing will be conducted substantially as provided below. The Decision-maker may recess the Hearing for appropriate and reasonable rest and meal breaks. Any Hearing participant may request a break.

1. The Investigator or Title IX Coordinator will serve as the moderator for the Hearing. The

function of the moderator is to move the proceeding forward in an unbiased manner and to give the Parties and witnesses an opportunity to get their evidence before the Decision-maker.

2. The moderator will review the Complainant's allegations and review the evidence provided by the Complainant and summarized in the Investigative Report. The moderator will ask the Complainant whether he or she wishes to affirm the allegations and evidence as reviewed, and whether he or she would like to make any additional statements.
3. The Respondent's advisor will be given an opportunity to question the Complainant.
4. The moderator will review the Respondent's response to the allegations and review the evidence provided by the Respondent and summarized in the Investigative Report. The moderator will ask the Respondent whether he or she wishes to affirm the response and evidence as reviewed, and whether he or she would like to make any additional statements.
5. The Complainant's advisor will be given an opportunity to question the Respondent.
6. The moderator will bring each witness before the Decision-maker, either in person or through appropriate technology. The moderator will review any evidence provided by the witness and summarized in the Investigative Report. The moderator will ask the witness whether he or she wishes to affirm the evidence as reviewed.
7. The Complainant's advisor will be given an opportunity to question the witness.
8. The Respondent's advisor will be given an opportunity to question the witness.
9. If the University has provided any relevant evidence summarized in the Investigative Report, an appropriate representative or representatives of the University will review such evidence.
10. The Complainant's advisor will be given an opportunity to question the University's representative(s).
11. The Respondent's advisor will be given an opportunity to question the University's representative(s).
12. The Decision-maker may ask questions of any Party, witness, or University representative during the time that person is presenting evidence or being questioned.
13. Each Party, beginning with the Complainant, will have the opportunity to make a brief closing statement to the Decision-maker.
14. After confirming with the moderator that there is no additional evidence or other matters to be addressed, the Decision-maker will adjourn the Hearing.

### Record of the Hearing

The University will create an audio or audiovisual recording, or transcript, of the Hearing and make it available to the Parties and to the Decision-maker for inspection and review.

## **Determination of the Allegations**

### Letter of Determination

The Decision-maker shall determine whether the Respondent is responsible for each of the allegations in the Formal Complaint that could constitute Sexual Harassment. The Decision-maker shall reach these decisions by applying the preponderance of the evidence standard. In making the determination, the Decision-maker:

1. must make an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.

2. must not make credibility determinations based on a person's status as a Complainant, Respondent, or witness.
3. cannot draw an inference about responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.
4. cannot rely upon evidence or information protected under a legally recognized privilege unless the person holding the privilege has waived it.

The Decision-maker may consider any statement made by a Party or witness that is otherwise permitted to be considered even if the person who made the statement does not submit to cross-examination at the Hearing. For example, the Decision-maker may consider statements made by the Parties or witnesses during the investigation, emails or text exchanges by a Party leading up to the alleged sexual harassment, and statements about the alleged sexual harassment which the Decision-maker determines to be relevant under this Policy, regardless of whether the person who made the statement submits to cross-examination at the Hearing. The Decision-maker may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a Party or witness who is not cross-examined at the Hearing.

The Decision-maker shall issue a written determination stating the Respondent's responsibility for the alleged misconduct. The written determination must include:

1. Identification of the allegations potentially constituting Sexual Harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the University's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
6. The University's procedures and permissible bases for the complainant and respondent to appeal.
7. A statement that the audio or audiovisual recording or the transcript of the Hearing is available by written request to all Parties for inspection and review.

The Decision-maker shall exercise independent and unbiased judgment with respect to:

1. findings of fact which support the determination(s);
2. conclusions regarding the application of the University's code of conduct to the facts;
3. the determination regarding responsibility as to each allegation; and
4. the rationale for the Decision-maker's conclusions.

The Decision-maker may consult with University officials for information with respect to the procedural steps taken, the University's normal practices relating to appropriate sanctions, and the University's procedures and permissible bases for appeals.

### Effective Date of Determination

The University will provide the written determination regarding responsibility to the Parties simultaneously. If neither Party appeals, the determination becomes final on the date on which an appeal would no longer be considered timely.

If a Party appeals the determination, the determination becomes effective on the date the University provides the Parties with the written determination of the result of the appeal, unless the appeal decision requires further proceedings.

The Title IX Coordinator is responsible for effective implementation of any sanctions or remedies.

## **Sanctions**

The University can impose a range of disciplinary sanctions and remedies with respect to any misconduct for which a Respondent has been determined to be responsible. Possible disciplinary sanctions and remedies include:

1. Imposing, continuing, or modifying any Supportive Measures.
2. Warning: A reminder to the respondent about relevant University rules, regulations, or policies and the potential consequences for violating them.
3. No contact order: A directive to initiate no contact with the Complainant, including contact in person or by phone, email, text message, social network, or any other means, either directly or through a third party.
4. Reprimand: Written notice that University rules, regulations, or policies have been violated and that continuation or repetition of misconduct may result in a more severe sanction.
5. Fines: A monetary fine assessed for a disciplinary violation.
6. Probation: Written notice explaining the serious nature of misconduct and outlining the terms of probation. The terms of probation may prohibit a student from participating in co-curricular activities and provide for expulsion for violating the terms of probation.
7. Restitution: Reimbursement or other compensation for damage or loss of property.
8. Eviction: Probation or removal from campus housing.
9. Suspension- Termination of student status at the University for a specified period of time.
10. Expulsion- Termination of student status at the University permanently or for an indefinite period of time.
11. For employees: any change to terms and conditions of employment, up to and including termination.

## **Appeals**

### Right of Appeal

Both Parties may appeal from a determination regarding responsibility, or from the University's dismissal of all or any part of a Formal Complaint. The appeal procedures shall apply equally to both Parties.

Any of the following is an appropriate basis for appeal:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made; or
3. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

### Filing an Appeal

In order to appeal, a Party must file a written Notice of Appeal challenging the initial outcome that is received by the Title IX Coordinator within ten (10) days after the written Letter of Determination was issued. The Notice of Appeal must state, at a minimum:

1. every basis for the appeal;
2. a complete statement of the facts and evidence that support each basis for the appeal; and
3. the relief requested as a result of the appeal.

### Consideration of an Appeal

The University will promptly notify both Parties in writing that an appeal has been filed and provide a copy of the Notice of Appeal to the other Party. The non-appealing Party shall have ten (10) days from the date of such notice to submit to the Title IX Coordinator a written statement in support of the initial outcome or in opposition to the appeal. A copy of any such written statement shall be provided by the Title IX Coordinator to the appealing Party.

The appeal shall be considered and decided by an Appeal Decision-maker who is not the same person as the Investigator, the Title IX Coordinator, or the Decision-maker that reached the determination regarding responsibility or dismissal. The Appeal Decision-maker shall review the Notice of Appeal, the written response of the non-appealing Party, and may review the record of the Hearing as necessary to reach a conclusion on the appeal. The Appeal Decision-maker shall be bound by the same rules and considerations which apply to a Decision-maker, as described in this grievance procedure. The Appeal Decision-maker does not interview parties or witnesses nor conduct any other type of investigation.

### Decision on Appeal

The Appeal Decision-maker shall issue a written decision describing the result of the appeal and the rationale for the result. The written decision shall, insofar as applicable, provide the same type of information required to be included in the initial written determination issued in connection with the Hearing.

The decision on appeal shall be appropriate to the basis or bases for appeal, and may adopt one or more of the following holdings, regardless of which Party filed the appeal:

1. Affirm the initial written determination;
2. Change any part of the written determination, including a change to find responsibility or to find no responsibility;
3. Increase or decrease the sanctions;
4. Require additional investigation (particularly in the case of new evidence that is material, not merely cumulative, and if presented in the Hearing could reasonably have resulted in a different determination); or
5. Order a new Hearing

The written decision on the appeal shall be provided simultaneously to both Parties and shall be final unless additional investigation or a new hearing is ordered.

## **Scheduled Time Frames for the Grievance Procedure**

### Normal Time Frames

The University will conclude this grievance procedure in a reasonably prompt manner and in accordance with the following time frames:

1. The University will generally issue the written Hearing determination within ninety (90) days after the filing of the Formal Complaint.
2. The University will generally issue the written appeal determination within thirty (30) days after the filing of the Notice of Appeal.
3. The University will generally conclude any informal resolution process within thirty (30) days after the Parties agree to an informal resolution.

### Temporary Delays or Extensions

The Title IX Coordinator may direct a temporary delay in any step of this grievance procedure or the limited extension of the normal time frames for good cause. The University will notify the Complainant and the Respondent in writing of any temporary delay or limited extension and the reasons for the action.

The Complainant or Respondent may request a temporary delay or limited extension in writing to the Title IX Coordinator. The written request must state the reason for the delay or extension and the length of the delay or extension being requested.

Some examples of situations which may constitute good cause for a delay or extension include: the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University will attempt to accommodate the schedules of Parties and witnesses throughout the grievance procedure in order to provide Parties with a meaningful opportunity to exercise their lawful rights. However, the University will not delay the grievance procedure indefinitely because a Party, witness, or advisor is refusing to cooperate. In order to resolve complaints within reasonable time frames, the grievance procedure can proceed to conclusion even in the absence of a Party or witness.

## **Retaliation Prohibited**

### Retaliation Defined

Retaliation shall include the following:

1. Conduct intended to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this grievance procedure.
2. Bringing disciplinary charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal

Complaint, for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this grievance procedure.

### No Retaliation

Neither the University nor any other person may engage in retaliation against an individual because the individual has made a report or complaint or testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or Hearing under this grievance procedure.

Any person who believes that he or she has experienced retaliation which is prohibited by this grievance procedure may file a complaint or Formal Complaint with the Title IX Coordinator.

### **Confidentiality**

Except as may be permitted by the Family Educational Rights and Privacy Act (FERPA) and the FERPA regulations, or as required by law, including in the conduct of any investigation, hearing, or judicial proceeding under Title IX, the University must keep confidential the identity of:

1. any individual who has made a report or complaint of sex discrimination;
2. any individual who has made a report or filed a Formal Complaint of Sexual Harassment;
3. any Complainant;
4. any individual who has been reported to be the perpetrator of sex discrimination;
5. any Respondent; and
6. any witness.

## **ATTACHMENT B**

### **General Grievance Procedures for Complaints of Sexual Harassment and Sexual Violence NOT classified as Title IX**

**(These procedures are applicable to complaints which are NOT subject to Attachment A - Grievance Procedures for Formal Complaints of Sexual Harassment and Sexual Violence Classified as Title IX)**

All complaints or charges subject to these General Grievance Procedures will be reviewed by the Title IX Coordinator or his/her designee and appropriate supportive measures will be offered. The Title IX Coordinator may elect to take no action if a complaint relates to a respondent who is not a University student or employee or if specific circumstances would prevent an effective investigation or determination. All other complaints will be investigated promptly and impartially.

### **Investigations**

The investigation will be as confidential as possible to acquire the information needed and will respect the rights of both the complainant and the respondent.

- Retaliation against complainants or witnesses is strictly prohibited.
- Deliberately falsifying a report of harassment is strictly prohibited.
- Likewise, failure to provide truthful, factual information without malice during an investigation is also forbidden.

In the course of the investigation, the University may, with the consent of all parties, use voluntary informal discussions or mediation for resolving complaints. Any party has the right to end the informal process at any time, in which case the investigation shall continue to its conclusion. Any agreed resolution of a complaint should fully and effectively address safety, fairness, and other appropriate concerns of the complainant, the respondent, and the University as a whole.

The University will conduct and conclude an adequate, reliable, and impartial investigation of the complaint within a reasonable time (generally around 60 days) after the complaint has been received. An investigation may occasionally take slightly longer because of unusual circumstances or the absence of necessary parties during school breaks.

The purpose of the investigation will be to determine whether any conduct in violation of University policies has occurred and, if so, to take disciplinary action and, if appropriate, corrective measures. The investigation and disciplinary process will be conducted by officials who receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on how to conduct an investigation and disciplinary process that protects the safety of victims and promotes accountability.

Both the complainant and the respondent may have a counselor of their choice (who may be a parent, attorney, etc.) present with them during any meeting with University officials related to the investigation or disciplinary process. The role of the counselor is limited to providing support, guidance, or advice to the party throughout the investigation and disciplinary process. During the meetings, the party and counselor may talk quietly with each other. Counselors do not have the right to question or cross-examine witnesses, present arguments, answer questions posed to a party, or otherwise take an active role in the meeting, except that Counselors may be allowed to participate in cross-examination in a meeting held for that purpose. Counselors cannot disclose to other persons any confidential information which is disclosed to the counselor in the course of the meeting. The University will remove or dismiss counselors who become disruptive or who do not abide by the restrictions on their participation. [Note: “counselors” within the meaning of these General Grievance Procedures should not be confused with “Advisors” who assist the Complainant and Respondent in a live hearing under the Title IX Grievance Procedures.]

### **Adjudication**

Once the investigation is completed, the complaint will be adjudicated by the Title IX Coordinator or his/her designee. Every complainant has the right to present his or her case. Both the complainant and the respondent will have an equal opportunity to present witnesses and other evidence. Both will have the opportunity to review any evidence provided by the other party or

any witness or otherwise collected by the college. Both the complainant and the respondent may provide the investigator or Title IX Coordinator with questions which they would like to have posed to the other party or to any witness in the presence of the adjudicating authority. Any relevant, appropriate questions will be asked, and the responses will be considered in reaching a decision.

1. The complaint will be decided using a preponderance of the evidence standard (i.e., is it more likely than not that the misconduct occurred?). For students: any of the sanctions listed under Sanctions for Misconduct in the UMHB Student Handbook may be imposed in order to restore the proper educational environment (for example, removal from a student organization or changing class schedules) or to discipline any person guilty of violating the University's rules of conduct. For employees: any change to terms and conditions of employment, up to and including termination.

The adjudicating official may consult with other University officials (which may include appropriate persons from Student Life, Human Resources, and/or a respondent/employee's supervisors) regarding sanctions or disciplinary action to be imposed.

Both parties will be promptly and simultaneously notified in writing of the outcome of the complaint, including the result of the University's disciplinary proceeding, the procedures for either party to appeal the result, any change to the result, and when the results become final. With respect to complaints of sexual harassment or sexual violence, the University will disclose to the complainant information about any sanctions imposed on the respondent when the sanction directly relates to the complainant, such as an order that the respondent stay away from the complainant or that the respondent is transferred to other classes, suspended, removed from a residence hall, expelled, etc. In order to comply with the Clery Act, both parties will also be informed of all sanction information if the offense involved is a sex offense.

### **Appeals**

Either party may appeal the initial decision regarding responsibility findings, sanctions or both by providing a written notice of appeal to the Sr. Vice President for Administration or his/her designee within seven (7) days after written notice of the decision has been given. The written notice of appeal must identify those parts of the initial decision which are being appealed, explain the reasons for the appeal, and specify any changes to the decision which are requested. Both the complainant and the respondent will be given notice of the appeal and an opportunity to respond. The Sr. Vice President for Administration or his/her designee will consider the appeal and issue a written decision within twenty-one (21) days after receiving the appeal. A decision on the appeal may occasionally take slightly longer because of unusual circumstances or the absence of necessary parties during school breaks.

Interim remedies previously imposed and any additional appropriate sanctions, may be imposed or continued during the appeal. The University shall respect and protect the rights of both parties until the appeal is resolved.

Both parties will be promptly notified in writing of the outcome of any appeal, which shall be final. The respondent will be notified of any changes to the sanctions, and the complainant will be given any notice of sanctions or changes in sanctions to which he or she is entitled, as described above.

**If a student withdraws from the University with pending disciplinary charges that may result in the student becoming ineligible to reenroll for a reason that is neither academic nor financial, the University may not end the disciplinary process until it makes a final determination of responsibility and eligibility to reenroll.**

**See Student Disciplinary section of the UMHB Student Handbook for more information regarding state law-required transcript notations if a student becoming ineligible to reenroll for a reason that is neither academic nor financial.**

### **Retaliation Is Prohibited**

No University employee or student shall retaliate in any way against a person for making a complaint, testifying, assisting, or participating in any manner in an investigation or complaint proceeding. Retaliatory actions, which are prohibited, include intimidation, threats, coercion, or discrimination against any such individual. Any person may report retaliation to the University's Title IX Coordinator and Non-Discrimination Compliance Officer:

Susan Owens, Vice President for Policy and Risk Management  
900 College St., Belton, Texas 76513  
(254) 295-4527  
[susan.owens@umhb.edu](mailto:susan.owens@umhb.edu)

Complaints of retaliation will be investigated by the University under the same complaint processes and standards which applied to the original underlying complaint.