



## Texas Christian University Policy

**Policy Number:** 1.005

**Subject:** Policy on Prohibited  
Discrimination, Harassment and  
Related Conduct (formerly referred  
to as Discrimination, Harassment,  
Sexual Misconduct and Retaliation)

**Effective Date:** December 1, 1994

**Revised:** August 1, 2017  
July 28, 2015  
January 8, 2014

### I. Policy Statement

Texas Christian University (TCU) is committed to providing a positive learning, living and working environment free from discrimination and harassment. In support of this commitment, TCU prohibits a range of behaviors, including unlawful discrimination and harassment based on age, race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law, except as permitted by law. TCU also prohibits unlawful sexual and gender-based harassment and violence, sexual assault, intimate partner violence, and stalking (collectively referred to herein as "Prohibited Conduct").

TCU also prohibits retaliation against an individual for making a good faith report under this policy, for participating in proceedings under this policy, or for opposing in a reasonable manner conduct believed to be prohibited by this policy. Any person who may have been subject to discrimination, harassment or Prohibited Conduct should feel comfortable reporting their concerns without fear of retaliation. TCU will take strong responsive action to threats or acts of retaliation.

Discrimination, harassment, Prohibited Conduct, and retaliation are incompatible with TCU's mission to educate individuals to think and act as ethical leaders and responsible citizens in the global community, and can threaten the educational experience, careers and well-being of members of the TCU community, including employees, students, and visitors. Such behavior will be addressed consistent with this policy. Reported violations of this policy may be pursued using the grievance procedures outlined in Sections VII, VIII, IX and X of this policy. Any student or employee who engages in conduct prohibited by this policy may be subject to disciplinary action and sanctions up to and including

termination or expulsion from TCU. TCU will take steps to prevent the recurrence of any harassment and to correct its discriminatory effects on a complainant and, if applicable, the TCU community.

TCU complies with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in the University's programs and activities and retaliation; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA); Title VII of the Civil Rights Act of 1964 (Title VII); Chapter 21 of the Texas Labor Code; the Age Discrimination Act of 1975, the Age Discrimination in Employment Act, the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and other applicable laws.

## **Scope and Applicability**

### **a. Individuals Covered by this Policy**

This policy applies to the following members of the TCU community: students (as defined in the Code of Student Conduct); employees, including faculty, staff, and administrators; trustees; third-party consultants, vendors and contractors when they are doing business with TCU; individuals who perform services for TCU as volunteers; and visitors, guests and other third parties under circumstances within TCU's control.

### **b. Jurisdiction**

This policy applies to conduct that takes place:

- on the campus or TCU premises;
- in the context of any TCU-related or sponsored education program or activity, regardless of location;
- through the use of TCU-owned or provided technology resources; or
- off-campus when the conduct is likely to have an adverse effect on TCU and/or the pursuit of its objectives, members of the TCU community, or is likely to create, continue or contribute to a hostile environment.

In determining if the conduct is likely to have an adverse effect, TCU may consider whether:

- the alleged action constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- it appears that the respondent may present a danger or threat to the health or safety of self or others;
- the conduct significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
- the conduct is detrimental to the educational interests of TCU.

## **Bystander Engagement**

The welfare of students in our community is of paramount importance. At times, students on and off--- campus may need assistance. TCU community members are encouraged to take reasonable and prudent actions to prevent or stop an act of Prohibited Conduct. Taking action may include direct intervention, calling TCU police or local law enforcement, or seeking assistance from a person in authority. Retaliation against TCU community members who choose to exercise this positive moral obligation is prohibited.

## **Reference to Related Policies and Resources**

In addition to this policy, the conduct of students, employees and other TCU community members may be governed by other TCU policies, including but not limited to:

- Code of Student Conduct
- Conflict Resolution Policy for Faculty
- Conflict Resolution Policy for Staff
- Faculty/Staff Handbook
- Policies and Procedures for Students with Disabilities
- University Postings on Laws Prohibiting Discrimination
- Student Handbook

Where conduct involves the potential violation of both this policy and another TCU policy, TCU may simultaneously investigate and resolve other potential misconduct under the procedures set forth in this policy, provided that doing so does not unduly delay a prompt or equitable resolution. Where there is a discrepancy between another applicable TCU policy and this policy, TCU has discretion as to what policy to follow but in all circumstances, intends to follow the law. Conduct which does not violate this policy may violate another TCU policy or standard and may lead to sanctions/corrective action or other remedies.

## **II. Responsibility**

### **Overview**

The Chief Inclusion Officer & Title IX Coordinator (“Coordinator”) oversees TCU’s centralized response to all reports of discrimination, harassment and other conduct that violates this policy. The Coordinator is also responsible for overseeing the administration of this policy. However, other TCU administrators have been designated by TCU to coordinate its efforts to comply with specific laws and regulations.

The Coordinator may address alleged violations of this policy or delegate responsibilities under this policy to one of the Deputy Title IX Officers, another appropriate University administrator or appropriate external professionals or investigators. The Coordinator and/or Deputy Title IX Officers may also confer with one another or other University administrators or external professionals when deemed appropriate. A reference in this policy to the Coordinator may include a Deputy Title IX Officer or another appropriate

designee.

## **Title IX**

The Coordinator is the designated University official with primary responsibility for coordinating TCU's efforts to comply with and carry out its responsibilities under Title IX and related provisions of the Clery Act (as amended by VAWA), including overseeing TCU's response to Reports raising Title IX and VAWA issues. The Coordinator also coordinates with representatives from University departments including Human Resources, the TCU Police Department, and Student Affairs, as appropriate, for purposes of identifying and addressing patterns or systemic concerns revealed by such Reports.

As deemed appropriate, the Coordinator and designated staff may, among other steps:

- Communicate with members of the TCU community regarding applicable laws and regulations and TCU's policy and provide information about how individuals may access reporting and support options.
- Review applicable TCU policies for institutional compliance with applicable federal and state laws.
- Monitor TCU's administration of its own applicable policies, including record keeping, adherence to timeframes, and other procedural matters.
- Oversee and/or conduct training regarding Title IX and related provisions of the Clery Act (as amended by VAWA).
- Coordinate TCU's response to any report raising Title IX or VAWA issues so that such reports are addressed by the appropriate TCU officials.
- Oversee the prompt and equitable investigation and resolution of such reports raising Title IX and VAWA issues.
- Assist the parties in receiving support services and facilitate appropriate interim remedial and protective measures during an investigation and/or resolution.

Inquiries about TCU's policies and compliance with Title IX or Clery (as amended by VAWA) should be directed to the Coordinator or one of the Deputy Title IX Officers:

Dr. Darron Turner  
Chief Inclusion Officer & Title IX Coordinator  
TCU Box 297090  
Jarvis Hall 228  
Fort Worth, TX 76129  
817/257-5566  
d.turner@tcu.edu

The Deputy Title IX Officers are:

Dr. Kathy Cavins-Tull  
 Vice Chancellor, Student Affairs  
 TCU Box 297043  
 Sadler Hall 4017  
 Fort Worth, TX 76129  
 817/257-7820  
[k.cavins@tcu.edu](mailto:k.cavins@tcu.edu)

Ms. Kristen Taylor  
 Director, Employee Relations  
 Human Resources  
 TCU Box 298200  
 3100 W. Berry St.  
 Fort Worth, TX 76129  
 817/257-4161  
[kristen.taylor@tcu.edu](mailto:kristen.taylor@tcu.edu)

Ms. Glory Robinson  
 Associate Dean, Campus Life  
 Student Affairs  
 TCU Box 297010  
 Sadler Hall 2006  
 Fort Worth, TX 76129  
 817/257-7926  
[g.robinson@tcu.edu](mailto:g.robinson@tcu.edu)

Ms. Kim Johnson  
 Senior Associate Athletics Director  
 Senior Woman Administrator  
 TCU Athletics  
 TCU Box 297600  
 John Justin Athletic Complex  
 Fort Worth, Texas 76129  
 817/257-7950  
[k.n.johnson@tcu.edu](mailto:k.n.johnson@tcu.edu)

Additional information or inquiries regarding Title IX can also be directed to the U.S. Department of Education or U.S. Equal Employment Opportunity Commission office listed below.

U.S. Department of Education	U.S. Equal Employment Opportunity Commission
Dallas Office	Dallas Office
Office for Civil Rights	207 S. Houston St., 3 <sup>rd</sup> Floor
U.S. Department of Education	Dallas, TX 75202
1999 Bryan Street, Suite 1620	Tele: 1-800-669-4000
Dallas, Texas 75201-6810	Fax: 214-253-2720
Telephone: 214/661-9600 or 800-421-3481	TTY: 1-800-669-6820
FAX: 214/661-9587; TDD: 800-877-8339	<a href="http://www.eeoc.gov">www.eeoc.gov</a>
<a href="mailto:OCR.Dallas@ed.gov">OCR.Dallas@ed.gov</a>	

### ADA and Section 504

TCU complies with the ADA and Section 504 of the Rehabilitation Act of 1973 regarding students with disabilities. TCU will provide reasonable accommodation to a qualified individual with a disability, as defined by the ADA or other applicable law, who has made TCU aware of his or her disability and requested accommodation, provided that such accommodation does not cause an undue hardship on TCU.

The Director for the Center for Academic Services and the Director of Employee Relations are the persons designated by TCU to coordinate its efforts to comply with and carry out

the responsibilities under Section 504 of the Rehabilitation Act. This is:

**For students:**

Ms. Marsha Ramsey  
Director, Center for Academic Services  
TCU Box 297710  
Sadler Hall 1010  
Fort Worth, TX 76129  
817/257-6567  
m.ramsey@tcu.edu

**For employees:**

Ms. Kristen Taylor  
Director, Employee Relations  
TCU Box 298200  
3100 W. Berry St.  
Fort Worth, TX 76129  
817/257-4161  
[kristen.taylor@tcu.edu](mailto:kristen.taylor@tcu.edu)

A student or applicant for admission who desires to request an accommodation should contact the Student Disabilities Services Office (DS Office) and clearly make this request known. Eligible students seeking accommodations should contact the DS Office early in the academic term for which they are seeking accommodation. The DS Office is located in the Center for Academic Services, Sadler Hall Room 1010. The phone number is 817/257-6567. Students should also refer to TCU's Policy and Procedures for Students with Disabilities for additional information on seeking an accommodation.

An employee or applicant for employment who desires to request an accommodation should clearly make this request known to the Director of Employee Relations (or that person's designee). An employee who requests an accommodation should make such a request before job performance suffers and before work related conduct problems occur so TCU can take timely and appropriate action.

Making a request for an accommodation known to another employee of TCU not identified above will not fulfill the notification obligation for seeking an accommodation.

**Title VII, Equal Opportunity/Affirmative Action and Age Discrimination**

TCU is an equal opportunity employer and complies with federal and state laws concerning affirmative action and workplace equal opportunity, including those covering prohibited discrimination, harassment and retaliation. TCU recruits, hires, and promotes qualified persons in all job classifications without regard to age, race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, genetic information, covered veteran status, or any other legally protected characteristic. This policy applies to all employment decisions, including but not limited to, decisions related to recruitment, hiring, promotion, compensation, benefits, transfers, university sponsored training and education, social and recreational programs, termination, and other terms and conditions of employment. The Vice Chancellor for Human Resources is the person designated by TCU to coordinate its efforts to comply with and carry out its responsibilities under Title VII, the Age Discrimination Act of 1975, and other Equal Opportunity and Affirmative Action regulations and laws. Inquiries about TCU's policies or compliance with these laws should be directed to:

Ms. Yohna Chambers  
Vice Chancellor for Human Resources

TCU Box 298200  
3100 W. Berry St.  
817/257-6222  
y.chambers@tcu.edu

### III. Conduct Prohibited by this Policy

The following conduct, as defined in this section, is prohibited by this policy. These definitions will be used by the Coordinator and during TCU's internal grievance processes when evaluating whether this policy has been violated. In some instances, where conduct may constitute a criminal offense under Texas law, the Texas statutory definitions are provided in a footnote for educational and awareness purposes only.

**\*Discrimination:** The unlawful treatment of an individual based on the individual's age, race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law that unreasonably interferes with or limits:

- A student's or applicant for admission's ability to participate in, access, or benefit from educational programs, services or activities (e.g., admission, academic standing, grades, assignment, campus housing);
- An employee's or applicant for employment's access to employment or conditions and benefits of employment (e.g., hiring, advancement, assignment);
- An authorized volunteer's ability to participate in a volunteer activity; or
- A guest's or visitor's ability to participate in, access, or benefit from TCU's programs.

Discrimination includes failing to provide reasonable accommodations, consistent with State and federal law, to qualified persons with disabilities.

**\*Harassment:** Unwelcome conduct based on an individual's age, race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, national origin, ethnic origin, disability, predisposing genetic information, covered veteran status, and any other basis protected by law, when (a) submitting to or enduring such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any TCU program, activity, or benefit, (b) submission to or rejection of such conduct is used, implicitly or explicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a TCU program, activity or benefit, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile or offensive environment for work, academics, or participation in a TCU program or activity so as to deny or limit an individual's ability to participate in or benefit from TCU's programs, services or activities.

A hostile environment can be created by persistent or pervasive conduct or by a single or

isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of non-consensual sexual contact or intercourse, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

**\*Sexual Harassment:** Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct that is based on sex or is sexual in nature, when (a) submitting to or enduring such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any TCU program, activity, or benefit, (b) submission to or rejection of such conduct is used, implicitly or explicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a TCU program, activity or benefit, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile or offensive environment for work, academics, or participation in a TCU program or activity so as to deny or limit an individual's ability to participate in or benefit from TCU's programs, services or activities.

**\*Gender-Based Harassment:** Unwelcome conduct based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when (a) submitting to or enduring such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any TCU program, activity, or benefit, (b) submission to or rejection of such conduct is used, implicitly or explicitly, as the basis for decisions affecting an individual's education (e.g., admission, academic standing, grades, assignment); employment (e.g., hiring, advancement, assignment); or participation in a TCU program, activity or benefit, or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile or offensive environment for work, academics, or participation in a TCU program or activity so as to deny or limit an individual's ability to participate in or benefit from TCU's programs, services or activities..

Examples of conduct to be avoided include, but are not limited to, the following:

- Making one or more unwelcome verbal statements, slurs, epithets, suggestive or off-color jokes, or derogatory or degrading comments, based on a protected status as defined above;
- Repeated sexual advances or requests for sexual favors that are unwelcome;
- Sexual assault or attempt to commit such an assault, and unwelcome physical conduct such as unwanted touching, impeding or blocking another person's movements, brushing against, leering at, or making sexual gestures to another person;



- Implying or threatening that submission to sexual advances or conduct prohibited by this policy is a condition of employment, work status, salary increase or decrease, promotion, academic admission, grades, advancement, recommendations, or participation in a program or activity;
- Threatening or engaging in reprisals or retaliation after such an overture is rejected;
- Displaying unwelcome sexually suggestive writings, pictures, magazines, cartoons, Internet material or objections; obscene letters, notes or invitations transmitted by electronic means or otherwise;
- Display or circulation of material that denigrates or shows hostility or aversion toward an individual or group based on a legally protected characteristic.

In addition, it is important to understand that, depending on the circumstances, Harassment:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- May be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational, or employment relationships, this is not required for harassment to occur.
- May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
- May be committed by or against an individual or may be a result of the actions of an organization or group.
- May occur in the classroom, in the workplace, in residential settings, or in another University-related context.
- May be a one-time event or may be part of a pattern of behavior.
- May be committed in the presence of others or when the parties are alone.
- May affect the complainant and/or third parties who witness or observe harassment.

**\*Sexual Assault<sup>1</sup>:** For purposes of this policy it means any sexual act directed against another person without his/her consent, including instances where he/she is incapable of giving consent. For purposes of this policy, **Sexual Assault** includes **Non-Consensual Sexual Contact**, **Non-Consensual Sexual Intercourse**, **Incest** and **Statutory Rape** as those terms are defined herein.

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<sup>1</sup>See [34 CFR 668.46\(a\)](#) for the source of this definition. For the definition of sexual assault under the Texas Penal Code, see [Texas Penal Code, §22.011\(a\)](#).

**\*Non-Consensual Sexual Contact:**<sup>2</sup> For purposes of this policy, it is the touching of another person’s breasts, buttocks, groin, genital, or other intimate parts for the purpose of sexual gratification without consent. Touching may be over or under clothing and may include the respondent touching the complainant, the respondent making the complainant touch the respondent or another person, or the respondent making the complainant touch the complainant’s own body. As defined below, consent cannot be obtained through force, threat of force, or by taking advantage of another person’s incapacitation.

**\*Non-Consensual Sexual Intercourse:**<sup>3</sup> For purposes of this policy, it is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or the oral penetration by a sex organ of another person, without consent. This includes: Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact).

**\* Incest:**<sup>4</sup> Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**\* Statutory Rape:**<sup>5</sup> Sexual intercourse with a person who is under the statutory age of consent.

**\*Sexual Exploitation:** Purposely or knowingly doing any of the following:

- Observing and/or watching other(s) engaged in intimate behaviors including, but not limited to, undressing, sexual activity, using the bathroom, bathing, or other actions usually considered to be of a private nature, without the other person’s knowledge or consent (often referred to as voyeurism);
- Recording, photographing, transmitting, showing, viewing, streaming, or distributing pictures, video or audio of another person in a sexual act, or in any other intimate/private activity without the knowledge and consent of all persons involved in the activity;
- Exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent);
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection;
- Administering alcohol or drugs (such as “date rape” drugs) to another person without their knowledge or consent; or

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<sup>2</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>3</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>4</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

<sup>5</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition.

- Exposing one’s genitals in non-consensual circumstances.

**\*Intimate Partner Violence (IPV):** For purposes of this policy includes both **Dating Violence** and **Domestic Violence**.

**\*Dating Violence:**<sup>6</sup> For purposes of this policy, it is violence, including but not limited to sexual or physical abuse or threat of such abuse, which occurs between individuals who are or has been in a social relationship of a romantic or intimate nature. In determining the existence of such a relationship, consideration will be given to the length and the type of relationship and the frequency of interaction between the persons involved in the relationship. Dating violence does not include acts covered under the definition of domestic violence.

**\*Domestic Violence:**<sup>7</sup> For purposes of this policy, it is a felony or misdemeanor crime of violence committed:

- by a person against his/her current or former spouse or intimate partner;
- by one person against another person when the two individuals share a child in common;
- by one person against another person with whom he/she is or has cohabitated with as a spouse or intimate partner;
- by a person, similarly situated to a spouse of the person against whom the violence was directed, under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**\*Bullying:** Any verbal, nonverbal, graphic, and/or physical behavior that intimidates and/or intentionally hurts, controls and/or diminishes another person physically, emotionally and/or mentally on the basis of their membership in a category protected above. This may include behavior occurring in person and/or via electronic communication.

**\*Stalking:**<sup>8</sup> For purposes of this policy, it is engaging in a course of conduct directed at a specific person which would cause a reasonable person (under similar circumstances and with similar identities to the complainant) to (1) fear for his or her safety or the safety of others or (2) suffer significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. For purposes of this definition, a “course of conduct” means two or more acts, including, but not limited

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<sup>6</sup> See [34 CFR 668.46\(a\)](#) for the source of definition. For the definition of dating violence under the Texas Family Code, see [Texas Family Code, §71.0021](#).

<sup>7</sup> See [34 CFR 668.46\(a\)](#) for the source of this definition. Texas statutes do not define domestic violence. For the definition of family violence under the Texas Family Code, see [Texas Family Code, §71.004](#).

<sup>8</sup> See [34 CFR 668.46\(a\)](#) for definition of stalking. For the definition of stalking under the Texas Penal Code, see Texas [Penal Code, §42.072](#).

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. Examples can include, but are not limited to, threats of harm to self, others, or property; pursuing or following a person; non-consensual (unwanted) communication by any means; sending unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, like the internet, social networks, blogs, cell phones, or text messages.

**\*Retaliation:** Action taken against any person because he/she opposed or made a good faith internal or external report or complaint of conduct of the type prohibited by this policy or because he/she has testified, assisted or participated in an investigation of conduct of the type prohibited by this policy or in related proceedings. Retaliation can take many forms, including, but not limited to, adverse action or violence, threats, acts of intimidation, other acts of harassment or discrimination that would discourage a reasonable person (under similar circumstances and with similar identities to the complainant) from engaging in a protected activity.

**\*Complicity:** Any act that knowingly aids, facilitates, promotes, or encourages another person to engage in conduct that violates this policy.

### **Understanding Consent and Incapacitation**

**\*Consent:**<sup>9</sup> Consent to sexual activity is defined as knowing, active, and voluntary permission between the participants, clearly expressed by words or by actions, to engage in mutually agreed upon sexual activity. Consent cannot be compelled by force, threat of force, coercion, or intimidation. Consent cannot be gained by taking advantage of another person's incapacitation, as defined herein. Consent given under such circumstances does not constitute willing and voluntary agreement.

In addition:

- Consent to one sexual act does not constitute consent to others.
- Prior consent to a given act does not constitute present or future consent.
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent.
- Consent must be ongoing throughout a sexual encounter and can be revoked, modified, or withdrawn at any time. Sexual contact must cease immediately once consent is withdrawn.
- Consent to an act with one person does not constitute consent to an act with any other person.
- Consent cannot be inferred from silence, passivity, or lack of resistance and

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<sup>9</sup> When assessing whether a criminal offense of sexual assault has been committed, see [Texas Penal Code §22.011](#) for information on consent.

relying on nonverbal communication alone may result in a violation of this policy.

- Consent cannot be given if it is coerced by supervisory or disciplinary authority.
- Under Texas law, consent cannot be given by a person younger than 17 years of age to sexual penetration or contact by an adult (18 years of age or older) who is three or more years older.

In evaluating whether consent has been freely sought and given, consideration will be given to the presence of any force, threat of force, intimidation or coercion; whether the complainant had the capacity to give consent; whether the respondent or a sober reasonable person in the same position as the respondent knew or should have known that the complainant was incapacitated; and, whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as willingness to engage in a particular sexual act.

**\*Incapacitation:** The inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. A person is mentally incapacitated when that person lacks the ability to make informed decisions about whether or not to engage in sexual activity. A person may be incapacitated as a result of the consumption of alcohol and/or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drug use is involved, incapacitation is a state beyond intoxication, impairment, or being under the influence. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination. TCU does not expect community members to be medical experts in assessing incapacitation. A person's level of intoxication is not always demonstrated by objective signs, but individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest the impacts of alcohol or other drugs differently, typical signs include slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, or incontinence.

An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. It is especially important, therefore, that anyone engaging in sexual activity be aware of their own level of intoxication and capacity to consent as well as the other person's level of intoxication and capacity to consent. The use of alcohol or other drugs can lower inhibitions, impair perceptions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or incapacitation, the safest course of action is to forgo or cease any sexual contact.

When evaluating consent in cases of reported incapacitation, the following will be considered: (1) Did the respondent know that the complainant was incapacitated? And if

not, (2) Should a sober, reasonable person in a similar set of circumstances as the respondent have known that the complainant was incapacitated? If the answer to either of these questions is “yes,” there was no consent; and the conduct is likely a violation of this policy.

A respondent’s voluntary intoxication is never an excuse for or a defense to Prohibited Conduct, and it does not diminish the responsibility to determine that the other person has given consent.

#### **IV. Confidentiality, Privacy and Employee Reporting Responsibilities**

Issues of confidentiality and privacy play important roles in this policy. While they are closely related, the concepts of confidentiality and privacy are distinct terms that are defined below.

##### **Confidentiality**

Confidentiality refers to the protections provided under Texas state law to communications occurring in the context of a legally-protected or privileged relationship. Information disclosed to a Confidential Resource (defined below) is generally confidential under Texas law when the communication takes place within the scope of the provision of professional services, meaning the Confidential Resource generally should not disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission, unless ethical or legal obligations compel disclosure. For example, information may be disclosed by a Confidential Resource when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others, the information concerns suspected abuse or neglect of a minor, or when compelled by court order or subpoena.

Generally, a person’s medical and counseling records are privileged and confidential documents. Medical and related records may be protected by the [Health Insurance Portability and Accountability Act](#) (HIPAA), The Texas Medical Records Privacy Act, Title 2, Chapter 181 of the Texas Health & Safety Code, Title 7, Chapter 611 of the Texas Health & Safety Code, and other applicable laws, excepting health records covered by FERPA or excluded or excepted from protection under an applicable law.

##### **Privacy**

Privacy refers to the discretion that will be exercised by TCU in the course of any investigation or disciplinary processes under this policy. Generally, sharing of information related to a complaint or report under this policy will be limited to those individuals who need the information to assist in the assessment, investigation, and resolution of the report or complaint and related issues. This may include, but is not limited to: Title IX Office, TCU Compliance Officers, Division of Student Affairs, Human Resources, TCU Police, and the Threat Assessment Team.

TCU will endeavor to keep the identity of a complainant and information learned in the investigation private, to the extent required by law. TCU will make reasonable efforts to investigate and address reports or complaints made under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, TCU will take into consideration the privacy of the parties to the extent reasonably possible, but cannot guarantee anonymity for a complainant where it would conflict with its obligation to investigate meaningfully, take corrective action, comply with the intent of this policy, or fulfill its legal obligations.

The privacy of student education records will be protected in accordance with the [Family Educational Rights and Privacy Act](#) (FERPA).

### **Employee Reporting Responsibilities: Mandatory Reporters and Confidential Resources**

TCU community members should be aware that designated University employees have certain responsibilities to report information about sexual and gender-based harassment and discrimination and other forms of prohibited conduct that relate to sexual and gender-based violence, including sexual assault, sexual exploitation, intimate partner violence, stalking and retaliation, to the Coordinator.

In this policy, TCU employees who are required to report this information to the Coordinator are called Mandatory Reporters. Employees who are generally not required to disclose legally-privileged communications are called Confidential Resources.

#### **Mandatory Reporters**

All TCU employees, except Confidential Resources, are considered Mandatory Reporters for purposes of their obligations to report, to the Coordinator, conduct that raises Title IX and/or VAWA issues.

##### **a. Obligations to report conduct raising Title IX or VAWA issues**

Mandatory Reporters are required to immediately report to the Coordinator information about conduct that raises Title IX and/or VAWA issues, including any reports, complaints or allegations of sexual harassment, discrimination and those forms of prohibited conduct that relate to non-consensual sexual intercourse or contact, sexual exploitation, intimate partner violence, stalking and retaliation involving any member of the TCU community, except as otherwise provided below.

Mandatory Reporters may receive this information in a number of ways. For example, a complainant may report the information directly to a Mandatory Reporter, a witness or third-party may provide information to a Mandatory Reporter, or a Mandatory Reporter may personally witness such conduct. A Mandatory Reporter's obligation to report such information to the Coordinator does not depend on how he/she received the information.

Mandatory Reporters must provide all known information about conduct that raises Title IX or VAWA issues to the Coordinator, including the identities of the parties, the date, time and location, and any other details. Failure of a Mandatory Reporters to provide such information to the Coordinator in a timely manner may subject the employee to appropriate discipline, including removal from a position or termination of employment.

Mandatory Reporters cannot promise to refrain from forwarding the information to the Coordinator if it raises Title IX or VAWA issues or withhold information about such conduct from the Coordinator. Mandatory Reporters may provide support and assistance to a complainant, witness, or respondent, but they should not conduct any investigation or notify the respondent unless requested to do so by the Coordinator.

Mandatory Reporters are not required to report information disclosed (1) at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs," or other public forums in which students may disclose such information (collectively, public awareness events); or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol (IRB Research). TCU may provide information about Title IX rights and available resources and support at public awareness events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

#### **b. Obligations to report other forms of discrimination and harassment**

TCU employees are not considered Mandatory Reporters for purposes of reporting other forms of harassment and discrimination prohibited by this policy. In other words, in general, TCU employees are not required to report information to the Coordinator about other forms of discrimination or harassment except those raising Title IX and/or VAWA issues described above. However, a supervisor who learns of an allegation of conduct which would violate this policy, or who personally observes or hears of such conduct, should promptly report this information to the Coordinator so that appropriate action can be taken.

#### **Confidential Resources**

Students who want information about an incident to remain confidential may wish to speak to a Confidential Resource. The following employees are Confidential Resources when they receive information from students in the context of providing professional services:

- licensed mental health-care professionals at the Counseling Center
- licensed medical professionals at the Health Center
- the Title IX certified confidential advocates for survivors of sexual assault (also referenced herein as Campus Advocate), and
- ordained clergy members, including ordained University Chaplains in TCU's Office of Religious and Spiritual Life.

Additionally, TCU student-athletes may wish to speak to one of the licensed physicians



on TCU's Sports Medicine Staff, who are also Confidential Resources when they receive information in the context of providing professional services. Athletic trainers, even if licensed, are not considered a Confidential Resource.

Confidential Resources will not disclose personally identifying information communicated to them by a student without the student's permission or except as set forth in the Confidentiality section above. When individuals who otherwise may be Confidential Resources receive information outside of the provision of professional services concerning allegations of policy violations involving any member of the TCU community, the Confidential Resource is required to share that information with the Coordinator. Additionally, a Confidential Resource should (and in some instances may be required to) report non-personally identifying information about Clery-reportable crimes to the TCU Police Department for purposes of the anonymous statistical reporting under the Clery Act as described below.

Because employees do not receive professional services from these Confidential Resources, information shared by an employee to these individuals would likely not be confidential.

## **Clery Act Reporting**

Pursuant to the Clery Act, TCU includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires TCU to issue timely warnings to the TCU community when certain crimes have been reported and may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, TCU withholds the names and other personally identifying information of complainants when issuing timely warnings to the TCU community.

## **V. Resources and Reporting Options**

### **Overview**

A complainant or witness may choose to:

- Report incidents of suspected criminal conduct to TCU Police or the appropriate law enforcement agency.
- Report conduct which may violate this policy to the Coordinator or another TCU employee.
- Seek assistance from a Confidential Resource. **Note that a request for assistance from a Confidential Resource does not constitute a report to TCU.**

Some behaviors prohibited by this policy may violate federal and/or state laws, and some may involve criminal conduct. Reports of suspected criminal conduct should be made to law enforcement. In some circumstances, conduct may violate this policy although it does

not violate the law. A person may choose to use external processes to resolve their complaints, including contacting law enforcement or other agencies, instead of, or in addition to, pursuing a remedy under TCU's internal grievance process. An individual may pursue some or all of these steps at the same time as applicable (e.g., one may simultaneously pursue a Title IX report and file a criminal complaint).

TCU's Title IX processes and law enforcement investigations operate independently of one another, although the Coordinator may communicate with the TCU Police or other law enforcement agencies when appropriate.

TCU recognizes that deciding among these options can be difficult and is an intensely personal decision. Complainants and witnesses are encouraged to seek assistance from a Confidential Resource and to explore all potential reporting and support options.

### **Seeking Emergency Medical or Law Enforcement Assistance**

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to their safety or physical well-being or following a potential criminal offense.

A complainant may seek emergency medical assistance, including a forensic sexual assault examination to document and preserve any potential evidence. Individuals are encouraged to seek prompt medical attention following an incident of sexual assault or intimate partner violence. As noted above, information received by a medical professional in the context of rendering professional services is generally confidential.

For immediate assistance, anyone who feels physically threatened or who has been a victim of a physical or sexual assault, including intimate partner violence, non-consensual sexual intercourse or contact, or stalking, should call 911. TCU Police can also be reached at 817/257-7777, 24 hours a day, seven (7) days per week. TCU Police can also assist in contacting the Fort Worth Police Department.

### **Reporting to Law Enforcement**

Except in cases involving suspected child abuse or neglect, which must be reported, a complainant has the right to report, or decline to report, potential criminal conduct to law enforcement, and TCU will assist a complainant in contacting law enforcement at any time upon request. Under limited circumstances posing a threat to the health or safety of any TCU community member, TCU may independently notify law enforcement.

### **Reporting to TCU**

Any student, employee, applicant, or other member of TCU's community who believes they or another student, employee, applicant or other member of TCU's community has been subject to conduct which violates this policy should immediately make a report/complaint to the Coordinator or to a Deputy Title IX Officer identified below. Making a report/complaint to another person or another TCU employee other than the Title IX

Coordinator or one of the Deputy Title IX Officers may cause TCU to delay its actions or limit its ability to remedy conduct which violates this policy. For purposes of this policy and the procedures related to TCU's internal grievance processes, a "Report" is a report or complaint made to the Coordinator of conduct prohibited by this policy.

There are several ways to report conduct which violates this policy:

- Leave a private message for the Coordinator at 817/257-5566.
- File a written Report with the Coordinator.
- Contact the Coordinator or a Deputy Title IX Officer by email at [d.turner@tcu.edu](mailto:d.turner@tcu.edu) or [titleix@tcu.edu](mailto:titleix@tcu.edu).
- Make an appointment to see the Coordinator or one of the Deputy Title IX Officers.
- Contact the Title IX office at 817/257-8228
- File an anonymous report online at [www.titleix.tcu.edu](http://www.titleix.tcu.edu)

The contact information for the Chief Inclusion Officer & Title IX Coordinator is:

**Dr. Darron Turner**  
**Chief Inclusion Officer & Title IX Officer**  
**TCU Box 297090**  
**Jarvis Hall 228**  
**Fort Worth TX 76129**  
**817/257-5566**  
[d.turner@tcu.edu](mailto:d.turner@tcu.edu)

The Deputy Title IX Officers are:

**Dr. Kathy Cavins-Tull**  
**Vice Chancellor, Student Affairs**  
**TCU Box 297043**  
**Sadler Hall 4017**  
**Fort Worth, TX 76129**  
**817/257-7820**  
[k.cavins@tcu.edu](mailto:k.cavins@tcu.edu)

**Ms. Kristen Taylor**  
**Director, Employee Relations**  
**Human Resources**  
**TCU Box 298200**  
**3100 W. Berry St.**  
**Fort Worth, TX 76129**  
**817/257-4161**  
[kristen.taylor@tcu.edu](mailto:kristen.taylor@tcu.edu)

**Ms. Glory Robinson**  
**Associate Dean, Campus Life**  
**Student Affairs**  
**TCU Box 297010**  
**Sadler Hall 2006**  
**Fort Worth, TX 76129**  
**817/257-7926**  
[g.robinson@tcu.edu](mailto:g.robinson@tcu.edu)

**Ms. Kim Johnson**  
**Senior Associate Athletics**  
**Director/SWA**  
**TCU Athletics**  
**TCU Box 297600**  
**John Justin Athletic Complex**  
**Fort Worth, Texas 76129**  
**817/257-7950**  
[k.n.johnson@tcu.edu](mailto:k.n.johnson@tcu.edu)

## **Time Frame for Complainant to Make a Report**

There is no time limit for a complainant to make a Report under this policy. However, complainants are encouraged to make a Report as soon as possible in order to maximize TCU's ability to respond promptly and effectively. If the respondent is no longer a student or employee, TCU may not be able to take disciplinary action against the respondent. When a Report raises Title IX issues, TCU will still seek to meet its Title IX obligations by providing support for the complainant and taking reasonable steps to end the prohibited behavior, prevent its recurrence, and address its effects. TCU may also assist the complainant in identifying and contacting law enforcement and other external enforcement agencies.

## **Amnesty/Immunity**

TCU encourages the reporting of conduct violations and crimes by complainants and witnesses. It is in the best interest of the TCU community that as many individuals as possible choose to report to TCU officials, and that witnesses come forward to share what they know. To encourage reporting, TCU will not pursue disciplinary action against students (complainants or witnesses) for disclosure of personal consumption of alcohol or other drugs (underage or illegal) where the disclosure is made in connection with a good faith report or investigation of conduct prohibited by this policy and the personal consumption did not place the health or safety of any other person at risk. TCU may, however, initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

## **VI. University Actions Following a Report/Complaint: Initial Inquiry, Interim Measures, Requests for Anonymity and Advisors**

Upon receipt of a Report, TCU will take prompt, thorough, reliable, equitable and impartial action consistent with TCU policy, applicable laws and regulations. Making a Report does not obligate a complainant to pursue a resolution or disciplinary action utilizing TCU's internal grievance process, but TCU encourages all complainants to do so. When the complainant and respondent are both either a TCU student or a TCU employee, if a complainant chooses to pursue a resolution or disciplinary action using the internal grievance process or the Coordinator determines it is necessary, the complainant can utilize either the Voluntary Informal Resolution process when permissible, (See Section VII, below), or the Investigation and Formal Resolution process (See Sections VIII, IX and X, below), as applicable.

If a Report includes a third party (e.g. non-TCU student or employee) as either the complainant or the respondent, the Coordinator will determine the appropriate means to address the Report and notify the parties. Factors may include the role of the third party, the nature of any contractual relationship with TCU, and the ability of TCU to take corrective action. When the respondent is a TCU student or employee, sanctions/corrective action may be imposed.

## **Initial Inquiry**

The Coordinator will make an Initial Inquiry to determine whether this policy applies to the alleged conduct and whether additional action should be taken based on the Report, including whether interim measures are appropriate and whether an investigation is warranted.

As part of the Initial Inquiry, the Coordinator will also assess the nature of the Report, address immediate needs of the complainant and the campus community, discuss available procedural options, determine the complainant's preference for resolution, provide the complainant with information about resources both on and off campus, and assess for pattern evidence or other similar conduct by the respondent. This assessment will continue until TCU has sufficient information to determine an appropriate course of action. In some instances, the Coordinator may arrange for limited fact-finding to gain a better understanding of the context of the Report or take other appropriate steps, including consulting with TCU's Threat Assessment Team.

TCU has several policies and procedures which can help resolve various types of complaints. The Coordinator will discuss other available options or resources with the complainant and respondent if appropriate. The Coordinator may determine that conduct as alleged, even if true, would not constitute a violation of this policy, or that the respondent is not a TCU community member over whom TCU can exercise disciplinary authority. If the conduct falls outside the scope of this policy, the Coordinator may refer the matter to another appropriate office or department for resolution under another relevant policy.

If it is determined that this policy applies, the Coordinator will determine the appropriate means to address the Report. When a complainant requests anonymity or does not want to participate in an internal grievance process to resolve a Report, the Coordinator will determine if the request can be honored and how to proceed. In all cases, the final decision on whether, how, and to what extent TCU will respond or conduct an investigation and whether other interim remedial or protective measures will be taken will be made in a manner consistent with this policy. When the Coordinator decides to initiate an investigation, impose interim protective measures, or take any other action that impacts a respondent, the respondent will be notified and will receive written information on available resources and options.

## **Request for Anonymity**

If the complainant requests anonymity or does not want to participate in an internal grievance process to resolve the Report, the Coordinator will consider this request in the context of TCU's responsibility to provide a safe and non-discriminatory environment for all members of the TCU community. In these instances, before taking any further investigative steps, the Coordinator will discuss any concerns with the complainant and seek to address and remedy barriers to pursuing a resolution or disciplinary action against the respondent based upon concerns of retaliation or lack of clarity in understanding procedural options and potential outcomes.

The Coordinator will balance the complainant's request against the following factors in reaching a determination on whether the request can be honored:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon;
- the respective ages and roles of the complainant and respondent;
- the risk posed to any individual or to the TCU community by not proceeding, including the risk of additional violence;
- whether there have been other reports of misconduct by the respondent;
- whether the Report reveals a pattern of misconduct related to conduct in violation of this policy (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- the complainant's interest in TCU not pursuing a resolution, investigation or disciplinary action and the impact of such actions on the complainant;
- whether TCU possesses other means to obtain relevant evidence;
- fairness considerations for both the complainant and the respondent;
- TCU's obligation to provide a safe and non-discriminatory environment; and
- any other available and relevant information.

TCU will attempt to comply with the complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the complainant and the TCU community. TCU's ability to respond fully to or investigate a Report may be limited if the complainant requests anonymity or declines to participate in an investigation or resolution process. Where the Coordinator determines that a complainant's request(s) can be honored, TCU may nevertheless take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the complainant and the TCU community. Those steps may include offering appropriate remedial measures to the complainant, providing targeted training and prevention programs, and/or providing or imposing other remedies.

A complainant who initially requests anonymity or declines to participate in TCU's internal grievance process can always change his/her mind and request to pursue a resolution or disciplinary action utilizing TCU's internal grievance processes.

### **Interim Measures**

Upon receipt of a Report raising Title IX or VAWA issues, TCU will provide reasonable and appropriate interim measures designed to preserve the complainant's educational experience; protect the complainant during an investigation; address safety concerns for the broader TCU community; maintain the integrity of the investigative and/or resolution process; and deter retaliation. These measures may be remedial (measures designed to maintain continued access to educational programs and activities) or protective (involving a restrictive action against a respondent). Under some circumstances, TCU,

in its discretion, may provide reasonable and appropriate interim measures in response to Reports that do not raise Title IX or VAWA issues. For example, TCU may take interim measures to address concerns of retaliation in response to Reports that do not raise Title IX or VAWA issues.

The availability of remedial and protective measures will be determined by the specific circumstances of each Report. TCU may consider a number of factors in determining which measures to take, including the needs of the student or employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the complainant; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the complainant (e.g., protective orders). TCU will work in good faith to implement the requirements of judicially-issued protective orders and similar orders, to the extent that doing so is within its authority.

Interim remedial measures may include, as appropriate:

- Access to counseling and medical services
- Assistance in obtaining a sexual assault forensic examination
- Assistance in arranging rescheduling of exams and assignments and obtaining extensions of deadlines
- Academic support
- Assistance in requesting long-term academic accommodations through the Center for Academic Services, if the complainant qualifies as an individual with a disability
- Change in the complainant's class schedule, including the ability to transfer course sections or withdraw from a course
- Change in the complainant's campus housing
- Change in the complainant's University work schedule or job assignment
- Escort and other safety planning steps
- Imposition of a "no contact directive," an administrative remedy designed to curtail contact and communications between two or more individuals
- Voluntary leave of absence
- Referral to resources which can assist in obtaining a protective order under Texas law
- Referral to resources which can assist with any financial aid, visa, or immigration concerns
- Any other remedial measure that can be used to achieve the goals of this policy.

Interim remedial measures are available to the complainant regardless of whether the complainant pursues a resolution or seeks disciplinary action utilizing the internal grievance process or whether the complainant chooses to make a report to TCU Police

or local law enforcement.

Interim protective measures may include:

- Change in the respondent's class schedule
- Change in the respondent's University work schedule or job assignment
- Change in the respondent's campus housing
- Exclusion from all or part of TCU housing
- Exclusion from specified activities or areas of campus
- Prohibition from participating in student activities or representing TCU in any capacity such as playing on an official team, serving in student government, performing in an official band, ensemble, or production, or participating in a recognized student organization
- Interim suspension
- Any other protective measure that can be used to achieve the goals of this policy
- Prohibition from participating in employee related activities or representing TCU in any capacity
- Administrative leave.

The determination of whether to impose the interim protective measure of interim suspension for students or administrative leave for employees will be made by the Coordinator in consultation with the Associate Vice Chancellor for Student Affairs & Dean of Campus Life (for students) or the Vice Chancellor for Human Resources (for employees) as appropriate. A respondent may be suspended or placed on administrative leave on an interim basis due to concerns for the safety and well-being of members of the TCU community or preservation of TCU property; for the individual's own physical or emotional safety and well-being; or if the individual poses a threat of physical disruption of, or interference with, the normal operations of TCU. During the interim suspension or administrative leave, an individual's access to TCU housing and/or to the campus (including classes), TCU facilities and systems as applicable, and/or all other TCU activities or privileges for which the individual might otherwise be eligible will be limited or denied. The decision to impose interim suspension or administrative leave may be made at any point in the process.

TCU will provide reasonable remedial and protective measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any contractual relationship with TCU.

Interim measures will not disproportionately impact the complainant. Requests for interim measures may be made by the complainant to the Title IX Office. The Title IX Office is responsible for ensuring the implementation of interim measures and coordinating TCU's response with the appropriate offices on campus. The Title IX Office has the discretion to impose and/or modify any interim measure based on all available information and is available to meet with a complainant or respondent to address any concerns about the provision of interim measures. TCU will maintain the privacy of any remedial and



protective measures provided under this policy to the extent practicable.

All individuals are encouraged to report to the Title IX Office any concerns about the failure of another to abide by any restrictions imposed through interim measures. In the event of an immediate health or safety concern, individuals should contact 911 or TCU Police immediately. TCU will promptly address any violation of a previously implemented measure, which may include imposing sanctions/corrective action.

### **Advisors**

The complainant and respondent, if they are a TCU student or TCU employee, are each allowed to have an advisor of their choice present with them for all meetings and proceedings under this policy at which the party is entitled to be present, including intake and interviews. The advisor may generally be any person, provided the requested advisor agrees to serve in the role, including an attorney, who is not otherwise a party or witness involved in the investigation, with the exception of the Confidential Advocate and staff members from the Title IX Office, Office of Campus Life, and the Office of Human Resources. If a party selects an attorney as an advisor, the party should provide at least three (3) business days' notice to the Coordinator or investigator before any meeting or interview the advisor will attend.

Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. While the advisor may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties, make any type of argument or presentation during any meeting or interview at which they are present, or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings. An advisor should plan to make themselves reasonably available, and TCU will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability. An advisor may be asked to meet with a TCU administrator in advance of any proceedings to understand the expectations of the role, privacy considerations, and appropriate decorum, as set forth in TCU's Expectations for Advisors document.

## **VII. Procedures for Resolving Reports: Voluntary Informal Resolution**

Voluntary Informal Resolution is an internal grievance process that may be available to resolve a Report. Voluntary Informal Resolution is available to both students and employees. However, it is not appropriate in all cases. Voluntary Informal Resolution is a voluntary, remedies-based resolution process that requires participation by both parties. It does not involve an investigation and may not involve taking disciplinary action against a respondent. Voluntary Informal Resolution is intended to eliminate the conduct at issue, prevent its recurrence, and remedy its effects. It is not necessary to pursue Voluntary Informal Resolution before pursuing Investigation and Formal Resolution.

### **Request to Use Voluntary Informal Resolution**

Following receipt of a Report and as part of or following the Initial Inquiry (See Section VI.

of the policy), the Coordinator will determine how to proceed. For purposes of these procedures, a reference to the Coordinator may include a Deputy Title IX Officer, a University administrator or another appropriate designee. If a complainant indicates a preference for Voluntary Informal Resolution to resolve a Report, the Coordinator will determine whether it is appropriate. This decision will be made as part of or following the Initial Inquiry when TCU has sufficient information about the nature and scope of the alleged conduct. If the Coordinator determines Voluntary Informal Resolution is appropriate, the respondent will be notified of the nature of the complaint, reminded that retaliatory behavior will not be tolerated, and advised of any confidentiality issues. Both the complainant and respondent will be given a copy of the policy, the applicable procedures and will be provided an explanation of the Voluntary Informal Resolution process.

The respondent must agree to participate in the Voluntary Informal Resolution to resolve the Report using this internal grievance process.

A complainant may request that the Voluntary Informal Resolution process be attempted to resolve a Report at any time. For example, a complainant who previously requested to go through the internal grievance process of Investigation and Formal Resolution can request to end that process and attempt Voluntary Informal Resolution. The Coordinator will consider the request if the respondent is in agreement. Either party participating in Voluntary Informal Resolution can end the process at any time and request a shift to the Investigation and Formal Resolution process. If the Voluntary Informal Resolution process is unsuccessful or fails to address the alleged conduct, at the discretion of the Coordinator, a complainant may be able to subsequently pursue a resolution through Investigation and Formal Resolution.

### **Timeframe for Resolving Reports**

Voluntary Informal Resolution will typically be completed within 60 calendar days of the Report. If additional time is needed, all parties will be notified.

### **Resolution**

If both parties and the Coordinator agree that Voluntary Informal Resolution should be attempted, the Coordinator will determine the most appropriate method for resolution that is agreeable to the parties. TCU will not require the complainant or respondent to participate in any particular form of resolution under Voluntary Informal Resolution. TCU will not compel a complainant to confront the respondent directly, and mediation, even if voluntary, may not be used in cases involving allegations of Sexual Assault. Although in many situations, TCU's Conflict Resolution process for faculty and/or staff may be appropriate to resolve disputes or grievances between employees, in cases alleging conduct which would violate this policy, TCU's Conflict Resolution process is not appropriate.

Voluntary Informal Resolution may include conducting targeted or broad-based

educational programming or training, arranging a meeting where the complainant is able to confront the respondent, indirect action by the Title IX Office, a conflict resolution meeting in which a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible, and any other form of remedy that can achieve the goals of the policy. Additionally, in matters raising Title IX or VAWA issues and in other matters as deemed appropriate, during the Voluntary Informal Resolution process interim measures may be established as appropriate. Failure to abide by the accord can result in appropriate responsive actions, including initiation of the Investigation and Formal Resolution Process.

### **VIII. Procedures for Resolving Reports: Investigation and Formal Resolution When Both Parties are Students**

The procedures relating to investigations, resolution and appeals of complaints against students, including complaints of student-on-student prohibited conduct that relate to sexual and gender-based sexual violence, including sexual assault, sexual exploitation, intimate partner violence, stalking and retaliation, are found in the [Policy on Prohibited Discrimination, Harassment and Related Conduct](#).

### **IX. Procedures for Resolving Reports: Investigation and Formal Resolution When Both Parties are Employees**

The Investigation and Formal Resolution process is an internal grievance process that may be used to resolve a Report. It is not necessary to pursue Voluntary Informal Resolution before pursuing Investigation and Formal Resolution.

These procedures apply when the Investigation and Formal Resolution Process is being used to address a Report concerning conduct directed against an employee by another employee. In applying these procedures, TCU will take prompt, thorough, reliable, equitable and impartial action consistent with TCU policy, applicable laws and regulations.

#### **Initiation of the Investigation and Formal Process**

Following receipt of a Report and as part of or following the initial Inquiry (See Section VI. of the policy), the Coordinator will determine how to proceed. For purposes of these procedures, a reference to the Coordinator may include a Deputy Title IX Officer, a University administrator or another appropriate designee. If resolution will be through an Investigation and Formal Resolution Process, the respondent will be notified of the nature of the complaint, reminded that retaliatory behavior will not be tolerated, and advised of any confidentiality issues. Both the complainant and respondent will be given a copy of the policy, the applicable procedures and will be provided an explanation of the Investigation and Formal Resolution process.

#### **Timeframe for Resolving Reports**

TCU will seek to complete the Investigation and Formal Resolution Process within 60 calendar days, but may take longer depending on the circumstances. If additional time is needed, the parties will be notified.

### **Investigation and Formal Resolution**

The Coordinator will initiate an Investigation of the Report. Investigations will be thorough, reliable, impartial, prompt, equitable and fair. The Coordinator may conduct the investigation or assign an impartial investigator to conduct the investigation. TCU may also hire an outside investigator to conduct the investigation when deemed appropriate. All individuals undertaking an investigation under these procedures will be appropriately trained.

During an investigation, the investigator(s) will attempt to interview both parties. The parties may each consult with a collegial or professional support person/advisor (Advisor), who may accompany them to their interview with the investigator. (See Section VI. of the policy for information on Advisors). Both parties may provide relevant information to the investigator(s), including the names of any witnesses to the alleged conduct. The investigator(s) will consider the information identified or provided by the parties and witnesses and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation.

At the conclusion of the investigation, the investigator(s) will determine, based on a preponderance of the evidence, whether a policy violation has occurred and will report the finding(s) to the Coordinator. A finding of responsibility means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it is more likely than not the policy violation occurred.

If there is a finding of responsibility, appropriate sanctions/corrective action or other remedies as determined by the Coordinator will be imposed. Even in the absence of a violation of this policy, if another TCU policy or standard has been violated, sanctions/corrective action or other remedies may be imposed. In deciding what sanctions/corrective action or other remedies are appropriate, the Coordinator will consult with other appropriate administrators as deemed necessary.

Typically, within ten (10) calendar days from completion of the investigation, both parties will be notified of the outcome consistent with applicable law. The respondent will also be notified in writing of the corrective action to be taken. The complainant will be notified in writing of the corrective action to be taken consistent with applicable law. Both parties will be notified of their rights to appeal.

### **Appeals Process**

Either party may appeal the investigative finding by asserting that (1) there was a material procedural error that significantly impacted the outcome or (2) there was no rational basis, applying a preponderance of the evidence standard, for the investigative finding. A respondent, and in cases where a complainant has been advised of the corrective action

imposed, a complainant, may also request that the corrective action or other remedies imposed be reviewed and reconsidered on the grounds that the sanction was clearly inappropriate and/or clearly disproportionate to the conduct for which the respondent was found responsible. Dissatisfaction with the sanction is not grounds for appeal; the party must articulate how the sanction was inappropriate or disproportionate.

All requests for appeal must be submitted in writing to the Coordinator within three (3) business days of the delivery of the final notification. The appeal must: 1) be timely filed, and 2) consist of a plain, concise and complete written statement outlining the grounds for appeal. The review on appeal is narrowly tailored to the above-stated bases. The original findings and/or corrective action will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. If either party files a timely appeal, interim measures may be taken or may remain in place until the appeal is resolved.

The Coordinator will refer the appeal to the Chief Compliance Officer or designee for determination. Appeals are confined to a review of the written documentation pertinent to the grounds for appeal. The decision of the Chief Compliance Officer regarding the appeal is final. In evaluating the existence of a rational basis for the investigative finding, the Chief Compliance Officer will not reweigh the facts gathered or substitute their opinion on credibility for the judgment of the investigator(s) who saw and heard the parties and witnesses.

Both parties will be informed of the appeal outcome. This will typically be within three (3) business days of the Chief Compliance Officer's decision.

If neither party appeals, or if an appeal is filed, once a determination is made by the Chief Compliance Officer, the Title IX Office will notify the appropriate dean, unit head, vice chancellor, or other appropriate University official responsible for implementing the decision and the corrective action to be taken.

\*\*Except as otherwise required by the Tenure Policy, neither party may appeal the findings or sanctions or challenge or otherwise address the investigation, corrective action or sanctions, or matters considered under this policy, through any additional appeal, mediation, panel or process under any other TCU policy (including but not limited to the Faculty Conflict Resolution Policy – Policy 2.016 and the Staff Conflict Resolution Policy – Policy 2.015, both of which may be viewed on the HR web site, and the Faculty Appeal Policy included in the Faculty/Staff Handbook). In any matter in which a tenured faculty member has been found in violation of this policy and the recommended sanction and/or corrective action is dismissal, the faculty member can exercise their rights under the Tenure Policy to challenge the dismissal. However, an underlying finding that this policy was violated may only be appealed using the appeal procedures available under this policy and will not be revisited as part of the review process provided in the Tenure Policy.

#### **X. Procedures for Resolving Reports: Investigation and Formal Resolution When Parties Include Both a Student and an Employee**

The Investigation and Formal Resolution process is an internal grievance process that may be used to resolve a Report. It is not necessary to pursue Voluntary Informal Resolution before pursuing Investigation and Formal Resolution.

These procedures apply when the Investigation and Formal Process is being used to address a Report concerning either (1) conduct directed against a student (or applicant) by an employee or (2) conduct directed against an employee by a student. In applying these procedures, TCU will take prompt, thorough, reliable, equitable and impartial action consistent with TCU policy, applicable laws and regulations.

### **Initiation of the Investigation and Formal Process**

Following receipt of a Report and as part of or following the initial Inquiry (See Section VI. of the policy), the Coordinator will determine how to proceed. For purposes of these procedures, a reference to the Coordinator may include a Deputy Title IX Officer, a University administrator or another appropriate designee. If resolution will be through an Investigation and Formal Resolution Process, the respondent will be notified of the nature of the complaint, reminded that retaliatory behavior will not be tolerated, and advised of any confidentiality issues. Both the complainant and respondent will be given a copy of the policy, the applicable procedures and will be provided an explanation of the Investigation and Formal Resolution process.

### **Timeframe for Resolving Reports**

TCU will seek to complete the Investigation and Formal Resolution process within 60 calendar days, but may take longer depending on the circumstances. If additional time is needed, the parties will be notified.

### **Investigation and Formal Resolution**

The Coordinator will initiate an investigation of the Report. Investigations will be thorough, reliable, impartial, prompt, equitable and fair. The Coordinator may conduct the investigation or assign an impartial investigator(s) to conduct the investigation. TCU may also hire an outside investigator(s) to conduct the investigation when deemed appropriate. All individuals undertaking an investigation under these procedures will be appropriately trained.

During an investigation, the investigator(s) will attempt to interview both parties. The parties may each consult with a collegial or professional support person/advisor (Advisor), who may accompany them to their interview with the investigator. (See Section VI. of the policy for information on Advisors). Both parties may provide relevant information to the investigator(s), including the names of any witnesses to the alleged conduct. The investigator(s) will consider the information identified or provided by the parties and witnesses and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation.

At the conclusion of the investigation, the investigator(s) will determine, based on a preponderance of the evidence, whether a policy violation has occurred, and will report the finding(s) to the Coordinator. A finding of responsibility means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it is more likely than not the policy violation occurred.

If there is a finding of responsibility, appropriate sanctions/corrective action or other remedies as determined by the Coordinator will be imposed. Even in the absence of a violation of this policy, if another TCU policy or standard is violated, sanctions/corrective action or other remedies may be imposed. In deciding what sanctions/corrective action or other remedies are appropriate, the Coordinator will consult with other appropriate administrator as deemed necessary.

Typically, within ten (10) calendar days from completion of the investigation, both parties will be notified of the outcome consistent with applicable law. The respondent will also be notified in writing of the corrective action to be taken. The complainant will be notified in writing of the corrective action to be taken consistent with applicable law. Both parties will be notified of their rights to appeal.

### **Appeals Process**

Both parties may appeal the investigative finding by asserting that (1) there was a material procedural error that significantly impacted the outcome or (2) there was no rational basis, applying a preponderance of the evidence standard, for the investigative finding. A respondent, and, in cases where a complainant has been advised of the corrective action imposed, a complainant, may also request that the corrective action or other remedies imposed be reviewed and reconsidered on the grounds that the sanction was clearly inappropriate and/or clearly disproportionate to the conduct for which the respondent was found responsible. Dissatisfaction with the sanction is not grounds for appeal; the party must articulate how the sanction was inappropriate or disproportionate.

All requests for appeal must be submitted in writing to the Coordinator within three (3) business days of the delivery of the final notification. The appeal must: 1) be timely filed, and 2) consist of a plain, concise and complete written statement outlining the grounds for appeal. The review on appeal is narrowly tailored to the above- stated bases. The original findings and/or corrective action will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. If either party files a timely appeal, interim measures may be taken or may remain in place until the appeal is resolved.

The Coordinator will refer the appeal to the University Compliance Officer or designee for determination. Appeals are confined to a review of the written documentation pertinent to the grounds for appeal. The Chief Compliance Officer's decision on appeal is final. In evaluating the existence of a rational basis for the investigative finding, the Chief Compliance Officer will not reweigh the facts or substitute their opinion for the judgment of the investigator(s) who saw and heard the parties and witnesses.

Both parties will be informed of the appeal outcome. Typically, this will be within three (3) business days of the Chief Compliance Officer's decision.

If neither party appeals or, if an appeal is filed, once a determination is made by the Chief Compliance Officer, the Title IX Office will notify the appropriate University officials responsible for implementing the decision and the corrective action to be taken.

\*\*Except as otherwise required by the Tenure Policy, neither party may appeal the findings or sanctions or challenge or otherwise address the investigation, corrective action or sanctions, or matters considered under this policy, through any additional appeal, mediation, panel or process under any other TCU policy (including but not limited to the Faculty Conflict Resolution Policy – Policy 2.016 and the Staff Conflict Resolution Policy – Policy 2.015, both of which may be viewed on the HR web site, and the Faculty Appeal Policy included in the Faculty/Staff Handbook, or the Code of Student Conduct in the Student Handbook). In any matter in which a tenured faculty member has been found in violation of this policy and the recommended sanction and/or corrective action is dismissal, the faculty member can exercise his/her rights under the Tenure Policy to challenge the dismissal. However, an underlying finding that this policy was violated may only be appealed using the appeal procedures available under this policy and will not be revisited as part of the review process provided in the Tenure Policy.

## **XI. Sanctions/Corrective Action**

Factors considered when determining a sanction/corrective action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the Coordinator and other designated administrators
- The need for sanction(s)/corrective action(s) to bring an end to the discrimination, harassment and/or retaliation
- The need for sanction(s)/corrective action(s) to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the complainant and the community

### **Sanctions/Corrective Actions Imposed Upon Students or Organizations**

For the usual sanctions/correction actions that may be imposed upon students or organizations singly or in combination, see the [Policy on Prohibited Discrimination, Harassment, Retaliation and Related Conduct](#).

### **Sanctions/Corrective Actions Imposed Upon Staff or Faculty**

The following are the usual corrective actions that may be imposed upon staff or faculty



singly or in combination:

- Oral or written reprimand
- Required attendance at a harassment/discrimination sensitivity program
- Oral or written warning
- Demotion, loss of salary or benefits
- Transfer or change of job, class or residential assignment or location, including removing the person from being in a position to retaliate or further harass the complainant
- Suspension, probation, termination, dismissal or expulsion
- Other action TCU deems appropriate under the circumstances

While counseling is not considered a sanction/corrective action, it may be required in combination with one or more sanctions/corrective actions. Attendance at a harassment and/or discrimination sensitivity program may also be required. Where alcohol and/or other substances are involved in the violation, such counseling may include a substance abuse program. Sanctions and/or corrective action will be implemented by the appropriate University official.

### **Long-Term Remedies/Actions**

Following the conclusion of the Resolution Process and in addition to any sanctions/corrective actions implemented, the Coordinator may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services or the Employee Assistance Program
- Education to the community or appropriate TCU employees
- Permanently altering the housing situation of the respondent (resident student or resident employee) or the complainant, if desired
- Permanently altering work arrangements for employees
- Providing campus escorts
- Providing transportation accommodations
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic or work deadlines, course schedules, etc.

At the discretion of the Coordinator, long-term remedies may also be provided even when the respondent is found not responsible. The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

## **Failure to Complete Sanctions, Comply with Interim and Long-term Remedies, Corrective Actions**

All responding parties are expected to comply with conduct sanctions/ corrective actions within the timeframe specified by the Coordinator. Failure to abide by conduct sanctions/corrective action and/or remedies may result in additional sanctions/corrective action and/or remedies from TCU and may be noted on a student's official transcript or an employee's employment record. Sanction(s) and/or corrective action(s) will be implemented by the appropriate University official. A suspension will only be lifted when compliance is achieved to the satisfaction of the Coordinator.

### **Records**

The Title IX Office will maintain records of all allegations, investigations, resolutions, and hearings for a period of seven (7) years in the Title IX Coordinator database.

### **Withdrawal While Charges Pending**

Should a respondent choose to withdraw from or leave TCU while there is a pending investigation or resolution process for violation of this policy, the process may proceed in the respondent's absence to a reasonable resolution and the respondent will not be permitted to return to TCU unless all sanctions/ corrective actions have been satisfied. The student will not have access to an academic transcript and the employee will not be re-hirable until the report has been resolved.

## **XII. Prevention and Awareness Programs**

TCU is committed to the prevention of discrimination, harassment, and related conduct, including sexual and gender-based harassment and violence through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming, and returning students and current employees receive ongoing training and related programs. TCU provides coordinated programming and training through multiple areas, including the Title IX Office, Student Affairs, Student Government Association, TCU Police Department, Human Resources, Wellness, Health Services, Counseling Center and other University departments. Any individual, department or TCU organization that would like to schedule an additional training session should contact the Coordinator or Human Resource Office.

## **XIII. Policy Communication and Revisions**

### **Policy Communication**

This policy and these procedures are included in the Student Handbook and the Faculty/Staff Handbook. This policy is also available on TCU's website and through the TCU Compliance Officers. In the event of any conflict between published versions of this policy, the version posted on the website will control.

This policy and these procedures will be reviewed annually by the Coordinator and updated as appropriate. TCU reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Coordinator may make minor modifications to the policy or procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Coordinator may also make material changes to the policy or procedures with notice (e.g., on the institutional web site, with appropriate date of effect identified) upon determining that changes in the law or regulations require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred. Policy definitions in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution, unless the parties consent to be bound by the current policy. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form.

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

This policy and procedure was implemented in August 1, 2017.