

## Sexual Harassment and Sexual Misconduct (Title IX) Policy

### I. Policy Statement

#### A. Purpose

St. Thomas University (hereafter University or STU), is committed to encouraging and sustaining a learning and living community that is free from sexual misconduct (which includes sex-based discrimination, sexual harassment, sexual violence, relationship violence, and stalking) and other illegal discriminatory practices. Consistent with this commitment and the U.S. Department of Education's regulations for Title IX of the Education Amendments of 1972 ("Title IX") (*see* 34 C.F.R. § 106 *et seq.*), STU prohibits Sexual Harassment that occurs within its education programs and activities. Further, STU conducts education and awareness programs with the goal of preventing and discouraging sexual assault, domestic violence, dating violence, and stalking.

#### II. Scope

This Policy applies to all members of the STU community, including but not limited to STU students; STU employees, including all officers, professional staff and administrators ("Staff"); STU faculty, including adjunct and visiting faculty; University affiliates, including contractors, vendors, volunteers, or other third parties within the University's control; and other visitors or guests of STU.

This policy applies to acts of Prohibited Conduct by or against STU community members when:

1. The conduct occurs in the context of STU employment or educational program or activity at any location within the United States, including, but not limited to, STU-sponsored research, residency, fellowship, or internship programs; and
2. The Complainant and Respondent are participating or seeking to participate in STU employment or its educational program or activity.

Matters that do not meet the foregoing two requirements must be dismissed for Title IX purposes. Such matters will be processed as described in STU's Policy on [Sexual and Discriminatory Harassment](#) for staff and faculty and the [Student Handbook](#) for students. Depending on the applicable code of conduct, this may include adjudication under the same or different procedures as referenced in this policy.

Consistent with the U.S. Department of Education's implementing regulations for Title IX, this policy does not apply to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in STU's Education Programs and Activities, such as a study abroad program. Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by the Student Code of Conduct if committed by a student, and other STU policies and standards if committed by an employee.

Along with Sexual Misconduct, Sex or Gender Based Discrimination, and Retaliation as defined within the "Prohibited Conduct" section of this Policy are also prohibited.

Lastly, STU will not tolerate or condone false reporting. Anyone who files or encourages the filing of a bad faith report of, or later provides information about, sexual assault, domestic violence, dating violence, or stalking; that she or he knows to be untrue, may be subject to disciplinary action and may also have violated criminal and civil laws against defamation.

### **III. Title IX Office, Title IX Coordinator, and Compliance**

STU's Title IX Coordinator is responsible for monitoring compliance with this Policy, as well as related federal statutes and regulations concerning the prohibition of Sexual Misconduct and Sex- or Gender- Based Discrimination in higher education. The Title IX Coordinator's duties include: overall management of the complaint process including coordination of supportive measures, signing of formal complaints, oversight of the investigative and decision-making process, and training of all Title IX-related personnel consistent with training requirements set by applicable law.

The Title IX Coordinator and other designees are available to assist all members of the University community with any questions about this Policy and/or the application of Title IX.

The name and contact information for the Title IX Coordinator is located in the Student Center and can be reached at:

Monica Cruz, J.D.  
Office: 305- 628-6652  
Mobile: 786-750-8648  
[monicacruz@stu.edu](mailto:monicacruz@stu.edu)  
Location: Student Affairs Office

Once notified of an allegation of sexual harassment, STU's Title IX Coordinator will communicate with involved parties to provide them with the information and support they need to decide the best options for them moving forward. In some circumstances, supportive measures may be identified to provide immediate relief to parties as they move through the process; the Title IX Coordinator will assist/oversee the implementation of these measures.

#### **A. Compliance with the ADA and Section 504 of the Rehabilitation Act of 1973**

In conformity with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, it is the policy of Moore College of Art and Design not to discriminate on the basis of disability or handicap in its educational programs or activities or in its employment practices. To request an ADA accommodation during a Title IX resolution process, please contact the Title IX Coordinator, who will work with the University ADA Coordinator to determine the appropriate accommodations.

#### IV. Definitions of Prohibited Conduct

- a. “Sexual Harassment” is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.
- b. “Quid Pro Quo Sexual Harassment” is an employee of STU conditioning the provision of an aid, benefit, or service of STU on an individual’s participation in unwelcome sexual contact.
- c. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to STU’s education programs and/or activities.
- d. “Sexual Assault” includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.<sup>1</sup>
  1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person without consent. Attempted Rape is included.
  2. “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  3. “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slight, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
  4. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

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<sup>1</sup> STU’s definition of “Sexual Assault” is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require STU to adopt a definition of “Sexual Assault” that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

5. “Incest” is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Florida law.
  6. “Statutory Rape” is sexual intercourse with a person who is under the statutory age of consent as defined by Florida law.
- e. “Domestic Violence” is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Florida; 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 Florida.
- f. “Dating Violence” is violence committed by a person –
1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  2. Where the existence of such a relationship will be determined based on a consideration of the following factors:
    - The length of the relationship;
    - The type of relationship; and
    - The frequency of interaction between the persons involved in the relationship.
- g. “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
  - Suffer substantial emotional distress.
- h. “Consent” is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through manipulation, force or coercion of any kind and requires having cognitive ability to agree to participate.
- i. “Incapacitated” refers to the state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption, medical condition or disability, or due to a state of unconsciousness or sleep.
- j. “Retaliation” is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or

complaint, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

- k. “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- l. “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- m. “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that STU investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in STU’s education program and/or activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint. The Title IX Coordinator may also launch a formal complaint, when they feel it is necessary to uphold the values of the STU community.
- n. “Supportive Measures” are non-disciplinary, non-punitive individualized services offered, as appropriate, without fee or charge that are designed to restore or preserve equal access to STU’s Education Programs and Activities without unreasonably burdening another party. These measures are designed to protect the safety of all parties implicated by a report or STU’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.
- o. “Education Programs and Activities” refers to all the operations of STU, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by STU. It also includes off-campus locations, events, or circumstances over which STU exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by STU.

## **V. Understanding Sexual Harassment**

In determining whether a sexual harassment exists, STU will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant;

the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. STU will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse, subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a sexual harassment.

STU encourages members of the STU Community to report any and all instances of sexual harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute sexual harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail and Internet use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

## **VI. Understanding Consent and Incapacitation**

### **A. Consent**

As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through manipulation, force or coercion of any kind and requires having cognitive ability to agree to participate. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive.

Impairment or incapacitation due to alcohol and/or drug use, permanent/temporary psychological or physical disability and being below the age of consent (age 18) are factors which detract from or make consent impossible.

Silence or an absence of resistance does not imply consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent in one sexual activity does not give consent for other types of sexual activity; each individual sexual act needs its own independent consent. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual engagement. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

## **B. Incapacitation**

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated or approaching incapacitation include slurred speech, confusion, shaky balance, stumbling, vomiting, and unconsciousness.

## **VII. Non-Title IX Harassment and/or other Sexual Misconduct**

Non-Title IX Sexual Harassment is defined as incidents of discrimination, discriminatory harassment, and sexual misconduct that falls outside the scope or jurisdiction of Title IX. Some of the Prohibited Conduct covered is also listed as prohibited in the above definitions of sexual harassment falling under the purviews of Title IX, but such conduct nevertheless falls outside the scope or jurisdiction of Title IX if (1) it is not so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity; (2) it does not occur in the University education programs and activities; or (3) it does not occur in the United States.

While several processes/procedures may be applicable in resolving a discrimination complaint, the Title IX Officer Coordinator will determine which process will be used for resolving the complaint. This is to avoid confusion about parties/facts/procedures, and to prevent duplication of resolution efforts.

### **VIII. Reporting Sexual Harassment and/or Sexual Misconduct**

STU's Title IX Coordinator is responsible for monitoring compliance with this Policy, as well as related federal statutes and regulations concerning the prohibition of Sexual Misconduct and Sex- or Gender- Based Discrimination in higher education. The Title IX Coordinator's duties include: overall management of the complaint process including coordination of supportive measures, signing of formal complaints, oversight of the investigative and decision-making process, and training of all Title IX-related personnel consistent with training requirements set by applicable law

#### **A. Reporting Directly to Title IX Coordinator or a Non- Confidential STU Employee**

The Title IX Coordinator is available to assist all members of the University community with any questions about this Policy and/or the application of Title IX.

The name and contact information for the Title IX Coordinator is:

Monica Cruz, J.D.

Office: 305-628-6652

Mobile: 786-750-8648

Email: [monicacruz@stu.edu](mailto:monicacruz@stu.edu)

Website & Online Incident Reporting Form: [www.stu.edu/titleix](http://www.stu.edu/titleix)

Location: Student Affairs Office

In addition to reporting to the Title IX Coordinator, any person may report sexual harassment to any University employee with managerial authority over other employees, including cabinet members, deans, department heads, unit supervisors, and other managers (collectively "Reporting Officials") who must promptly forward such report of sexual harassment to the Title IX Coordinator.

#### **B. Reporting to Confidential STU Employees or Sources**

STU is committed to protecting the privacy of all individuals involved in a report of sexual misconduct. Throughout the process, every effort will be made to protect the privacy and interests of all individuals involved in a manner consistent with the need for a thorough review of the report. Students should be aware, however, that privacy and confidentiality have distinct meanings under this Policy.

Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a).

At STU, reports of sexual harassment or misconduct made directly to Campus Ministry or to a staff member in the Counseling center or Baptist Health are confidential. These are the ONLY resources at STU where confidential reports can be made without the report being forwarded to the Title IX Coordinator for resolution. Confidential means that the information is protected from being disclosed to anyone else, unless required or permitted by law.

No member of the STU community has authority to investigate, resolve, or institute corrective measures related to this Policy without the involvement of the Title IX Coordinator or her designee. Administrative investigation through STU's applicable grievance procedure is not a substitute for civil or criminal charges, or for any other administrative or legal process that either party may wish to pursue.

Confidential, Off-Campus Resources can be found at [www.stu.edu/titleix](http://www.stu.edu/titleix). Questions regarding reporting responsibilities should be directed to the Title IX Coordinator at [titleix@stu.edu](mailto:titleix@stu.edu).

## **IX. Reporting Responsibilities of Employees**

All non-confidential faculty and staff are considered mandated reporters of sexual harassment for the purposes of this policy are required to report Prohibited Conduct to the Title IX Coordinator. This duty applies no matter how the information was learned, whether from direct report from a Complainant, from social media, or from a concerned third-party. This reporting helps to provide the community with an accurate picture of the extent and nature of campus crime in order to ensure greater community safety and enable campus community members to make important decisions about their own safety, as well as making sure that a potential victim is connected to the appropriate resources and services.

Employees may not promise confidentiality or withhold information about Prohibited Conduct from the Title IX Coordinator. Employees, however, can direct students to confidential resources such as Campus Ministry, Baptist Health, and the Counseling Center prior to a student disclosing a potential Title IX related incident.

## **X. Preliminary Assessment**

Upon receipt of a report made pursuant to Section VIII, the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls or could fall within the scope of the policy specified in Section II; and
- Whether the conduct, as reported, constitutes or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute sexual harassment, even if investigated, the Title IX Coordinator will close the matter for Title IX purposes and may notify the reporting party if

doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may then refer the report to other STU offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute sexual harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant as specified in Section XI.

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if such identity is not apparent from the report.

## **XI. Contacting the Complainant**

If a report is not closed as a result of the preliminary assessment specified in Section X and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures specified in Section XII; to discuss and consider the Complainant’s wishes with respect to such Supportive Measures; to inform the Complainant of the availability of such Supportive Measures with or without filing a formal complaint; and to explain the process for filing and pursuing a formal complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the local community.

## **XII. Supportive Measures**

If a report is not closed as a result of the preliminary assessment specified in Section X, STU will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a formal complaint.

Contemporaneously with the Respondent being notified of a formal complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and STU will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. STU will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a formal complaint, if the Respondent requests such measures.

STU will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair STU’s ability to provide the Supportive Measures in question.

## **XIII. Interim Removal**

At any time after receiving a report of sexual harassment, the Title IX Coordinator may remove a student Respondent from STU’s education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, STU may place the Respondent on administrative leave at any time after receiving a report of sexual harassment, including during the pendency of the investigation and adjudication process specified in Sections XIX and XXI.

For all other Respondents, including independent contractors and guests, STU retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of sexual harassment or otherwise.

#### **XIV. Formal Complaint**

A Complainant may file a formal complaint with the Title IX Coordinator requesting that STU investigate and adjudicate a report of Sexual Harassment in accordance with the provisions of Sections XIX and XXI. Provided, however, that at the time the Complainant submits a formal complaint, the Complainant must be participating in, or attempting to participate in, one or more of STU's education programs or activities.

A Complainant may file a formal complaint with the Title IX Coordinator in person, by regular mail, by telephone, or by email using the contact information specified in Section VIII above. No person may submit a formal complaint on the Complainant's behalf.

In any case, including a case where a Complainant elects not to file a formal complaint, the Title IX Coordinator may file a formal complaint on behalf of STU if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the STU Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a formal complaint, then STU will commence an investigation as specified in Section XIX and proceed to adjudicate the matter as specified in Section XXI. In all cases where a formal complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a formal complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

#### **XV. Consolidation of Formal Complaints**

STU may consolidate formal complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular "party," "Complainant," or "Respondent" include the plural, as applicable. A formal complaint of Retaliation may be consolidated with a formal complaint of Sexual Harassment.

## **XVI. Dismissal Prior to Commencement of Investigation**

In a case where the Complainant files a formal complaint, the Title IX Coordinator will evaluate the formal complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the formal complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the formal complaint falls outside the scope of the policy specified in Section II (i.e., because the alleged conduct did not occur in STU's Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the formal complaint should be dismissed pursuant to this Section X, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section XXIII. The Title IX Coordinator may refer the subject matter of the formal complaint to other University offices, as appropriate. A dismissal pursuant to Section XVI is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal. The dismissal will be recorded on the student's academic record.

## **XVII. Notice of formal complaint**

Within five (5) days of the Title IX Coordinator receiving a formal complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to 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);
- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice
- Notifying the Complainant and Respondent of their right to inspect and review evidence
- Notifying the Complainant and Respondent of STU's prohibitions on retaliation and false statements
- Information about resources that are available on campus and in the community.

Should STU elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, STU will provide written notice describing the additional allegations to be investigated.

### **XVIII. Informal Resolution**

At any time after the parties are provided written notice of the formal complaint as specified in Section XIV, and before the completion of any appeal specified in Section XXIII, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other forms of dispute resolution, the goal of which are to enter into a final resolution resolving the allegations raised in the formal complaint by agreement of the parties. Administrative Adjudication as specified in Section XXI.B is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

1. Describes the parameters and requirements of the informal resolution process to be utilized;
2. Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another STU official, or a suitable third-party);
3. Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the formal complaint; and
4. Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature.

Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by STU, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to STU.

Notwithstanding the foregoing, if the form of informal resolution is Administrative Adjudication as specified in Section XXI.b there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the Title IX Coordinator shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in Section XXI.b, all other forms of informal resolution pursuant to this Section XVIII are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the formal complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Informal resolution does not result in findings related to responsibility or in sanctions. Options for informal resolution include, but are not limited to: community service, educational meeting with student, training, changes in academic, work or living arrangements and/or conducted facilitated conversations with the parties.

Other language in this Section XXIV notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

## **XIX. Investigation**

### **a. Commencement and Timing**

After the written notice of formal complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with STU and not with the parties. The investigation will culminate in a written investigation report, specified in Section XVII(E), that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, STU strives to complete each investigative process within thirty (30) days of the transmittal of the written notice of formal complaint.

### **b. Equal Opportunity**

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator

finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in Section XXV. The investigator will document in the investigation report the parties interviewed as well as those that were not and the reason for not interviewing the potential witness. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party's opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the formal complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing of mistake, inadvertence, surprise, or excusable neglect.

**c. Documentation of Investigation**

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses will be recorded to ensure accuracy and efficiency throughout the investigative process. The investigation may be documented by the investigator's notes, audio recorded, video recorded and/or transcribed.

**d. Access to the Evidence**

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including evidence STU may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

**e. Investigation Report**

After the period for the parties to provide any written response as specified in Section XIX.d has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The Title IX Coordinator will then contemporaneously transmit the investigation report to each party and their respective advisor, in electronic form.

## **XX. Adjudication Process Selection**

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes specified in Section XX. The notice will explain that the hearing process specified in Section XX(A) is the default process for adjudicating all formal complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in Section XX(B) as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of Section XX), consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

Each party will have three (3) business days from transmittal of the notice specified in this Section XIX to return the signed written consent form to the Title IX Coordinator. If either party does not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the formal complaint will be adjudicated pursuant to the hearing process.

## **XXI. Adjudication**

### **a. Hearing Process**

The default process for adjudicating formal complaints is the hearing process specified in this Section XXI.A. The hearing process will be used to adjudicate all formal complaints unless both parties timely consent to administrative adjudication as specified in Section XXI.b above.

#### **1. Hearing Officer and Hearing Panel**

After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process which includes a panel of 3 decision makers. The Title IX Coordinator will see that the hearing panel is provided a copy of the investigation report and a copy of all evidence transmitted to the parties.

No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.

The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### **2. Hearing Notice and Response to the Investigation Report**

After the hearing panel is appointed by the Title IX Coordinator, the Title IX Coordinator will promptly transmit written notice to the parties notifying the parties of the hearing panel's

appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of STU's Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held earlier than ten (10) days from the date of transmittal of the written notice specified in this Section XXI(A)(2).

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history or for any other reason;
- Any objection that the party has to STU's Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;
- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that STU provide an advisor for purposes of conducting questioning

A party's written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the formal complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the formal complaint constitute Sexual Harassment.

### 3. Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted virtually, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing panel, the parties, the advisors, and other necessary University personnel together.

During the pre-hearing conference, the hearing panel will discuss the hearing procedures with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing panel deems appropriate; discuss whether any stipulations may be made to expedite

the hearing; and resolve any other matters that the hearing panel determines, in the hearing panel's discretion, should be resolved before the hearing.

#### 4. Issuance of Notices of Attendance

After the pre-hearing conference, the Title IX Coordinator will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the Title IX Coordinator immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

STU will not issue a notice of attendance to any witness who is not an employee or a student.

#### 5. Hearing

After the pre-hearing conference, the hearing panel will convene and conduct a hearing pursuant to STU's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review upon reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing panel, the parties, the advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the Title IX Coordinator's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing panel will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing panel;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;

- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect; and
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing panel, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing panel, the Title IX Coordinator, and other necessary University personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is required.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them.

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing panel.

Subject to the minimum requirements specified in this Section XXI.A.5, the hearing panel will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing panel will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section XXI.A.5 are met.

## 6. Subjection to Questioning

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties' advisors, the statements of that party or witness whether given during the investigation or during the hearing, will not be considered by the hearing panel in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing panel may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or in the case where neither party requested attendance of the witness at the hearing.

In applying this Section XXI.A.6, the hearing panel will not draw an inference about the determination regarding responsibility based solely on a party or a witness's absence from the live hearing and/or refusal to submit to questioning by the parties' advisors.

## 7. Deliberation and Determination

After the hearing is complete, the hearing panel will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing panel will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of Section XXI.A.6. The hearing panel will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the formal complaint.

## 8. Discipline and Remedies

In the event the hearing panel determines that the Respondent is responsible for violating this policy, the hearing panel will determine the appropriate disciplinary sanction related to the policy violation. The hearing panel will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

## 9. Written Decision

After reaching a determination and consulting with the Title IX Coordinator as required by Section XVIII.A.8, the hearing will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the formal complaint;
- A description of the procedural steps taken by STU upon receipt of the formal complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.
- Articulated findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official as referenced in Section XXI.A.8;
- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator;

- A description of STU’s process and grounds for appeal, as specified in Section XX; and
- The signatures of all members of the hearing panel.

The written determination will be transmitted to the parties via STU email. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in Section XX.

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, STU strives to issue the hearing panel’s written determination within ten (10) days of the conclusion of the hearing.

**b. Administrative Adjudication Alternative**

In lieu of the hearing process, the parties may consent to have a formal complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in Section XXI.b. At any time prior to the issuance of the Title IX Coordinator’s determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in XXI.a.

If administrative adjudication is selected, the Title IX Coordinator will provide a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator.

The Title IX Coordinator will promptly send written notice to the parties notifying the parties of the Title IX Coordinator’s appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the Title IX Coordinator separately. The Title IX Coordinator’s meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A party’s written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in Section XXVI, or for any other reason;
- Argument regarding whether any of the allegations in the formal complaint are supported by a preponderance of the evidence;
- Argument regarding whether any of the allegations in the formal complaint constitute Sexual Harassment.

After reviewing the parties' written responses, the Title IX Coordinator will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the Title IX Coordinator to ask questions concerning the party's written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each party, the Title IX Coordinator will objectively re-evaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The Title IX Coordinator will take care to exclude from consideration any evidence that the Title IX Coordinator determines should be ruled inadmissible based on the objections and arguments raised by the parties in their respective written responses to the investigation report. The Title IX Coordinator will resolve disputed facts using a preponderance of the evidence (i.e., "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the formal complaint.

Thereafter, the Title IX Coordinator will consult with any University official necessary in the manner specified in Section XXI.A.7 and will prepare and transmit a written decision in the manner as specified in Section XXI.A.8 which shall serve as a resolution for purposes of informal resolution.

Transmittal of the Title IX Coordinator's written determination concludes the administrative adjudication, subject to any right of appeal as specified in Section XX.

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, STU strives to issue the Title IX Coordinator's written determination within fifteen (15) days of the transmittal of the initiating written notice specified in this Section XXI.B.

## **XXII. Dismissal During Investigation or Adjudication**

STU may dismiss a formal complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the formal complaint;
- The Respondent is no longer enrolled or employed by STU; or
- Specific circumstances prevent STU from gathering evidence sufficient to reach a determination as to the formal complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator determines that a formal complaint should be dismissed pursuant to this Section XXII, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in Section XXIII. The Title IX Coordinator may refer the subject matter of the formal complaint to other University offices, as appropriate. A dismissal pursuant to this Section XXII is presumptively a final

determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

### **XXIII. Appeal**

Either party may appeal the determination of an adjudication, or a dismissal of a formal complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;
- The Title IX Coordinator, investigator, or hearing panel, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within five (5) days of the date they receive notice of dismissal or determination. The appeal must be submitted in writing to the Assistant Vice President of Student Affairs and Compliance who serves as the appeals officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeals officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeals officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeals officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within five (5) days. The appeals officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeals officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a formal complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeals officer has resolved all appeals, either by dismissal or by transmittal of a written decision. No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, STU strives to issue the appeal officer's written decision within (15) days of an appeal being filed.

#### **XXIV. Advisor of Choice**

From the point a formal complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in Section XXI.A.5, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with STU about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section XXI and Section XXI.A.5, STU may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in Section XXI.A.5, and requests STU to provide an advisor, STU will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. STU will have sole discretion to select the advisor it provides. The advisor STU provides may be, but is not required to be, an attorney.

STU is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in Section XXI.A.5 and requests that STU provide an advisor.

#### **XXV. Treatment Records and Other Privileged Information**

During the investigation and adjudication processes, the investigator and adjudicator are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege;

unless STU has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section XXV if the party

holding the privilege affirmatively discloses the records or information to support their allegation or defense.

## **XXVI. Past Sexual History**

During the investigation and adjudication processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section XXVI for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section XXVI.

## **XXVII. Presumption of Non-Responsibility**

From the time a report or formal complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

## **XXVIII. Resources**

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through STU. STU encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator is available to provide information about STU's policy and procedure and to provide assistance. A list of University identified resources is located at the following link: [www.stu.edu/titleix](http://www.stu.edu/titleix).

## **XXIX. Conflicts of Interest, Bias, and Procedural Complaints**

The Title IX Coordinator, investigator, hearing panel, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that STU may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in Section XXIII or otherwise.

## **XXX. Objections Generally**

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that STU may evaluate the matter and address it, if appropriate.

## **XXXI. Constitutional Rights and Academic Freedom**

STU will construe and apply this policy consistent with the First Amendment to the U.S. Constitution and the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment based on expressive

conduct that is protected by the First Amendment and/or the principles of academic freedom specified in the Faculty Handbook. In order to establish a violation of Title IX, the harassment must be sufficiently serious to deny or limit a person's employment or ability to participate in or benefit from an education program. However, raising issues of academic freedom and freedom of expression will not excuse behavior that constitutes a violation of the law or the University's Sexual Harassment Policy.

#### **XXXII. Relationship with Criminal Process**

This policy sets forth STU's processes for responding to reports and formal complaints of Sexual Harassment. STU's processes are separate, distinct, and independent of any criminal processes. While STU may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, STU will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

#### **XXXIII. Recordings**

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by STU and is considered property of STU, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only STU is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

#### **XXXIV. Vendors, Contractors and Third Parties**

STU does business with various vendors, contractors, and other third-parties who are not students or employees of STU. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, STU retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And STU retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

#### **XXXV. Bad Faith Complaints and False Information**

It is a violation of this policy for any person to submit a report or formal complaint that the person knows, at the time the report or formal complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section XXXV are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Code of Student Conduct in the case of students and other University policies and standards, as applicable, for other persons.

#### **XXXVI. Retaliation**

It is a violation of this policy to engage in Retaliation. Any report or formal complaint of Retaliation will be processed under this policy in the same manner as a report or formal complaint

of Sexual Harassment, as the case may be. STU retains discretion to consolidate a formal complaint of Retaliation with a formal complaint of Sexual Harassment for investigation and/or adjudication purposes if the two formal complaints share a common nexus.

### **XXXVII. Confidentiality**

STU is committed to protecting the privacy of all individuals involved in a report of sexual assault and harassment. In any report under this policy, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the allegation.

The privacy of the parties will be respected and safeguarded. All University employees who are involved in the University's Title IX response, including Title IX Hearing Panel members, receive specific training and guidance about safeguarding private information. Privacy and confidentiality have distinct meanings under this policy.

Notwithstanding the foregoing, STU may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out STU's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding STU's general obligation to maintain confidentiality as specified herein, the parties to a report or formal complaint will be given access to investigation and adjudication materials in the circumstances specified in this policy.

While STU will maintain confidentiality specified in this Section XXXVII, STU will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which STU must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifiable information.

### **XXXVIII. Other Sexual Misconduct Violations**

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students, the Faculty Handbook for faculty, or other University policies and standards for employees.

### **XXXIX. Signatures and Form of Consent**

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written

consent must be provided, consent in either physical or electronic form, containing a physical or digital signature will suffice.

#### **XL. Deadlines, Time, Notices, and Method of Transmittal**

The deadlines in this policy refer to “business days.” For the purpose of this policy, an individual has the right to a complete business day, i.e., a day that starts at 9:00 am and ends at 5:00 pm Monday through Friday.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the Title IX Coordinator. Such request must state the extension sought and explain what good cause exists for the requested extension. STU’s Title IX Coordinator will resolve the request for extension and may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of STU.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of STU, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted. All notices will be provided at least 24 hours in advance of any meeting related to the resolution process.

All deadlines and other time periods specified in this policy are subject to modification by STU where, in STU’s sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with STU’s legal counsel; unforeseen weather events; and the like.

#### **XLI. Other Forms of Discrimination**

This policy applies only to Sexual Harassment and Sexual Misconduct under Title IX. Complaints of other forms of sex discrimination are governed by STU’s Non-Discrimination Policy.

#### **XLII. Outside Appointments, Dual Appointments, and Delegations**

STU retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of STU under this policy, including, but not limited to, the investigator, hearing officer, informal resolution officer, and/or appeals officer.

STU also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, informal resolution officer, and appeals officer, may, in STU's discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by STU at any time.

### **XLIII. Training**

STU will ensure that University officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, informal resolution facilitators, University provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law. All training received by Title IX related officials at STU will be maintained on the STU Title IX webpage.

### **XLIV. Recordkeeping**

STU will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in STU's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

### **XLV. Discretion in Application**

STU retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if STU's interpretation or application differs from the interpretation of the parties.

The provisions of this policy and the Hearing Procedures referenced in Section XXI.A.5 are not contractual in nature. Accordingly, STU retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. STU may apply policy revisions to an active case provided that doing so is not clearly unreasonable. The provisions of this policy and the Hearing Procedures referenced in Section XXI.A.5 are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, STU retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. STU may apply policy revisions to an active case provided that doing so is not clearly unreasonable.