

2022 ANNUAL  
**SECURITY & FIRE  
SAFETY REPORT**

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# 2022 ANNUAL SECURITY & FIRE SAFETY REPORT

## Campus Crime Statistics Report

East Texas Baptist University provides the following Annual Security and Fire Safety Report, which includes University policies, procedures and statistical information, in order to provide important information for students, parents, and employees. This report complies with federal law, including the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*. In complying with the *Clery Act*, ETBU gathers statistics concerning the occurrence of crimes on campus, in residence halls, public property immediately adjacent to the campus, and non-campus property owned by the University. This Report contains *Clery Act* crime statistics for the previous three years. Information for this report was gathered from the University Security Department, Office of Student Engagement, and the City of Marshall Police Department.

EAST TEXAS BAPTIST UNIVERSITY					
Offense	Year	On-Campus	On-Campus Student Housing	Noncampus Property	Public Property
<b>CRIMINAL OFFENSES</b>					
Murder/Non-Negligent	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Negligent Manslaughter	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Rape	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Fondling	2019	0	0	0	0
	2020	0	0	0	0
	2021	1	1	0	0
Incest	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Statutory Rape	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0

**EAST TEXAS BAPTIST UNIVERSITY**

Offense	Year	On-Campus	On-Campus Student Housing	Noncampus Property	Public Property
Robbery	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Aggravated Assault	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Burglary	2019	4	4	0	0
	2020	4	4	0	0
	2021	0	0	0	0
Motor Vehicle Theft	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Arson	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0

**VAWA OFFENSES**

Domestic Violence	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Dating Violence	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Stalking	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0

**ARRESTS**

Liquor Law Violations	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Drug Abuse Violations	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0
Illegal Weapons Possession	2019	0	0	0	0
	2020	0	0	0	0
	2021	0	0	0	0

**DISCIPLINARY REFERRALS**

Liquor Law Violations	2019	46	44	0	0
	2020	50	50	0	0
	2021	13	13	0	0
Drug Abuse Violations	2019	12	6	0	0
	2020	11	8	0	0
	2021	5	5	0	0
Illegal Weapons Possession	2019	0	0	0	0
	2020	1	1	0	0
	2021	0	0	0	0

\*Residence Hall crimes and occurrences are included in the on campus total numbers. There were no unfounded crimes on campus in 2019, 2020, 2021.

There were no hate crime occurrences on campus in 2019, 2020, 2021.

You may also access information on the OPE Campus Security Statistics website at, <http://ope.ed.gov/security>. To find the ETBU crime statistics report on this site, click on "Get data for one institution/campus." Then, enter "East Texas Baptist University" in the name field in order to view the report.

## Security Policies and Procedures

East Texas Baptist University is a private institution. Access to the campus, buildings and grounds is limited to students, faculty, staff, and invited guests. Presence on the campus is not a right but a privilege. University personnel and law enforcement agencies have the right to remove people without proper identification from campus. The general public is welcome to attend certain religious, cultural, and athletic events on campus; however, their access is limited to the events only.

East Texas Baptist University maintains an ongoing working relationship with local law enforcement agencies in order to help provide a healthy, safe, and secure environment for all members of our campus community. The University has a working agreement with the Marshall Police Department (MPD) and the Harrison County Sherriff's Office (HCS) to help provide security throughout and around campus. ETBU University Security Officers are responsible for ensuring each building is locked and secured. MPD and HCS officers providing security for the University have full law enforcement powers and authority to respond to police, security, and emergency related calls, as well as investigate reported crimes, arrest individuals, and enforce traffic laws. The University has a working agreement with MPD and HCS for the investigation of alleged crimes.

In the event of any criminal activity, faculty, staff, and students are encouraged to contact the Marshall Police Department and/or the University Security Department. As necessary, University Security will make the contact on behalf of the University for the individual requesting assistance. ETBU faculty, staff, students, and visitors may contact the appropriate department or office below for assistance.

### Emergency Phone Guide

University Security Department	903.923.2323
University Security Mobile Phone	903. 407.8189
Marshall Police Department	903.935.4575
Emergency	911
Physical Operations Offices	903.923.2098
Office of Student Engagement	903.923.2320

The Physical Operations Department maintains the physical condition of campus facilities. This department keeps close watch on all facilities to ensure students' safety while on campus. Security cameras and security lights are strategically located throughout campus to assist with our security program. Additionally, four emergency phone towers have been installed in the following locations on campus: Murphy Science Building, Meadows Hall, Ornelas Housing Complex, and University Apartments. To operate the emergency phone towers, push the emergency button located on the front of the phone tower and 911 will be automatically dialed.

## Residence Hall Security

ETBU offers traditional residence halls and apartments for on-campus student housing. The safety and security of campus residents, their property, and the facility is important to ETBU. The Office of Student Engagement manages all residence halls and apartments on campus. Each facility is staffed by a live-in Resident Director or Resident Manager. A number of live-in

Resident Assistants also work in each residence hall facility. All staff members working in residential facilities undergo comprehensive training each year regarding community living environments. Safety and security are vital parts of that environment. The Office of Student Engagement works closely with our University Security Department to ensure the safety of all residents.

Several residence halls feature electronic access by ETBU Student Identification cards, with access restricted solely to students with valid ETBU Student ID cards living within the respective residence hall. The Oaks on Grove and University Park are accessed via residential keys.

Information on safety, security, and other related topics is presented during Tiger Camp, New Student Orientation, Welcome Week, mandatory residence hall meetings, Learning and Leading classes, and is published in the Student Handbook. Safety and security-related presentations are made to inform residents that their cooperation and partnership are necessary and needed in preventing campus crime.

### **Assistance in Emergency Situations and How to Report a Crime**

In the event of a criminal act in a residence hall, students should contact a member of the residence hall staff as soon as possible (Resident Assistant, Resident Director, or Resident Manager). The staff member can provide assistance and direct students through the procedure of reporting a crime. If an accident occurs outside a residence hall, during normal business hours, a student should contact the Office of Student Engagement or the University Security Department for immediate assistance or to file a report.

Any suspicious activity or criminal act occurring on campus after operating hours should be reported immediately to University Security or to the Marshall Police Department. In an emergency, 911 should be called immediately.

### **Confidential Reporting**

If a member of the ETBU campus community is the victim of a crime and does not want to pursue action with local law enforcement or through the University disciplinary process, he or she may still want to consider making a confidential report of the situation. With the victim's permission, a representative of the University Security Department or the Office of Student Engagement can file a report on the details of the incident without revealing his or her identity. Please note that crimes involving children under the age of 17 must be investigated and pursued to the full extent of local, state, and federal law.

The purpose of a confidential report is to comply with the individual's wish to keep the matter confidential, while taking steps to ensure the future safety of the victim and others. With such information, the University can keep an accurate record of the number of criminal incidents, determine if there is a pattern of crime with regard to a particular location, method, or assailant, and alert the campus community to potential dangers.

Reports filed in this manner are counted and disclosed in the annual crimes statistics for the institution's Annual Security Report in compliance with the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, and the *Campus Sexual Violence Elimination Act*, as a part of the *Violence Against Women Reauthorization Act*.

Campus “Pastoral Counselors” and Campus “Professional Counselors,” when acting as such, are not considered a campus security authority and are not required to report crimes for inclusion into the annual disclosure of crime statistics. As a matter of policy, all Counseling Center personnel, Professional Counselors, and Pastoral Counselors inform persons being counseled of the procedures to report crimes on a voluntary basis for inclusion into the annual crime statistics and that all reported crimes which pose a threat to the client or other person will be reported to local law enforcement for investigation and appropriate action.

A Pastoral Counselor is an employee of an institution who is associated with a religious order or denomination, recognized by that religious order or denomination as someone who provides confidential counseling and who is functioning within the scope of that recognition as a pastoral counselor.

A Professional Counselor is an employee of an institution whose official responsibilities include providing psychological counseling to members of the institution’s community and who is functioning within the scope of his or her license or certification.

### **Timely Warning**

When known crime risks might endanger the campus community, the Office of Student Engagement or the University Security Department will notify the campus community in a timely manner utilizing such communication modes as: text messaging alert system, email, telephone calls, flyers, and other modes deemed appropriate at the time.

### **Tiger Alert**

All students, faculty, and staff are automatically enrolled in “Tiger Alert” (Rave), ETBU’s emergency alert system. Texas State Law requires the Institution to automatically enroll every faculty, staff, and student at East Texas Baptist University into the emergency alert system. Students, faculty, and staff receive all emergency alerts via their ETBU email and a text message to their mobile phone (if they have provided their mobile phone number). This service will only be used in times of emergency when important information must be communicated in a timely manner such as weather warnings, major event cancellations, University closings, delayed openings, emergencies, crisis situations, active shooter alert, or other safety concerns.

Students can register and update their mobile phone number in Campus Connect. Once the phone number registration or update is complete, they will be automatically enrolled in Tiger Alert. Faculty and staff can update and provide their mobile phone number by logging into the Paycor HR system or by emailing Human Resources.

Texas State Law requires an “Opt-Out” process of receiving these messages, if one may choose to do so. It is ETBU’s hope that all would choose to stay enrolled, as all messages from Tiger Alert will be important for campus life and safety.

However, if one prefers to Opt-out, they may text “STOP” to any of the following Rave Mobile Safety SMS short codes:

1. 226787

2. 67283
3. 78015
4. 81437
5. 22911

If one chooses to later “Opt-In” again, they must text the word “START” to any of the above short codes, which will resume/reinstate the Tiger Alert messages via text.

### **Alcohol/Drugs/Tobacco Policy**

ETBU prohibits the possession, use, or distribution of alcohol, illicit drugs, drug paraphernalia, or tobacco on campus property. The Student Code of Conduct requires students to be in compliance with all federal, state and local laws regarding the use of alcohol, tobacco, drugs and other controlled substances. Failure to comply will result in disciplinary actions, up to and including suspensions and/or dismissal or referral for prosecution. A disciplinary action may include the completion of an appropriate rehabilitation program.

### **Alcohol and Drug Abuse Support Services**

Amnesty Statement: Students who seek help for substance abuse problems can be assured that confidentiality will be observed within the limits of the law. Where federal and state laws permit, the University will not impose sanctions when a student seeks assistance for substance abuse or any other problem of a similar nature.

The Office of Student Engagement will assist students seeking help for alcohol and drug abuse problems through various functions.

1. Assessment – meeting with students to assess the extent of their problem with alcohol or other drugs.
2. Intervention – working with various personnel in an attempt to reach out to people in trouble and provide them access to appropriate help.
3. Short-term Counseling –providing counseling to students who can benefit from therapy sessions, as appropriate.
4. Referral/Aftercare – assisting students in finding specialized care including outpatient therapy or inpatient treatment.
5. Campus Awareness – working with student organizations to coordinate projects or programs to focus attention on the dangers of drug and alcohol abuse and also problems of dependency.
6. Education – giving presentations on the effects of chemical dependency and/or alcohol and drug abuse.

The following organizations provide assistance to individuals dealing with drug and alcohol problems:

Health Core Mental Health Crisis Line: 1.800.832.1009  
Marshall Good Shepherd Medical Center Switchboard: 903.927.6000  
Oak Haven Recovery Center: 903.938.5149  
Texas Department of Human Services: 903.938.7751  
Sisk Health Services Clinic: 903.923.2355

Women's Center of East Texas: 1.800.441.5555  
East Texas Council on Alcoholism and Drug Abuse: 903. 753.7633 or 1.800.441.8639  
Substance Abuse and Mental Health Services Hotline: 1.800.662.HELP (www.samhsa.gov)  
Texas Al-Anon (Alcohol Abuse): www.texas-al-anon.org

For more information on drugs or rehabilitation programs contact the Office of Student Engagement.

- See appendices for Complying with the Drug-Free Schools and Campuses Regulations (DFSCR)

## **WEAPONS POLICY**

### **Weapons Prohibition Policy**

East Texas Baptist University has a policy banning various weapons from campus. If you have any questions about the Campus Carry Policy or the Weapons Prohibition Policy, please contact the ETBU Security Department at 903.923.2323.

### **Texas Senate Bill 11 Information**

Texas law previously permitted public and private universities to ban the carrying of concealed handguns on their campuses. On June 13, 2015, Governor Abbott signed into law S.B. 11 which adds section 411.2031 to the Government Code and authorizes a concealed handgun license holder to carry a concealed handgun on the campus of a public or private university in Texas, effective August 1, 2016. However, private universities in Texas may adopt rules, regulations, or other provisions to prohibit license holders from carrying handguns on the campus of the institution, any grounds or building on which an activity sponsored by the institution is being conducted, or a passenger transportation vehicle owned by the institution." Open carry of handguns (or other firearms) on a college campus continues to be prohibited under Texas Law.

### **General Weapons Policy**

This policy applies to all persons entering property owned or leased by ETBU (including the main campus and downtown Marshall Grand campus), at all locations where any ETBU sponsored activity is being conducted, and in all passenger transportation vehicles owned or leased by ETBU.

ETBU aims to provide a safe and secure campus community in which to pursue its mission of Christ-centered education. Therefore, all members of the ETBU community, including faculty, staff, students, and off-campus visitors are prohibited from possessing firearms, explosives, fireworks, weapons, and replicas of dangerous weapons (as described in this policy) while on ETBU property, in buildings where an ETBU-sponsored activity is held or within or on ETBU's vehicles. This prohibition against weapons possession is in effect to the fullest extent allowed under Texas laws, including laws pertaining to weapons generally (Texas Penal Code § 46.03) and to concealed handgun licenses (Texas Penal Code § 46.035). The only exceptions to this weapons prohibition are those authorized in writing by the Office of the President and those exceptions mandated by law.



Any ETBU student, faculty member, staff member, or contracted service provider violating this policy is subject to disciplinary action, up to and including expulsion, dismissal, or termination of employment. When appropriate, anyone, including off-campus guests, violating this policy may also be subject to removal from the campus, prohibition from the campus, and/or criminal prosecution. ETBU expects all members of the campus community to help safeguard the community by reporting promptly to University Security, Office of Student Engagement, and/or Office of the President any weapons discovered to be present on campus. Persons should report any concerns about violations of this policy to the Director of University Security, Vice President for Student Engagement, Dean of Students, Assistant Vice President of University Operations, or supervisor. Any person concerned about an imminent threat of violence on University property or at a University-sponsored event should report the concern immediately to University Security at 903.923.2323 or dial 911 for the Marshall Police Department.

#### Definitions and Descriptions

As used in this policy, the term “weapon” encompasses any object or substance designed to inflict a wound, incapacitate or cause injury, and includes, but is not limited to, the following:

- firearms, including, without limitation, rifles, shotguns, handguns, BB or pellet guns, compressed-air guns, stun guns, paintball or airsoft guns;
- ammunition, including materials for making ammunition;
- explosive material, including bombs, grenades, rockets, and fireworks;
- chemical weapons (other than small chemical dispensers sold commercially for personal protection, such as pepper spray);
- daggers, swords, spears, knives with blades longer than 5½ inches, switchblades, butterfly knives, and other bladed weapons (including those, intended for ceremonial or decorative uses);
- slingshots, bows and arrows, clubs, blackjacks, nightsticks, hunting, or martial arts weapons;
- weapons prohibited by Texas Penal Code Chapter 46 (which includes a variety of firearms, handguns, zip guns, clubs, knives, fake bombs, explosive weapons, and components of explosives that are possessed with the intent to create an explosive weapon);
- other dangerous weapons, especially those intended for warfare, combat or hunting; and
- replicas or other objects that are made to look like actual weapons and could reasonably be mistaken by community members or police officers as actual weapons (including toy, fake or facsimile weapons).

Any questions about whether an item may constitute a “weapon” addressed by this policy should be directed to the University Security Department or the Office of Student Engagement.

The term “possession” includes, but is not limited to, having the weapon on one’s person or storing the weapon in workplaces, residential facilities, lockers, desks, briefcases, any type of carrying bags or containers, or in vehicles on University property.

Examples of prohibited firearms include, but are not limited to: handguns, rifles, BB guns, pellet guns, air guns, stun guns, electronic weapons, and all other devices which expel a projectile through a barrel by using the energy generated by an explosion, burning substance, CO2 cartridge, compressed air, etc.

Examples of other prohibited weapons include, but are not limited to: swords, spears, switchblades, all knives with a blade over five and one-half inches, bows and arrows, crossbows, martial arts “stars,” throwing knives, “nunchakus,” and any other such weapons.

Paint guns and water guns may not be used on University property except during University-sanctioned activities.

Under no circumstances are students to have fireworks, gun powder, shell-loading equipment, bottle rockets, rocket engines, ether cannons, or similar explosives (i.e. homemade pyrotechnic or non-pyrotechnic explosive devices or potentially explosive ingredients of any kind) on their person, in vehicles, or in residence halls, apartments, or houses. Possession or use of any of the above on the University campus is in direct violation of Texas State Law, Marshall City Ordinance, and University Policy.

#### Exceptions to the Policy

The only exceptions to this prohibition on possession or storage of weapons at ETBU are the following:

- State law (Texas Labor Code § 52.061) permits employees (including ETBU employees) who hold concealed handgun licenses and lawfully possess a firearm or ammunition, to store or transport the firearm or ammunition in their locked vehicles in a parking lot, garage or other parking area that the employer provides to the employee. This permission extends only to employees and not to visitors or contracted service providers; it pertains only to locked, privately owned vehicles in ETBU parking facilities and does not extend to ETBU-owned vehicles.
- In addition, state law (Texas Government Code § 411.2032) permits persons who hold concealed handgun licenses (including enrolled ETBU students) to store or transport firearms.

#### Implementation

Persons licensed by the state to carry concealed handguns may not bring such weapons into any area not permitted by law, such as ETBU buildings or residences, and they should instead store their weapons in a secure manner that does not violate state law or this policy.

ETBU does not provide storage of personal firearms.

University classes, clubs, and other sponsored activities that will be using items included in the definition of “weapons” (such as classes using martial arts weapons or theatrical productions using fake guns) must, prior to any use, obtain written permission from the University President to use weapons as part of the activity. It is important that University Security be notified in advance of any weapons (including replicas or facsimiles) that are being used on campus, even in University-sponsored activities, in order to avoid misunderstandings with University Security, local law enforcement, campus officials, and to permit ETBU to respond appropriately to any reports regarding the weapons. Any weapons permitted as part of University-sanctioned events must be stored in the location designated in the written permission obtained from the University President.

#### **Campus Carry Policy**

Pursuant to Section §30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property (ETBU) with a concealed handgun. The ETBU President may grant authorization to a qualified and certified full-time faculty or staff member, who is a license holder with a concealed handgun to conceal carry on the University campus, at a University-sponsored event, or within or on a University vehicle. Penal Code §30.06 states that the required written communication includes "a sign posted on the property that: (i) includes the language described by Paragraph (A) in both English and Spanish.

### **Missing Student Notification**

In compliance with the Missing Student Notification Policy and Procedures established by H.R. 4137, Section 488, of the Higher Education Opportunity Act of 2008, it is the policy of East Texas Baptist University to actively investigate any report of a missing student who is enrolled at the University. Each resident will be informed regarding the Missing Student Notification procedures upon check-in at their residence hall. Each resident has the option to provide the name and contact number of an individual(s) that should be contacted in case of an emergency. Upon determination that a student is missing, the Vice President for Student Engagement will be notified immediately. The individual identified on the Residence Hall Student Information Form will be contacted no later than 24 hours after the time the student is determined missing, in accordance with official notification procedures established by the University.

For any resident under the age of 18, who is not emancipated, the institution will notify a custodial parent or guardian no later than 24 hours after the time the resident is determined to be missing by University staff. When a member of the University community has reason to believe that a student is missing, all possible efforts will be made immediately to locate the student to determine his or her condition.

Once the Vice President for Student Engagement has confirmed that a student is missing, the following notifications will be taken:

- The University President will be notified immediately and appropriate staff and faculty are notified when a student has been missing for more than 24 hours.
- A missing person report is filed with University Security, who in turn notifies the Marshall Police Department.
- The person designated as an emergency contact on the Residence Hall Student Information form is notified.
- If the student is under 18, and not an emancipated individual, the student's custodial parent or legal guardian is notified.

### **Students' Responsibility for Safety and Security**

Safety and security is the responsibility of the entire campus community. Students are encouraged to behave safely and obey campus policies and regulations. Students must assume responsibility for their own personal safety and the security of their personal belongings by taking common sense precautions. Students should be aware of their environment and surroundings at all times.

- Exterior doors to residential areas should never be propped open as this compromises security.
- Room doors should always be locked even when the student leaves for a short time.
- Keep windows closed and locked.
- Never loan apartment or room keys to another person.
- Never loan student ID to another person.
- Vehicles should be locked at all times and valuables concealed from view or hidden in trunk.
- A suspicious person or situation should be reported to resident assistants, resident directors, and/or University Security.
- Contact University Security for escort service at night or use a “buddy system”.
- Exercise caution when walking or exercising at night.

## **Emergency Response Procedures**

The University Crisis Management Plan includes provisions that provide for emergency notifications for immediate threats, testing of the emergency response procedures at least annually, and provisions for publicizing the procedures in conjunction with the annual testing. The Crisis Management Plan includes specific protocols for potential emergency events that may occur on campus. These protocols may, or may not, require emergency notification to the entire campus based on the severity of the incident, and whether the incident poses a threat to the rest of the campus community.

### Significant Emergencies

Level 2 and Level 3 emergencies automatically activate the Crisis Management Plan. These incidents disrupt campus operations (Level 2), or threaten the entire campus and surrounding community (Level 3). Specific Level 2 and Level 3 emergencies are named in the Crisis Management Plan. This list is not all inclusive.

Even Level 1 events can escalate to a Level 2 or 3 under certain circumstances. Based on the level of the emergency, the initial contact may go to 911. A secondary message will then go to University Security. Based on the level of the emergency, the University President will be contacted. The administrator in charge will make the decision whether the event is a significant emergency or dangerous situation involving an immediate threat to the health or safety of students and employees.

### Emergency Notifications

If the threat is significant, the ETBU emergency alert system is utilized. In the event of weather related warnings, lock-downs, and evacuations, a message is promptly sent. A text message is sent to cell phones through the emergency alert system. The institution will take into account the safety of the community, determine the content of the notification and initiate the notification system, unless issuing a notification will, in the professional judgment of responsible authorities, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency.

The position that has primary responsibility for emergency notifications is the Director of University Security. The University also has other individuals trained and ready to deliver

emergency notifications should the situation arise. These individuals include the President and the Vice President for Student Engagement. All students and employees are automatically enrolled in the ETBU emergency alert system. In order to save vital time, and to provide uniform communications, text and email messages are pre-formatted so that the appropriate message can be selected and quickly sent.

#### Testing and Assessment

The emergency notification systems and evacuation procedures will be tested once during the regular academic year. Either of these processes may be tested independently more often than annually if this is deemed appropriate or necessary by the Emergency Response Team (ERT), or by University Administration. The tests of the notification system, the evacuation procedures, or both processes will be documented and assessed each time that these are conducted. The ERT will meet to assess each test in order to determine how well the systems are working and if revisions need to be made to the Crisis Management Plan. Results of these tests and assessments must be maintained for a period of seven years.

#### **Sexual and Gender-Based Harassment and Interpersonal Violence Policy**

*Applies to sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, intimate relationship violence, and retaliation.*

## Appendix 1: Summary of Federal Drug Law<sup>2</sup>

Federal Trafficking Penalties for Schedules I, II, III, IV, and V (except Marijuana, App. 2)				
Schedule	Substance/ Quantity	Penalty	Substance/ Quantity	Penalty
II	Cocaine 500-4,999 grams mixture	<b>First Offense:</b> Not less than 5 yrs. and not more than 40 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine of not more than \$5 million if an individual, \$25 million if not an individual.  <b>Second Offense:</b> Not less than 10 yrs. and not more than life. If death or serious bodily injury, life imprisonment.  Fine of not more than \$8 million if an individual, \$50 million if not an individual.	Cocaine 5 kilograms or more mixture	<b>First Offense:</b> Not less than 10 yrs. and not more than life. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine of not more than \$10 million if an individual, \$50 million if not an individual.  <b>Second Offense:</b> Not less than 20 yrs, and not more than life. If death or serious bodily injury, life imprisonment.  Fine of not more than \$20 million if an individual, \$75 million if not an individual.  <b>2 or More Prior Offenses:</b> Life imprisonment. Fine of not more than \$20 million if an individual, \$75 million if not an individual.
II	Cocaine Base 28-279 grams mixture		Cocaine Base 280 grams or more mixture	
IV	Fentanyl 40-399 grams mixture		Fentanyl 400 grams or more mixture	
I	Fentanyl Analogue 10-99 grams mixture		Fentanyl Analogue 100 grams or more mixture	
I	Heroin 100-999 grams mixture		Heroin 1 kilogram or more mixture	
I	LSD 1-9 grams mixture		LSD 10 grams or more mixture	
II	Methamphetamine 5-49 grams pure or 50-499 grams mixture		Methamphetamine 50 grams or more pure or 500 grams or more mixture	
II	PCP 10-99 grams pure or 100-999 grams mixture	PCP 100 grams or more pure or 1 kilogram or more mixture		

<sup>2</sup> Available at: Title 21 Code of Federal Regulations, Part 1308 – Schedules of Controlled Substances

<https://www.deadiversion.usdoj.gov/21cfr/cfr/2108cfrt.htm>

Subchapter 1 – Control and Enforcement, Part D. Offenses and Penalties

<https://www.deadiversion.usdoj.gov/21cfr/21usc/index.html>

Also available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm>

## Appendix 1: Summary of Federal Drug Law (Continued)

Substance/Quantity	Penalty
<b>Any Amount Of Other Schedule I &amp; II Substances</b>	<b>First Offense:</b> Not more that 20 yrs. If death or serious bodily injury, not less than 20 yrs. or more than Life. Fine \$1 million if an individual, \$5 million if not an individual.
<b>Any Amount of Any Drug Product Containing Gamma Hydroxybutyric Acid</b>	<b>Second Offense:</b> Not more than 30 yrs. If death or serious bodily injury, life imprisonment. Fine \$2 million if an individual, \$10 million if not an individual.
<b>Flunitrazepam (Schedule IV) 1 Gram</b>	
<b>Any Amount Of Other Schedule III Drugs</b>	<b>First Offense:</b> Not more than 10 yrs. If death or serious bodily injury, not more than 15 yrs. Fine not more than \$500,000 if an individual, \$2.5 million if not an individual. <b>Second Offense:</b> Not more than 20 yrs. If death or serious injury, not more than 30 yrs. Fine not more than \$1 million if an individual, \$5 million if not an individual.
<b>Any Amount Of All Other Schedule IV Drugs (other than Flunitrazepam)</b>	<b>First Offense:</b> Not more than 5 yrs. Fine not more than \$250,000 if an individual, \$1 million if not an individual. <b>Second Offense:</b> Not more than 10 yrs. Fine not more than \$500,000 if an individual, \$2 million if other than an individual.
<b>Flunitrazepam (Schedule IV) (Other than 1 gram or more)</b>	<b>First Offense:</b> Not more than 5 yrs. Fine not more than \$250,000 if an individual, \$1 million if not an individual. <b>Second Offense:</b> Not more than 10 yrs. Fine not more than \$500,000 if an individual, \$2 million if other than an individual.
<b>Any Amount Of All Schedule V Drugs</b>	<b>First Offense:</b> Not more than 1 yr. Fine not more than \$100,000 if an individual, \$250,000 if not an individual. <b>Second Offense:</b> Not more than 4 yrs. Fine not more than \$200,000 if an individual, \$500,000 if not an individual.

## Appendix 2: Summary of Federal Marijuana Law<sup>3</sup>

Substance / Schedule	Quantity	1st Offense	2nd Offense
<b>Marijuana (Schedule I)</b>	1,000 kg or more marijuana mixture; or 1,000 or more marijuana plants	Not less than 10 yrs. or more than life. If death or serious bodily injury, not less than 20 yrs., or more than life.  Fine not more than \$10 million if an individual, \$50 million if other than an individual.	Not less than 20 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than \$20 million if an individual, \$75 million if other than an individual.
<b>Marijuana (Schedule I)</b>	100 kg to 999 kg marijuana mixture; or 100 to 999 marijuana plants	Not less than 5 yrs. or more than 40 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine not more than \$5 million if an individual, \$25 million if other than an individual.	Not less than 10 yrs. or more than life. If death or serious bodily injury, life imprisonment. Fine not more than \$20 million if an individual, \$75million if other than an individual.
<b>Marijuana (Schedule I)</b>	More than 10 kgs hashish; 50 to 99 kg marijuana mixture More than 1 kg of hashish oil; 50 to 99 marijuana plants	Not more than 20 yrs. If death or serious bodily injury, not less than 20 yrs. or more than life. Fine \$1 million if an individual, \$5 million if other than an individual.	Not more than 30 yrs. If death or serious bodily injury, life imprisonment. Fine \$2 million if an individual, \$10 million if other than an individual.
<b>Marijuana (Schedule I)</b>	Less than 50 kilograms marijuana (but does not include 50 or more marijuana plants regardless of weight)  1 to 49 marijuana plants;	Not more than 5 yrs. Fine not more than \$250,000, \$1 million if other than an individual.	Not more than 10 yrs. Fine \$500,000 if an individual, \$2 million if other than individual.
<b>Hashish (Schedule I)</b>	10 kg or less		
<b>Hashish Oil (Schedule I)</b>	1 kg or less		

<sup>3</sup> Available at Title 21 Code of Federal Regulations, Part 1308.11 – Schedules of Controlled Substances: Schedule 1 [https://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308\\_11.htm](https://www.deadiversion.usdoj.gov/21cfr/cfr/1308/1308_11.htm)  
Subchapter 1 – Control and Enforcement, Part D. Offenses and Penalties – Section 841. Prohibited acts A <https://www.deadiversion.usdoj.gov/21cfr/21usc/841.htm>  
Also available at <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcr/CFRSearch.cfm?fr=1308.11>



## Appendix 3: Health Risks Information: Alcohol<sup>4</sup>

### Health Risks

The following information on health risks is from the Centers for Disease Control and Prevention:

Drinking too much can harm your health. Excessive alcohol use led to approximately 95,000 deaths and 2.8 million years of potential life lost (YPLL) each year in the United States from 2011 – 2015, shortening the lives of those who died by an average of 29 years. Further, excessive drinking was responsible for 1 in 10 deaths among working-age adults aged 20-64 years. The economic costs of excessive alcohol consumption in 2010 were estimated at \$249 billion, or \$2.05 a drink.

The Dietary Guidelines for Americans defines moderate drinking as up to 1 drink per day for women and up to 2 drinks per day for men. In addition, the Dietary Guidelines do not recommend that individuals who do not drink alcohol start drinking for any reason.

Excessive alcohol use has immediate effects that increase the risk of many harmful health conditions. Over time, excessive alcohol use can lead to the development of chronic diseases and other serious problems including: High blood pressure, heart disease, stroke, liver disease, and digestive problems; Cancer of the breast, mouth, throat, esophagus, liver, and colon; Learning and memory problems, including dementia and poor school performance; Mental health challenges, including depression and anxiety; Social problems, including lost productivity, family problems, and unemployment; Alcohol dependence, or alcoholism. By not drinking too much, you can reduce the risk of these short- and long-term health risks.

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<sup>4</sup> Available at CDC website: <https://www.cdc.gov/alcohol/fact-sheets/alcohol-use.htm> (last accessed Jan. 6, 2021)

## Appendix 4: Health Risks Information: Marijuana<sup>5</sup>

### Health Risks

The following information on health risks is from the Centers for Disease Control and Prevention:

Marijuana is the most commonly used illegal drug in the United States, and marijuana use may have a wide range of health effects on the body and brain.

About 1 in 10 marijuana users may experience some form of addiction. For people who begin using before the age of 18, that number rises to 1 in 6. People who are addicted to marijuana may also be at a higher risk of other negative consequences of using the drug, such as problems with attention, memory, and learning. Some people who are addicted may need to smoke more and more marijuana to get the same high. It is also important to be aware that the amount of tetrahydrocannabinol (THC) in marijuana (i.e., marijuana potency or strength) has increased over the past few decades. The higher the THC content, the stronger the effects on the brain. In addition, some methods of using marijuana (e.g., dabbing, edibles) may deliver very high levels of THC to the user.

In many cases, marijuana is smoked in the form hand-rolled cigarettes (joints), in pipes or water pipes (bongs), in bowls, or in blunts—emptied cigars that have been partly or completely refilled with marijuana. Smoked marijuana, in any form, can harm lung tissues and cause scarring and damage to small blood vessels. Smoke from marijuana contains many of the same toxins, irritants, and carcinogens as tobacco smoke. Smoking marijuana can also lead to a greater risk of bronchitis, cough, and phlegm production. These symptoms generally improve when marijuana smokers quit.

Marijuana use, especially frequent (daily or near daily) use and use in high doses, can cause disorientation, and sometimes cause unpleasant thoughts or feelings of anxiety and paranoia. Marijuana use is associated with temporary psychosis (not knowing what is real, hallucinations and paranoia) and long-lasting mental health challenges, including schizophrenia (a type of mental illness where people might see or hear things that aren't really there).

Marijuana use has also been linked to depression and anxiety, and suicide among teens. However, it is not known whether this is a causal relationship or simply an association.

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<sup>5</sup> Available at CDC website: <https://www.cdc.gov/marijuana/factsheets/teens.htm> (last accessed Jan. 6, 2021); <https://www.cdc.gov/marijuana/health-effects.html> (last accessed Jan. 6, 2021).

## Appendix 5: Health Risks Information: MDMA<sup>6</sup>

### Health Risks

The following information on health risks is from the National Institute on Drug Abuse:

People who use MDMA usually take it as a capsule or tablet, though some swallow it in liquid form or snort the powder. The popular nickname Molly (slang for “molecular”) often refers to the supposedly “pure” crystalline powder form of MDMA, usually sold in capsules. However, people who purchase powder or capsules sold as Molly often actually get other drugs such as synthetic cathinones (“bath salts”) instead. Some people take MDMA in combination with other drugs such as alcohol or marijuana.

MDMA increases the activity of three brain chemicals:

- Dopamine—produces increased energy/activity and acts in the reward system to reinforce behaviors
- Norepinephrine—increases heart rate and blood pressure, which are particularly risky for people with heart and blood vessel problems
- Serotonin—affects mood, appetite, sleep, and other functions. It also triggers hormones that affect sexual arousal and trust. The release of large amounts of serotonin likely causes the emotional closeness, elevated mood, and empathy felt by those who use MDMA.

Other health effects include:

- nausea
- muscle cramping
- involuntary teeth clenching
- blurred vision
- chills, and
- sweating.

MDMA’s effects last about 3 to 6 hours, although many users take a second dose as the effects of the first dose begin to fade. Over the course of the week following moderate use of the drug, a person may experience irritability, impulsiveness and aggression, depression, sleep problems, anxiety, memory and attention problems, decreased appetite, and decreased interest in and pleasure from sex. It’s possible that some of these effects may be due to the combined use of MDMA with other drugs, especially marijuana.

High doses of MDMA can affect the body’s ability to regulate temperature. This can lead to a spike in body temperature that can occasionally result in liver, kidney, or heart failure or even death.

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<sup>6</sup> Available at NIH website: <https://www.drugabuse.gov/publications/drugfacts/mdma-ecstasy-molly>.

## Appendix 6: Health Risks Information: Prescription Opioids<sup>7</sup>

### Health Risks

The following information on health risks is from the National Institute on Drug Abuse:

Prescription opioids used for pain relief are generally safe when taken for a short time and as prescribed by a doctor, but they can be misused.

Opioids bind to and activate opioid receptors on cells located in many areas of the brain, spinal cord, and other organs in the body, especially those involved in feelings of pain and pleasure. When opioids attach to these receptors, they block pain signals sent from the brain to the body and release large amounts of dopamine throughout the body. This release can strongly reinforce the act of taking the drug, making the user want to repeat the experience.

In the short term, opioids can relieve pain and make people feel relaxed and happy. However, opioids can also have harmful effects, including drowsiness, confusion, nausea, constipation, euphoria, and slowed breathing. Opioid misuse can cause slowed breathing, which can cause hypoxia, a condition that results when too little oxygen reaches the brain. Hypoxia can have short- and long-term psychological and neurological effects, including coma, permanent brain damage, or death. Researchers are also investigating the long-term effects of opioid addiction on the brain, including whether damage can be reversed.

People addicted to an opioid medication who stop using the drug can have severe withdrawal symptoms that begin as early as a few hours after the drug was last taken. These symptoms include muscle and bone pain, sleep problems, diarrhea and vomiting, cold flashes with goose bumps, uncontrollable leg movements, and severe cravings.

An opioid overdose occurs when a person uses enough of the drug to produce life-threatening symptoms or death. When people overdose on an opioid medication, their breathing often slows or stops. This can decrease the amount of oxygen that reaches the brain, which can result in coma, permanent brain damage, or death.

If you suspect someone has overdosed, the most important step to take is to call 911 so he or she can receive immediate medical attention. Once medical personnel arrive, they will administer naloxone. Naloxone is a medicine that can treat an opioid overdose when given right away. It works by rapidly binding to opioid receptors and blocking the effects of opioid drugs. Naloxone is available as an injectable (needle) solution, a hand-held auto-injector (EVZIO®), and a nasal spray (NARCAN® Nasal Spray).

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<sup>7</sup> Available at NIH website: <https://www.drugabuse.gov/publications/drugfacts/prescription-opioids>.

## Appendix 7: Health Risks Information: Specific Dangers from Drug Facilitated Sexual Assault Drugs<sup>8</sup>

### Health Risks

The following information on health risks is from the National Institute of Drug Abuse:

There are three specific drugs that are commonly utilized in drug facilitated sexual assault: Rohypnol®, Ketamine, or GHB (Gamma Hydroxybutyric Acid).

#### Rohypnol®

Rohypnol®, also known as flunitrazepam, is not approved in the United States, although it is available for use as a prescription sleep aid in other countries. It is most commonly found as a tablet which is consumed by dissolving it in a drink or swallowing it. The possible short term health effects include drowsiness, sedation, sleep, amnesia, blackout; decreased anxiety; muscle relaxation, impaired reaction time and motor coordination; impaired mental functioning and judgement; confusion; aggression; excitability; slurred speech; headache; slowed breathing and heart rate. When combined with alcohol the possible health effects include severe sedation, unconsciousness, and slowed heart rate and breathing, which can lead to death. At this point the long-term health effects of Rohypnol® are still unknown. Rohypnol® can take between 36-72 hours to leave the body.

#### GHB (Gamma Hydroxybutyric Acid)

GHB is a depressant approved for use in treatment of narcolepsy, and commonly goes by the other names of Goop, liquid ecstasy, and liquid X. It is most commonly found as a colorless liquid or white powder which is consumed through swallowing, often in combination with alcohol. The possible short term health effects include euphoria, drowsiness, nausea, vomiting, confusion, memory loss, unconsciousness, slowed heart rate and breath, lower body temperature, seizures, coma, and death. In combination with alcohol the possible health effects include nausea, problems with breathing, and greatly increased depressant effects. At this point in time the long-time effects of GHB are unknown. GHB, unlike Rohypnol, leaves the body between 10-12 hours after consumption.

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<sup>8</sup> Available at NIH website: <https://www.drugabuse.gov/drug-topics/commonly-used-drugs-charts#rohypnol-reg-flunitrazepam->  
<https://www.drugabuse.gov/drug-topics/commonly-used-drugs-charts#ghb>  
<https://www.drugabuse.gov/drug-topics/commonly-used-drugs-charts#ketamine>  
[https://www.dea.gov/sites/default/files/2018-07/DFSA\\_0.PDF](https://www.dea.gov/sites/default/files/2018-07/DFSA_0.PDF)

## Appendix 7: Health Risks Information: Specific Dangers from Drug Facilitated Sexual Assault Drugs (continued)

### Health Risks (continued)

#### Ketamine

Ketamine is a dissociative drug used as a surgical anesthetic, an anesthetic in veterinary practice, and as a prescription for treatment resistant depression under strict medical supervision. It is most commonly found in liquid or white powder and is consumed through swallowing, smoking, snorting, or injections. The possible short term health effects include problems with attention, learning, and memory; dreamlike states, hallucinations; sedation; confusion loss of memory; raised blood pressure, unconsciousness; and dangerously slowed breathing. If ketamine is consumed with alcohol there is a risk of adverse effects. The possible health effects associated with long term use include ulcers and pain in the bladder; kidney problems; stomach pain; depression; and poor memory.

If an individual believes they or a friend have consumed Rohypnol®, GHB, or Ketamine they should visit a local healthcare facility that can care for survivors of sexual assault and provide a forensic exam. While receiving care the individual who has ingested the drug can request the hospital to take a urine sample for drug toxicology testing, if the individual cannot immediately go to a hospital they should save their urine in a clean, sealable container as soon as possible, and place it in the refrigerator or freezer for future toxicology testing.



**Sexual and Interpersonal Misconduct Policy**

**Effective: November 15, 2021**

## Table of Contents

Table of Contents .....	2
1. Overview .....	4
2. The University's Title IX Coordinator.....	5
3. Scope of this Policy .....	6
A. Students and employees.....	6
B. Third parties .....	6
C. Procedures.....	6
D. Determination of jurisdiction .....	7
E. Definitions .....	7
4. Coordination with Other Policies .....	7
5. Relationships with Individuals in Authority.....	8
6. Academic Freedom and Freedom of Expression.....	9
7. Prohibited Conduct.....	9
A. Title IX Sexual Harassment.....	9
B. Non-Title IX Misconduct .....	12
8. Consent and Incapacitation .....	15
9. Confidentiality, Qualified Confidentiality, Privacy, and Reporting Responsibilities	17
A. Confidentiality.....	17
B. Qualified Confidentiality and Privacy.....	19
C. Reporting Responsibilities.....	19
D. Clery Act Reporting .....	21
E. DFPS Reporting .....	21
10. Resources and Reporting Options.....	21
A. Emergency Resources and Law Enforcement.....	21
B. Campus Confidential Resources .....	22
C. Reporting Options .....	23
D. Other Community Resources .....	25
11. Interim and/or Supportive Measures.....	25
12. Overview of Resolution Options .....	27
13. Initial Steps and Determination of Appropriate Procedures .....	28
A. Initial Contact with Complainant by Title IX Coordinator .....	28
B. Initial Assessment .....	28
C. Formal Complaints, Dismissals and Appeals of Dismissals .....	30
D. Formal Complaints Signed by Title IX Coordinator.....	31
E. Balancing Complainant Autonomy with University Decision to Respond.....	31
F. Student/Employee Cases.....	32



G. Consolidation of Investigation.....	32
H. Safeguarding the Privacy of Complainants and Respondents.....	33
I. Advisors .....	33
14. Emergency Removal and Administrative Leave .....	33
A. Emergency Removal .....	33
B. Employee Administrative Leave .....	33
15. Adaptable Resolution .....	33
16. Timeframe for Investigation and Resolution.....	35
17. Expectations Regarding Participation in Investigations and Formal Resolutions.	36
18. Administrative Holds and Continuation of Disciplinary Resolution .....	36
19. Disciplinary Resolution When the Respondent is a Student.....	36
A. Notice .....	37
B. Investigations .....	38
C. Review of Directly Related Information and Parties' Written Response .....	40
D. Final Investigative Report.....	41
E. Hearings.....	41
F. Determinations Regarding Responsibility .....	46
20. Imposition of Sanctions.....	47
A. Imposition of Sanctions .....	47
B. Other Information About Sanctions .....	49
C. Additional Remedies .....	49
D. Administrative Measures.....	50
21. Disciplinary Resolution When the Respondent is an Employee .....	50
22. Appeals .....	50
23. Violations of Law .....	52
24. Prevention and Awareness Programs .....	52
25. Annual Review.....	52

## 1. Overview

East Texas Baptist University (“ETBU”) is committed to providing a safe and non-discriminatory learning, living, and working environment for all members of the University community.

East Texas Baptist University does not unlawfully discriminate on the basis of sex or gender in any of its education or employment programs and activities, and it does not tolerate unlawful discrimination or harassment on the basis of sex or gender. This Sexual and Interpersonal Misconduct (“SIM”) policy prohibits: 1) sexual harassment as defined by Title IX (“Title IX Sexual Harassment”); and 2) certain other forms of sexual and interpersonal misconduct not covered by Title IX (e.g., certain types of sexual and gender-based harassment, sexual assault, sexual exploitation, stalking, intimate partner violence, retaliation, and complicity (“Non-Title IX Misconduct”)) (collectively referred to in this policy as Prohibited Conduct). These forms of Prohibited Conduct are harmful to the well-being of our community and its members, the learning and working environment, and collegial relationships among our students, faculty, and staff.

Findings of violations of Prohibited Conduct under this policy may result in discipline, including potential separation from the University and/or referral to separate procedures that could result in termination of employment. Some forms of Prohibited Conduct may also violate state and federal laws, and criminal prosecution may occur independently of any University process.

The University will comply 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 Title IX regulations issued in May 2020; 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; Chapter 21 of the Texas Labor Code; Chapter 40, Section 819 of the Texas Administrative Code; pertinent provisions of the Texas Education Code, and other applicable law. As a religiously controlled institution of higher education, ETBU is also entitled to statutory and constitutional protections for its religious liberty that exempt it from certain provisions of civil rights laws, including but not limited to the religious organization exemption under Title VII of the Civil Rights Act of 1964, the religious exemption to Title IX of the Education Amendments of 1972, and the Free Exercise Clause of the First Amendment to the United States Constitution, among others.

This policy sets forth the procedures that will be used to investigate and respond to reports of Prohibited Conduct. The University will respond to reports about Prohibited Conduct with measures designed to eliminate the conduct, prevent its recurrence, and remedy any adverse effects of the conduct on individuals, members of the campus community, or University-related programs or activities. In addition, the University may implement supportive measures that are designed to restore or preserve equal access to University programs and activities and protect individual and campus safety.

Within the bounds of applicable law, the University will make reasonable efforts to investigate and address reports of Prohibited Conduct, regardless of how the information was brought to the University's attention or the extent to which the complainant wishes to participate or be involved. See Balancing Complainant Autonomy with University Responsibility to Investigate.

While East Texas Baptist encourages students to abide by the University's Sexuality and Gender Statement, the University recognizes that each student will make independent decisions about their own conduct. The University expects students to reflect Christ-like character, conducting themselves in a manner consistent with biblical principles. The University prioritizes the reporting of sexual assault, and under no circumstances will a complainant, respondent, or witness who provides information about an alleged sexual assault or other Prohibited Conduct be charged with student conduct violations related to the Sexuality and Gender Statement, regardless of the outcome. Similarly, the University will not pursue disciplinary action against a complainant, respondent, or witness 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 resolution process and the personal consumption did not place the health or safety of any other person at risk.

All ETBU students and employees have access to Confidential Resources that they may use for support and guidance regardless of whether they make a report to the University or participate in a resolution process.

Retaliation against anyone who makes a good faith report or complaint under this policy, who opposes in a reasonable manner an act believed to constitute a violation of this policy, or because they have assisted, or participated or refused to participate in any manner in a resolution process under this policy, is prohibited. Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

## **2. The University's Title IX Coordinator**

The Title IX Coordinator coordinates the University's compliance with Title IX and related provisions of the Clery Act. The Title IX Coordinator oversees the University's centralized response to all reports of Prohibited Conduct to ensure consistent implementation of this policy and compliance with federal and state law. The Title IX Coordinator and designated staff will, among other steps:

- Communicate with all members of the University community regarding applicable law and policy and provide information about how individuals may access reporting and support options.
- Review applicable University policies to ensure institutional compliance with applicable federal and state law.
- Monitor the University's administration of its own applicable policies, including record keeping, adherence to timeframes, and other procedural requirements.
- Conduct or arrange for training regarding Title IX, related provisions of the Clery Act (as amended by VAWA), and Prohibited Conduct defined in this policy.
- Respond as appropriate and within the bounds of the law to any report regarding conduct that may violate this policy. In this capacity, the Title IX Coordinator shall oversee the investigation and resolution of such alleged misconduct, direct the provision of any interim or supportive measures (including oversight of the failure to abide by an interim or supportive measure), and monitor the administration of any request for review of the finding.

The Title IX Coordinator may delegate responsibilities under this policy to designated

administrators or external professionals, who will have appropriate training and/or experience. When used in this policy, the term Title IX Coordinator may include an appropriate designee. The Title IX Coordinator's contact information is:

Tara Bachtel  
Title IX Coordinator  
East Texas Baptist University  
1 Tiger Dr.  
Marshall, Texas 75670  
903-923-2119  
[titleix@etbu.edu](mailto:titleix@etbu.edu)  
[www.etbu.edu/titleix](http://www.etbu.edu/titleix)

Concerns about the University's application of Title IX and the Clery Act may be addressed to the University's Title IX Coordinator; the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)); the United States Department of Education, Office for Civil Rights (at [OCR@ed.gov](mailto:OCR@ed.gov) or 800-421- 3481); and/or the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or 800-669-4000). Concerns related to employment or housing discrimination may also be addressed to the Texas Workforce Commission (at 888-452-2642 or [www.twc.state.tx.us/programs/civil-rights-program-overview](http://www.twc.state.tx.us/programs/civil-rights-program-overview)).

### **3. Scope of this Policy**

**A. Students and employees.** This policy governs the conduct of ETBU students, regardless of enrollment status, as well as faculty and staff.

#### **B. Third parties**

Third parties (i.e., non-members of the University community, such as vendors, alumni/ae, and visitors) may report potential policy violations committed by a member of the University community, and the University will take appropriate steps to investigate and respond to the conduct consistent with the authority granted by the University's jurisdiction, if any, over the respondent. A third party may be subject to investigation and/or other actions for alleged violations of this policy; a third party who is accused of violating the SIM policy may be permanently barred from areas and/or activities controlled by the University or be subject to other restrictions for failing to comply with this policy. The University may take such action against third parties without providing the full rights and processes afforded to East Texas Baptist community members through the provisions of this policy.

Complaints by third parties constituting Non-Title IX Misconduct may be investigated at the University's discretion. If an investigation proceeds, the procedures for Non-Title IX Misconduct may apply.

#### **C. Procedures**

Various procedures provided in this policy may be used to address Prohibited Conduct that occurs:

- on campus or University property;
- in the context of any University-related or sponsored education program or activity, regardless of the location (including travel, research, or internship

programs);

- by an ETBU student, regardless of location, under the Student Conduct Code;
- by an ETBU employee, regardless of location;
- through the use of University-owned or provided technology resources; or
- when the conduct has a nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

#### **D. Determination of jurisdiction**

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University will exercise jurisdiction over the allegations or disciplinary authority over the respondent or the conduct. In exercising jurisdiction over an ETBU-affiliated respondent for reported conduct that occurs off campus and that has no nexus to the University or a University-related or sponsored education program or activity, the University's ability to investigate and impose disciplinary action may be limited by the University's authority and/or the amount of information available to the University through the exercise of reasonable diligence.

In instances where the University does not have disciplinary authority over the respondent, the University will still take reasonably available steps to support a complainant through interim or supportive measures and will assist a complainant in identifying external reporting mechanisms.

#### **E. Definitions**

This policy uses the terms complainant, respondent, party, third party, and witness as follows:

- The term **complainant** refers to an individual who is reported to have experienced conduct that could constitute Prohibited Conduct, even if they do not participate in any related process.
- The term **respondent** refers to an individual who has been reported to have engaged in conduct that could constitute Prohibited Conduct.
- The term **party** or **parties** may also be used to refer to a complainant or respondent participating in a resolution process.
- The term **third party** refers to an individual who is not a University student, faculty member, or staff member (e.g., vendors, alumni/ae, volunteers, or visitors).
- The term **witness** refers to an individual who may have information relevant to a report of Prohibited Conduct. A witness may be a student, an employee, or a third party.

#### **4. Coordination with Other Policies**

This policy addresses discrimination on the basis of sex or gender as it relates to Title IX Sexual Harassment and Non-Title IX Misconduct as defined in more detail below. Sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, age, disability, or other protected characteristic are governed by the University's Non-Discrimination Policy.

In addition, the conduct of students, employees, and faculty is governed by the following policies:

- Student Code of Conduct
  - Applies to all other forms of student misconduct (e.g., alcohol or other drug use, threats or physical abuse, possession of firearms, etc.)
  - Overseen by Dean of Students
- Sexuality and Gender Statement
  - Sets general expectation for ETBU students, faculty, and staff that sexual intimacy will be expressed consistently with the biblical understanding of human sexuality
- ETBU Personnel Policies
  - Sets the standards of personal conduct for employees
  - Includes the staff disciplinary and grievance policies
- Faculty Handbook
  - Sets the standards of personal conduct for faculty members
  - Includes the University's grievance policy
- Faculty Dismissal Policy
  - Outlines the grounds and procedures for dismissal of tenured and non-tenured faculty
- Policy on Personal and Professional Relationships
  - Prohibits romantic and/or sexual relationships between employees and undergraduate students, and employees and any individual whom that person supervises or evaluates in anyway
- Policy to Protect Children and Prevent Abuse
  - Provides for the screening, selection, and assessment of personnel
  - Includes information about recognizing, responding to, and reporting inappropriate or suspicious behavior, suspected abuse, and minor-to-minor sexual abuse

Where reported conduct involves the potential violation of both this policy and another University policy, the University may at its discretion choose to investigate other potential misconduct under the procedures set forth in this policy, instead of the procedures ordinarily used to address potential violations of such other University policies, so long as doing so does not or would not unduly delay a prompt, equitable resolution of the report.

## **5. Relationships with Individuals in Authority**

Engaging in romantic relationships and/or sexual conduct is prohibited between:

- Faculty members and undergraduate students;
- University employees and undergraduate students;
- Graduate students and undergraduate students where the graduate student educates, advises, coaches, supervises, or evaluates the undergraduate in any way;
- Employees and any individual whom that person supervises or evaluates in any way.

Because prohibited relationships often involve a power differential, the conduct may also constitute sexual harassment or other forms of prohibited conduct under this policy. The Vice-President of Financial Affairs, Director of Human Resources, and/or Office of the Provost are a part of enforcement as applicable.

## **6. Academic Freedom and Freedom of Expression**

The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. The University is operated within the Christ-centered mission, aims, and ideals of Baptists as expressed in the resolutions of the Baptist General Convention of Texas, in accordance with the University's Community Code of Conduct, and the University will therefore be protective of academic freedom in instruction, discussion, and expression among the members of its community, including speech pertaining to religious issues.

## **7. Prohibited Conduct**

In determining whether reported conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Individuals of any sex or gender can commit any of the Prohibited Conduct defined in this policy, and it can occur between individuals of the same sex/gender or different sexes/genders. It can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships. In broad terms, this policy prohibits the following forms of conduct, collectively referred to throughout this policy as Prohibited Conduct, as well as attempts to commit such misconduct.

### **A. Title IX Sexual Harassment**

"Title IX Sexual Harassment" is a subset of Prohibited Conduct. Under Department of Education regulations (see 34 C.F.R., Part 106) issued in 2020 to implement Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., the University is required to prohibit certain forms of sexual harassment as defined in those regulations. Title IX Sexual Harassment is Prohibited Conduct of the following types committed by or against Students and/or Employees in an education program or activity of the University, in the United States:

Prohibited Conduct meets the definition of Title IX Sexual Harassment when:

- An Employee conditions the provision of an aid, a benefit, or a service on another Employee's or a Student's participation in unwelcome sexual conduct (i.e., *Quid Pro Quo* sexual harassment); or

- A Student, Employee, or Third Party (to the extent applicable) engages in unwelcome conduct on the basis of sex that would be determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to the University’s programs or activities; or
- A Student, Employee, or Third Party engages in Sexual Assault, Domestic Violence, Dating Violence, or Sexual and/or Gender-based Stalking as defined below; and
  - The alleged conduct was perpetrated against a person in the United States; and
  - The conduct took place within the University’s programs and activities. Conduct takes place within the “University’s programs and activities” when that conduct occurs:
    - (1) in a location, at an event, or in a circumstance where the University exercises substantial control over both the respondent and the context in which the conduct occurs; or
    - (2) in any building owned or controlled by a student organization recognized by the University. Events that occur off campus or in locations with no connection to the University are unlikely to be considered a University program or activity.

Conduct that does not meet the parameters above to constitute Title IX Sexual Harassment is still prohibited by this policy if it otherwise constitutes Prohibited Conduct as further defined below.

The following Prohibited Conduct definitions apply for purposes of the definition of Title IX Sexual Harassment:

**1. Title IX Quid Pro Quo Sexual Harassment**

*Quid pro quo* sexual harassment is conduct on the basis of sex by which an employee of the University conditions the provision of an aid, benefit, or service of the University on a student’s or employee’s participation in unwelcome sexual conduct.

**2. Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment**

Severe, pervasive and objectively offensive sexual harassment is conduct on the basis of sex that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to the University’s education program or activity.

**3. Title IX Sexual Assault**

As required by the May 2020 Title IX regulations, the definition of Title IX Sexual Assault used in this policy incorporates the definitions of the FBI’s Uniform Crime Reporting (NIBRS) program, as follows:



- Rape:
  - The carnal knowledge of a person (i.e., penile-vaginal penetration, without the consent of that person,
  - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, and/or
  - To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person. An “object” or “instrument” is anything other than a penis.
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person (for purposes of this definition, “private body parts” means a person’s breast(s), buttocks(s), genitals, or other intimate parts, and prohibited fondling may be over or under clothing).
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

#### **4. Title IX Domestic Violence**

Title IX domestic violence is conduct that constitutes a felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the complainant;
- By a person with whom the complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth complainant who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

#### **5. Title IX Dating Violence**

Title IX dating violence is conduct that constitutes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the parties’ statements and with consideration of the length of the relationship, the type of

relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

#### **6. Title IX Stalking**

Title IX Stalking for purposes of the Title IX Sexual Harassment definition is conduct on

the basis of sex that constitutes a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## **B. Non-Title IX Misconduct**

Non-Title IX Misconduct is Prohibited Conduct that falls within the Scope of this Policy and the definitions below but that does not fall within the definition of Title IX Sexual Harassment, either due to the nature of the conduct or because it did not reportedly occur within a program or activity of the University in the United States. Such conduct is defined for purposes of this policy as:

### **1. Non-Title IX Sexual Assault**

Sexual Assault (i.e., rape, fondling, or statutory rape) as defined in the Title IX Sexual Assault definition above that did not reportedly occur in a program or activity of the University in the United States.

### **2. Non-Consensual Sexual Contact**

Any intentional touching of a person's breast(s), buttock(s), groin, genitals, or other intimate parts 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.

### **3. Sexual and Gender-Based Harassment**

**Sexual Harassment:** Sexual harassment is any unwelcome sexual advance, request for sexual favors, and/or other unwelcome, verbal or physical conduct of a sexual nature when one of the conditions outlined in (a), (b), or (c), below, is present.

**Gender-Based Harassment:** Gender-based harassment includes harassment based on sex, 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 one of the conditions outlined in (a), (b), or (c), below, is present.

- a. Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing,

employment, or participation in any University program, activity, or benefit, but which does not fit within the definition of Title IX *Quid Pro Quo*.

- b. Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions, in circumstances that do not fit within the definition of Title IX *Quid Pro Quo*.
- c. Such conduct creates a hostile environment. Under Texas Education Code §51.281(4) a hostile environment exists:
  - i. in the employment context, when it unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
  - ii. in the education context, when it is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from the University's educational programs or activities.

Offensiveness of conduct, standing alone, is not sufficient for the conduct to constitute Prohibited Conduct. To constitute Prohibited Conduct, in an employment context, it must unreasonably interfere with a person's work performance or create an intimidating, hostile, or offensive work environment; in the education context, conduct must be so severe, persistent, or pervasive that it interferes with a student's ability to participate in or benefit from the University's educational programs 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. The perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment. In assessing the nature and impact of the alleged harassment, the Title IX Coordinator will consider both subjective (i.e., the complainant's experience of the conduct) and objective (i.e., how a reasonable person in the complainant's circumstances would have experienced the conduct) perspectives.

Sexual 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 or involve repeated incidents.
- May be committed by anyone, regardless of sex, 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, harassment can occur in any context.
- 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, organization, or group.
- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.

- May occur in the classroom, in the workplace, in residential settings, or in any other context.
- May be a one-time event or may be part of a pattern of behavior, if it meets the standard stated above.
- 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.

#### **4. Sexual Exploitation**

Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another, but that does not fall within the definition of Title IX Sexual Harassment. Sexual exploitation may include, but is not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved;
- providing alcohol or drugs to a complainant with the intent to facilitate Prohibited Conduct; or
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.

#### **5. Non-Title IX Domestic Violence**

Domestic violence as defined in the Title IX Domestic Violence definition above that did not reportedly occur in a program or activity of the University in the United States.

#### **6. Non-Title IX Dating Violence**

Dating violence as defined in the Title IX Dating Violence definition above that did not reportedly occur in a program or activity of the University in the United States.

#### **7. Non-Title IX Stalking**

Stalking as defined in the Title IX Stalking definition above that did not reportedly occur in a program or activity of the University in the United States, or that otherwise fits within the definition of stalking but does not fall within the Title IX Stalking definition because the reported conduct is not directed at the alleged victim on the basis of sex.

#### **8. Retaliation**

Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or the SIM policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any

manner in an investigation, proceeding, or hearing regarding Prohibited Conduct. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, constitutes retaliation, as does any adverse action taken against a person for making a good faith report of Prohibited Conduct or participating in any proceeding under this Policy.

Retaliation may include intimidation, threats, coercion, discrimination, harassment, or adverse employment or educational actions that would discourage a Reasonable Person from engaging in activity protected under this Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this Policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

Further, under Texas Education Code §51.254, the University will not discipline or otherwise discriminate against an employee because they have, in good faith, made a report of Prohibited Conduct to the Title IX Coordinator as provided below, or because they have cooperated with an investigation, or resolution process relating to such a report.

Concerns or questions about retaliation should be immediately reported to the University's Title IX Coordinator.

## **9. Complicity**

Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

## **8. Consent and Incapacitation**

The following definitions clarify key terminology as used throughout the policy and apply to both Title IX Sexual Harassment and Non-Title IX Sexual Misconduct.

**Consent:** Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, threats, or coercion; whether the complainant had the capacity to give consent; 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 a willingness to engage in a particular act.

Coercion is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to engage in sexual contact. When a person makes clear that they do not wish to participate in a particular activity or communicates by words or actions a decision to stop or a decision not to go beyond a certain interaction, continued pressure can be coercive. In evaluating whether coercion was used, the University will consider: (i) the frequency of the

application of the pressure, (ii) the intensity of the pressure, (iii) the degree of isolation of the person being pressured, and (iv) the duration of the pressure.

Consent cannot be obtained through physical force or where there is a reasonable belief of the threat of physical force, when one person overcomes the physical limitations of another person.

Important points regarding the totality of the circumstances concerning consent include:

- Consent to one act does not automatically constitute consent to another act.
- Consent on a prior occasion does not automatically constitute consent on a subsequent occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.
- 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 should not be inferred merely from silence, passivity, or lack of resistance.
- Communication is essential to understanding whether consent is present during the progression and/or regression of an intimate interaction.
- Once consent has been established a person who changes his or her mind should communicate the withdrawal of consent through words or actions.
- Consent can be withdrawn or modified at any time, and the act must cease immediately once consent is withdrawn.

Under Texas law, individuals younger than 17 years of age are legally incapable of giving consent to sexual penetration or contact by an adult (someone 18 years of age or older) who is three or more years older than the individual.

**Incapacitation:** Incapacitation is 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 activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in an act.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently and determining whether an individual is incapacitated requires an individualized assessment.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's

level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

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. Because the impact of alcohol and other drugs varies from person to person, the amount of alcohol and/or drugs a person consumes may not be sufficient, without other evidence, to prove that they were incapacitated under this Policy.

Another effect of alcohol consumption can be memory impairment or forgetting entire or partial events (sometimes referred to as “black-out” or “brown-out”). A person may experience this symptom while appearing to be functioning “normally,” including communicating through actions or words that seem to express an interest in engaging in sexual conduct. Whether sexual conduct with a person who is “blacked-out” constitutes Prohibited Conduct depends on the presence or absence of the observable factors indicating that a person is also incapacitated, as described above. Total or partial loss of memory alone, may not be sufficient, without other evidence, to prove that a person was incapacitated under this policy.

In evaluating consent in cases of reported incapacitation, where the information is sufficient to raise the possibility that the complainant was incapacitated, the University asks two questions: (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,” the complainant could not 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 and has the capacity to do so.

## **9. Confidentiality, Qualified Confidentiality, Privacy, and Reporting Responsibilities**

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

### **A. Confidentiality**

**Confidentiality** refers to the protections provided to information disclosed in legally-protected or privileged relationships under Texas state law, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under Texas law when the information is disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to

any third party without the individual's written permission or unless required by ethical or legal obligations that compel the professional to reveal such information. For example, information may be disclosed 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, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18. A person's medical and counseling records are privileged and confidential documents.

In accordance with May 2020 Title IX regulations, the University will not access, consider, disclose, or otherwise use a party's privileged records or require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Confidential resources submit non-personally-identifying information about Clery-reportable crimes to the ETBU Security Department for purposes of anonymous statistical reporting under the Clery Act. Additionally, as required by Texas Education Code §51.252, Confidential Resources will report non-personally-identifiable information about incidents of sexual harassment, sexual assault, dating violence, and stalking to the Title IX Coordinator for purposes of statistical reporting.

Under Texas law, the identity of the following individuals is deemed confidential:

- (1) alleged victims of sexual harassment, sexual assault, dating violence, or stalking reported to a university;
- (2) a person who reports such conduct to a university, who sought guidance from the institution concerning such an incident, or who participated in the institution's investigation of such an incident; and
- (3) a person who is alleged in such a report to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence, or stalking if, after completing an investigation, the institution determines the report to be unsubstantiated or without merit.

This means that unless waived in writing by the person, their identity may be disclosed only to:

- (1) the employees or contracted individuals as necessary to conduct an investigation of the report or other related hearings;
- (2) a law enforcement officer as necessary to conduct a criminal investigation of such report;
- (3) a health care provider in an emergency situation, as determined to be necessary by the university;
- (4) the respondent as necessary to conduct a resolution process; and/or
- (5) potential witnesses as necessary to conduct an investigation of the report.

As noted above, information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking disclosed to a health care provider or other medical provider employed by a university is confidential and may be shared by the provider



only with the alleged victim's consent except, as also noted above, that the provider must provide aggregate data or other non-identifying information regarding those incidents to the university's Title IX Coordinator.

## **B. Qualified Confidentiality and Privacy**

May 2020 Title IX regulations contemplate that certain information will generally be treated confidentially, except as qualified by statements in those regulations. For example, the regulations provide that ETBU must maintain as confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The regulations also provide that ETBU must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy ("FERPA") statute referenced below, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

This means that discretion will be exercised by the University in the course of any investigation or other processes under this policy. Information related to a report of Prohibited Conduct will be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation.

The privacy of student education records is governed by the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is governed by the Health Insurance Portability and Accountability Act (HIPAA) and Title 2, Chapter 81 and Title 4, Chapter 241, Subchapter G, of the Texas Health & Safety Code, and Chapter 144 of the Texas Civil Practice and Remedies Code, excepting health records protected by FERPA. Access to an employee's personnel records in Texas is governed by Chapter 103 of the Texas Labor Code.

## **C. Reporting Responsibilities**

It is important to understand the different responsibilities of ETBU employees under federal and state law and University policy. Every employee is designated as either a Confidential Resource or a Responsible Employee.

**Confidential Resources:** The University has designated limited categories of employees as Confidential Resources with whom students may speak confidentially concerning Prohibited Conduct. A Confidential Resource is any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their

performance of such services. The Dean of Spiritual Life is also a Confidential Resource when acting within a ministerial or pastoral role in the provision of services to a student.

Unless given permission to disclose more information by the complainant, Confidential Resources will only disclose the type of incident, date, and location if known, and not reasonably calculated to disclose personally identifiable information about the individual, but will not disclose the individual's name or other identifying details to the Title IX Coordinator. When individuals who otherwise may be Confidential Resources receive information outside of the provision of services to a patient or the Dean of Spiritual Life's ministerial relationship, the Confidential Resource is required to share that information with the Title IX Coordinator.

**Responsible Employees:** Except for Confidential Resources, all University Employees are designated Responsible Employees and thereby mandatory reporters of potential Title IX violations. Responsible Employees include all staff (hourly and salary), faculty, instructors, teaching assistants, and student workers who have supervisory responsibility or responsibility for the welfare of other students and learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to Resident Assistants and Graduate Assistant Coaches. Responsible Employees **must report immediately** any information about suspected sexual or gender-based harassment, sexual assault,

sexual exploitation, stalking, intimate partner violence, or retaliation for reporting regardless of when (both prior to or during their time at ETBU) or where (both on and off campus) the alleged misconduct occurred. Responsible employees must report retaliation when they are aware of acts consistent with the policy definition of retaliation, and they have reason to believe it is occurring because of a party's participation in a Title IX process, or in order to prevent either making a report to Title IX or participation in a Title IX process. Reports must include any known details such as identities of the parties and the date, time, and location of the incident.

Texas law requires any employee of a college or university in Texas to report to the Title IX Coordinator any information regarding an alleged incident of sexual harassment, sexual assault, dating violence, or stalking, committed by or against a person enrolled at or employed by the institution at the time of the incident. *The law requires colleges to terminate employment for employees who fail to report such matters and imposes criminal penalties of up to a year in jail.*

The obligation to report applies whenever an employee receives, in the course and scope of employment, information about an alleged incident which reasonably constitutes sexual harassment, sexual assault, dating violence, or stalking committed by or against a person who was a student or employee at the time of the incident. The report must include all information known to the employee which would be relevant to an investigation or redress of the incident, including whether the alleged victim has expressed a desire for confidentiality. A party's desire for confidentiality does not relieve the employee's obligation to report.

The law encourages but does not require student employees to report. ETBU policy, however, requires student employees to report such instances.

Employees do not need to, and furthermore should not, investigate matters or make unnecessary judgments about the information they receive in order to determine whether the reported information meets the definitions of misconduct. All instances of alleged misconduct that could reasonably constitute sexual harassment, sexual assault,

dating violence, or stalking must be reported to the Title IX Coordinator.

The Title IX Coordinator will share with the ETBU Security Department details of all reports alleging Clery-reportable crimes in compliance with Clery Act reporting requirements. Responsible Employees may provide support and assistance to a complainant, witness, or respondent; but they cannot promise confidentiality or withhold information about Prohibited Conduct.

Responsible Employees are not required to report information disclosed 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 Prohibited Conduct. The University may however provide information about Title IX rights and available University and community resources and support at public awareness events.

A complainant may choose not to make a complaint or report in their own case, even if the complainant would otherwise have reporting obligations by virtue of being a faculty member, staff member, or student worker.

**Students:** With the exception of student workers who are designated as Responsible Employees, all other students **are encouraged to report** any suspected violation of this policy.

#### **D. Clery Act Reporting**

Pursuant to the Clery Act, the University 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 the University to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally-identifying information of complainants when issuing timely warnings to the University community.

#### **E. DFPS Reporting**

Texas law requires that any person who suspects that a child – 17 years of age or younger, or a person 65 years of age or older, or an adult with disabilities is or was being abused, neglected or exploited must report immediately all known information to the Department of Family and Protective Services (DFPS). Moreover, a report will be made if it is determined that the alleged perpetrator continues to have access to minors, even if the complainant has turned 18.

### **10. Resources and Reporting Options**

All involved parties have many options, including seeking counseling or assistance from a Confidential Resource, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Individuals are encouraged to seek assistance and to explore all potential reporting and support options.

#### **A. Emergency Resources and Law Enforcement**

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 safety or physical well-being or following a potential criminal offense. Texas Education Code § 51.282 requires that ETBU inform you that it is very important for victims of sexual harassment, sexual assault, dating violence, or stalking to go to a hospital for help with treatment and preservation of evidence, if applicable, as soon as practicable after an incident.

To contact law enforcement: call the ETBU Security Department at 903-923-2323 or, if off campus, **Marshall Police Department** at 903-935-4575. In an emergency, call 911.

Local hospitals can be contacted at:

**Christus Good Shepherd Medical Center-Marshall**

811 S Washington Ave. Marshall, TX 75670  
903-927-6000

**Christus Good Shepherd Medical Center-Longview**

700 East Marshall Ave. Longview, TX 75601  
903-315-2000

**Christus Highland Medical Center**

1453 East Bert Kouns Industrial Loop Shreveport, LA 71105  
318-681-4500

**Longview Regional Medical Center**

2901 N Fourth Street Longview, TX 75605  
903-758-1818

**Willis-Knighton Medical Center**

2600 Greenwood Road  
Shreveport, LA 71103  
318-212-4000

To access crisis counseling and other community resources:

**East Texas Crisis Center**

24 Hour Hotline: 903-595-5591 | 1-800-333-0358  
2401 Old Noonday Rd Tyler, TX 75701  
903-509-2526

**Women's Center of East Texas-Marshall**

2109 Victory Dr.  
Marshall, TX 75672  
903-934-9661  
800-441-5555

**Women's Center of East Texas-Longview**

1415 McCann Rd.  
Longview, TX 78601  
903-295-7526  
800-441-5555

**B. Campus Confidential Resources**

Students can access confidential resources on campus through:

### **1. ETBU Counseling Care Center**

Hours of Operation: 8 a.m. until 5 p.m. Monday through Friday  
In case of a crisis, an individual may come by the Counseling Care Center during regular office hours. Students are advised to contact other available mental health resources when the Counseling Center is closed during academic breaks.

In Marshall: If a student is having a psychological crisis and needs assistance, call: 911 or a local hospital

### **2. ETBU Sisk Health Services Clinic**

Hours of Operation: 8 a.m. until 5 p.m. Monday through Friday  
To make an appointment or for more information, call: 903-923-2355  
The Sisk Health Services Clinic is centrally located on campus in the Bennett Student Commons and serves as a Primary Care Ambulatory Clinic that provides medical services.

### **3. Office of Spiritual Development**

Dean of Spiritual Life, Dr. Scott Stevens 903-923-2178  
Ornelas Spiritual Life Center

## **C. Reporting Options**

The University encourages all individuals to report Prohibited Conduct or a potential violation of this policy to the Title IX Coordinator, the ETBU Security Department, and/or to local law enforcement. A complainant has the right to report, or decline to report, potential criminal conduct to law enforcement, and/or to be assisted by the University in reporting potential criminal conduct to law enforcement at any time. Under limited circumstances deemed by the University to pose a threat to the health or safety of any University community member, the University may independently notify law enforcement.

An individual may make a report to the University, to law enforcement, to neither, or to both. Campus investigations of Prohibited Conduct and law enforcement investigations operate independently of one another, although the University will coordinate as appropriate. Anyone can make a report as follows:

- Make a report to the Title IX Coordinator in person, by telephone at 903-923-2119 by email at [titleix@etbu.edu](mailto:titleix@etbu.edu), or online at [www.etbu.edu/titleix](http://www.etbu.edu/titleix).
- If on campus, contact the East Texas Baptist University Security Department for assistance in filing a criminal complaint and preserving physical evidence at 903-923-2323.
- If off campus, contact local law enforcement to file a criminal complaint by calling 911.

An individual may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX report and a criminal complaint). When initiating any

of the above options, an individual does not need to know whether they wish to request any particular course of action nor how to label what happened. As part of a report to the Title IX Coordinator, an individual can also request interim measures and support.

### **1. Anonymous Reporting**

Anyone can make an anonymous report by submitting information on the East Texas Baptist Title IX website: [www.etbu.edu/titleix](http://www.etbu.edu/titleix). Depending on the nature of the information submitted, the University's ability to respond to an anonymous report will likely be limited.

### **2. Requests for Anonymity**

Once a report has been shared with the Title IX Coordinator, a complainant may also directly request that their identity remain private (request for anonymity), that no investigation occur, or that no disciplinary action be taken. The University will carefully balance this request with the University's commitment to provide a non-discriminatory environment, and the respondent's right to have specific notice of the allegation(s) if the University were to take action that affects the respondent. In such circumstances, the Title IX Coordinator may arrange for preliminary fact-finding by an investigator to gain a better understanding of the context of the complaint or take other appropriate steps, including consulting with the University's threat assessment group. See Balancing Complainant Autonomy with University Responsibility to Investigate.

### **3. Amnesty**

The University wishes to encourage good faith reports of conduct prohibited under this policy. Therefore, the University will not pursue disciplinary action against a student enrolled at the University who makes a good faith report to the University as a complainant or a witness to an incident of Prohibited Conduct for a violation by the student of the University's Student Conduct Code. Similarly, the University will not pursue disciplinary action against a complainant, respondent, or witness 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 resolution process and the personal consumption did not place the health or safety of any other person at risk, regardless of the outcome of the University's resolution process.

Similarly, the University will not pursue disciplinary action against students (complainants, respondents or witnesses) for conduct in violation of the Sexuality and Gender Statement. Under no circumstances will a complainant or witness who makes a report of sexual assault or other Prohibited Conduct, or a respondent who participates in a resolution process be charged with violating the Sexuality and Gender Policy, regardless of the outcome.

The University may investigate to determine whether a report of Prohibited Conduct was made in good faith. A student will not receive amnesty for reporting an incident involving their own commission or assistance in the commission of Prohibited Conduct. A student who makes a report but is later found responsible for Prohibited Conduct at or near the time of the incident, may not be entitled to a determination that the report was made in good faith. Granting of amnesty is final and may not be revoked. Even when amnesty is extended, the University may initiate an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

#### **4. Timeframe for Reporting**

Complainants and other reporting individuals are encouraged to report any violation of this policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. There is no time limit for reporting. Reports under this policy may be made at any time without regard to how much time has elapsed since the incident(s) in question.

If the respondent is no longer a student at the time of a report, the University may not be able to take disciplinary action against the respondent. The University's ability to take action would also be limited if a report involves alleged conduct by a former employee. However, in such circumstances, the University may still provide support for the complainant and take steps to restore or preserve the complainant's equal access to University education programs or activities. The University may also assist the complainant in identifying and contacting law enforcement and other external enforcement agencies.

#### **D. Other Community Resources**

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system. If accessing these resources, individuals are encouraged to clarify whether the resources are confidential. For a comprehensive list of on- and off-campus resources and support services, see [www.etbu.edu/titleix](http://www.etbu.edu/titleix).

#### **11. Supportive Measures**

Upon receipt of a report of Prohibited Conduct, the University will consult initially with the complainant and provide reasonable and appropriate supportive measures designed to preserve the parties' educational experiences; protect the parties during an investigation; address safety concerns for the broader University community; maintain the integrity of the resolution process; and/or deter retaliation. At the appropriate time, the University will also consult with the Respondent regarding supportive measures. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment. Interim measures are services provided to a party while an investigation and resolution process is pending, while interim measures may be provided at any time, regardless of whether an investigation and resolution process has been initiated or completed.

Supportive measures may include:

- access to counseling;
- access to medical services;
- academic accommodations, such as extensions of deadlines or other course-related adjustments, course schedule changes, late drops, and the ability to

transfer course sections (this would include the University's allowing either party to drop a course in which both are enrolled in the same class section without academic penalty);

- modifications of work schedules; change in work locations; changing working arrangements; or providing other employment accommodations as appropriate;
- mutual restrictions on contact between the parties (i.e., "no contact directives");
- residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
- leaves of absence;
- increased security and monitoring of certain areas of the campus;
- changing transportation arrangements;
- Assistance in accessing support services, including, as available, victim advocacy, academic support, counseling, disability, health or mental health services visa and immigration assistance, and student financial aid services both on and off campus, as applicable;
- Assistance in obtaining a sexual assault forensic examination;
- Assistance in communications with faculty to request academic modifications;
- Assistance in requesting long-term academic accommodations through the Office of Academic Success, if the party qualifies as an individual with a disability;
- Assistance navigating off-campus housing concerns;
- Escort and other safety planning steps;
- Referral to resources that can assist in obtaining a protective order under Texas law;
- Changes to another party's schedule, housing, academic arrangements and/or participate in University education programs or activities that do not unreasonably burden that party; and/or
- Any other measure that can be used to achieve the goals of this policy.

The availability of supportive measures will be determined by factors such as the specific circumstances of each report, the party's wishes regarding supportive measures, and an individualized assessment of the circumstances of each case. Making every effort to avoid depriving all parties of their education, the University will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking supportive measures; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been imposed (e.g., protective orders). The University 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.

The University will provide reasonable supportive measures to third parties as appropriate and available, considering the role of the third party and the nature of any contractual relationship with the University.

Requests for supportive measures may be made by either party to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of supportive measures and coordinating the University's response with the appropriate offices on campus. The Title IX Coordinator has the discretion to impose and/or modify any supportive measure based on all available information and is available to meet with a complainant or respondent to address any concerns about the provision of supportive measures. The University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures and will promptly address any violation of supportive measures.

All individuals are encouraged to report to the Title IX Coordinator any concerns about the failure of another to abide by any restrictions imposed through a supportive measure. In the event of an immediate health or safety concern, individuals should contact 911 or 903-923-2323 (on campus) immediately. The University will take action to enforce a previously implemented measure, which may include additional supportive measures and/or disciplinary penalties under this SIM policy or other University policies.

In evaluating whether a party has violated the conditions of a supportive measure, the Title IX Coordinator has the authority to conduct expedited fact-gathering (with appropriate notice and the opportunity to be heard), to impose separate disciplinary action for the violation based on the facts as gathered without a hearing, to incorporate the failure to comply with the supportive measure into the underlying investigation and charges of Prohibited Conduct, and/or refer the matter to the Dean of Students.

## **12. Overview of Resolution Options**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of Prohibited Conduct under this policy when a formal complaint has been filed by a complainant or signed by the Title IX Coordinator, as described below:

- (1) Disciplinary Resolution, which involves an investigation and adjudication; and
- (2) Adaptable Resolution, which includes informal or restorative options for resolving reports.

Also, in cases in which an investigation and adjudication under this policy, the Title IX Coordinator may itself or in collaboration with or referral to other University offices, undertake efforts such as educational conversations with individuals, educational programs for departments or groups, or other efforts designed to improve the campus environment and/or address concerns about behavior that may implicate this policy. As an example of such a case would include a situation where a complainant does not wish to participate in a formal investigation and resolution process and the University can respect that wish due to the nature and level of the reported conduct, but where some action is nonetheless deemed appropriate by the Title IX Coordinator.

The processes under this policy are separate and distinct from Texas' criminal process. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

### **13. Initial Steps and Determination of Appropriate Procedures**

#### **A. Initial Contact with Complainant by Title IX Coordinator**

After receiving a report of Prohibited Conduct, the Title IX Coordinator will:

- (1) promptly contact or attempt to contact the complainant to discuss the availability of supportive measures (unless deemed unnecessary because contact has already been made with the complainant regarding the conduct alleged in the report);
- (2) inform the complainant of the availability of supportive measures with or without the filing of a formal complaint;
- (3) consider the complainant's wishes with respect to supportive measures; and
- (4) explain to the complainant the process for filing a formal complaint.

#### **B. Initial Assessment**

As part of or in addition to the initial contact with the complainant, the Title IX Coordinator will also gather information about the reported conduct and any immediate health or safety concerns raised by the report or the complainant. The Title IX Coordinator will assess the complainant's safety and well-being, offer the University's immediate support and assistance, and assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, and whether the reported conduct is within the scope of this policy. The Title IX Coordinator may consult with the University's threat assessment group or other University administrators as part of the initial assessment.

As part of the initial assessment, the Title IX Coordinator will:

- assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness, and/or any other individual with knowledge of the reported incident;
- address immediate physical safety and emotional well-being;
- notify the complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- notify the complainant of the right to seek medical treatment;
- notify the complainant of the importance of preservation of evidence and of visiting a hospital as necessary for help with doing so;
- communicate necessary details of the report to the ETBU Security Department to enter the report into the University's daily crime log if required by the Clery Act;

the ETBU Security Department will assess the reported conduct and discern the need for a timely warning under the Clery Act;

- provide the complainant with written information about on- and off-campus resources; notify the complainant of the range of interim measures available, including the right to reasonable interim or supportive measures regardless of whether they choose to file a formal complaint or participate in a University or law enforcement investigation;
- provide the complainant with an explanation of their procedural options;
- discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- notify the complainant of the right to be accompanied at any meeting by an advisor of choice;
- assess for any alleged pattern of conduct by the respondent;
- explain the University's policy prohibiting retaliation, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation; and
- determine age of the complainant; and if the complainant is a minor, or was a minor at the time of the alleged Prohibited Conduct, make the appropriate notifications under the Policy to Protect Children and Prevent Abuse.

In cases in which the Title IX Coordinator initiates an investigation or takes any other action that impacts a respondent, the Title IX Coordinator will also ensure that the respondent is notified and receives written information on available resources and options, consistent with the list outlined above, as applicable.

At the conclusion of the initial assessment, the University will proceed with one of the following options:

- (1) Proceed with an investigation under the Disciplinary Resolution process. This will occur when a complainant requests an investigation and the Title IX Coordinator determines it is appropriate; when the Title IX Coordinator determines that an investigation must be pursued even when a complainant requests that no investigation be pursued; or when Adaptable Resolution is not appropriate or available.
- (2) Proceed with Adaptable Resolution. This will always require the consent of the complainant. The consent of the respondent is also required when the form of resolution involves the respondent.
- (3) If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.
- (4) If the complainant requests that the University not pursue a resolution process and the University determines that it can respect that request, the University will close the report. This option could include notifying the respondent of the alleged misconduct. The level of detail shared with the respondent will be at the discretion of the Title IX Coordinator. The University may re-open the matter if

the complainant subsequently requests resolution or if the University subsequently determines there is a need to re-open the matter.

### **C. Formal Complaints, Dismissals and Appeals of Dismissals**

A formal complaint for purposes of this SIM policy is a document filed by a complainant or signed by the Title IX Coordinator alleging Prohibited Conduct committed by a respondent and requesting that the University investigate the allegation. When a complainant submits a formal complaint, the Title IX Coordinator will first promptly determine whether:

- (1) the conduct alleged would, if proved, constitute Title IX Sexual Harassment (i.e., *Quid Pro Quo* Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, or sex-based Domestic Violence, Dating Violence or Stalking) as defined in the SIM Policy
- (2) the conduct allegedly occurred in the University's education program or activity;
- (3) the conduct allegedly occurred in the United States; and
- (4) the complainant is participating in or attempting to participate in the University's education program or activity at the time the complaint is filed.

If the formal complaint satisfies all 4 of these elements, it will be investigated and resolved as a Title IX Sexual Harassment matter through the procedures outlined below.

If it appears based upon initial review or upon information gathered during an investigation that a formal complaint does not satisfy and/or no longer satisfies all 4 of these elements, the University will, as required by the May 2020 Title IX regulations, dismiss the formal complaint for purposes of the Title IX Sexual Harassment process. The Title IX Coordinator may upon such dismissal transfer the matter for handling under the Non-Title IX Misconduct process outlined below or other University procedures, as deemed appropriate by the University.

Even if the allegations of a formal complaint fall within the definition of Title IX Sexual Harassment, the Title IX Coordinator may (but is not required to) dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the University (unless the University is required by Texas law to finalize an investigation involving a student respondent who was enrolled at the University at the time the investigation was initiated); or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint is dismissed by the University under the circumstances described above, the University will simultaneously provide to the parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and

notice of the parties' opportunity to appeal such dismissal through the appeal procedures outlined below.

#### **D. Formal Complaints Signed by Title IX Coordinator**

In cases where it appears based on an initial report that the 4 elements stated above would be satisfied, but the complainant does not wish to file a formal complaint, the Title IX Coordinator may, in their discretion (see "Balancing Complainant Autonomy With University Decision to Investigate" immediately below), decide to sign a complaint of Title IX Sexual Harassment and initiate an investigation and resolution process under the Title IX Sexual Harassment formal resolution process outlined below. If this occurs, the Title IX Coordinator will not be a complainant or otherwise a party to the matter.

Further, if a formal complaint is dismissed as described above because it does not fit within the definition of Title IX Sexual Harassment, but the Title IX Coordinator determines that the allegations of the complaint may constitute Non-Title IX Misconduct, the Title IX Coordinator may (upon the resolution of, and to the extent consistent with the result of, any appeal of such dismissal), address the alleged Non-Title IX Misconduct through the resolution procedures provided below.

#### **E. Balancing Complainant Autonomy with University Decision to Respond**

In order to protect the safety of the campus community, the Title IX Coordinator may decide to proceed with an investigation of Prohibited Conduct (that is, either Title IX Sexual Harassment or Non-Title IX Misconduct) even if a complainant specifically requests that the matter not be pursued. The Title IX Coordinator may also initiate an investigation of potential violations of this policy even absent a formal complaint or identified complainant or respondent and even if a report has been withdrawn. If a complainant requests that the University not investigate the alleged incident, the University may gather facts about the alleged incident in a manner that complies with the confidentiality requirements described below. The Title IX Coordinator may also look into potential violations of this policy absent a formal complaint or identified complainant or respondent. This process need not follow the Disciplinary Resolution or Adaptable Resolution procedures outlined in this policy, and may instead proceed as deemed appropriate in the discretion of the Title IX Coordinator. In determining whether to investigate the alleged incident(s), the University will consider factors such as, for example:

- (1) the seriousness of the alleged incident;
- (2) whether the institution has received other reports of Prohibited Conduct committed by the respondent or respondents;
- (3) whether the alleged incident poses a risk of harm to others; and
- (4) any other factors the University determines are relevant.

A complainant may request that their name or other personally identifiable information not be shared with a respondent, or that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, a member of the Title IX Coordinator will discuss any concerns with the complainant and seek to address and remedy barriers to reporting and/or participation based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes.

The Title IX Coordinator will consider what steps may be possible or appropriate when a respondent is unknown or the complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate manner of resolution under the policy. The University will seek resolution consistent with the complainant's request, if it is possible to do so, based upon the facts and circumstances, while also promoting the health and safety of the complainant and the University community.

The Title IX Coordinator may request that a report be re-opened and pursued under this policy if any new or additional information becomes available, and/or if the complainant decides that they would like Disciplinary Resolution to occur.

In those instances when the Title IX Coordinator determines that the University will proceed with an investigation despite the complainant's request that it not occur, the Title IX Coordinator will notify the complainant of the University's decision whether to investigate the matter. The University is required by the May 2020 Title IX regulations to send certain notices to the complainant whether they wish to receive them or not, but the complainant will not be required to participate in the investigation or in any of the actions taken by the University if they choose not to do so.

The University's ability to investigate and respond fully to a report may be limited if the complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the potential Prohibited Conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation and whether other supportive or other measures will be taken in connection with a report of Prohibited Conduct will be made in a manner consistent with this policy.

#### **F. Student/Employee Cases**

If the respondent is both a student and an employee, the Title IX Coordinator will determine which procedures outlined below will apply based upon the facts and circumstances, such as whether the respondent's status as a student or an employee predominates in the context of the Prohibited Conduct. If a student-employee/employee-student is found to have engaged in Prohibited Conduct, the student-employee/employee-student may be subject to sanctions both in connection with their employment, and in connection with their student status, as appropriate under these and other applicable procedures.

#### **G. Consolidation of Investigation**

The Title IX Coordinator has the discretion to consolidate matters involving allegations of Prohibited Conduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of such Prohibited Conduct arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

As noted in Coordination with Other Policies, investigations initiated under this SIM policy may also include investigation of other forms of conduct that would be a potential

violation of other University policies, and those forms of conduct may be resolved under this policy, instead of the procedures ordinarily used to address potential violations of such other University policies.

#### **H. Safeguarding the Privacy of Complainants and Respondents**

The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, but all individuals involved in proceedings under this policy are encouraged to exercise discretion in sharing information about such allegations in order to safeguard the integrity of the process and to avoid potential retaliation-related concerns. More information about how the University will handle information about complainants and respondents is provided in the Confidentiality, Qualified Confidentiality, Privacy, and Related Reporting Responsibilities section of this policy above.

#### **I. Advisors**

Throughout any investigation or resolution, each party has the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the resolution of a report under this policy. While the advisor may provide support and advice to the party at any meeting and/or proceeding, the University has established restrictions regarding the extent to which the advisor may participate in the proceedings. An advisor may not speak on behalf of the party or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings, except as specifically permitted by the hearing procedures outlined below. Generally, the Title IX Coordinator and investigator will communicate directly with the complainant or respondent, and any communications with an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, in order to not unduly delay the scheduling of meetings or proceedings.

### **14. Emergency Removal and Administrative Leave**

#### **A. Emergency Removal**

Where there is an immediate threat to the physical health or safety of any student or other individual arising from the alleged Prohibited Conduct, the University can remove a student or employee respondent from its education program or activity (which may include removing an employee respondent from their employment at the University) and issue any necessary related no-trespass and no-contact orders. The Title IX Coordinator will make the decision to remove a respondent from its education program or activity based on an individualized assessment and risk analysis. The Title IX Coordinator may consult with other University personnel, departments, or teams to assist in the individualized assessment and risk analysis.

If the University makes such a decision, the respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

#### **B. Employee Administrative Leave**

The University always maintains the discretion to place an employee respondent on paid or unpaid administrative leave during the pendency of an investigation and resolution process.

### **15. Adaptable Resolution**

Adaptable Resolution is a voluntary and remedies-based resolution option. Adaptable Resolution may be pursued instead of Disciplinary Resolution at the request and agreement of both parties and as deemed appropriate by the University. The Title IX Coordinator will assess the request for Adaptable Resolution in light of factors such as, but not limited to, the stated goals of the requesting party, the severity of the alleged violation, and the potential risks to campus community members posed by the reported misconduct. Parties engaged in Disciplinary Resolution may also request to end Disciplinary Resolution and begin Adaptable Resolution at any time prior to reaching a determination regarding responsibility being shared with the parties. The University will only proceed with Adaptable Resolution if both parties provide their voluntary, written consent. Adaptable Resolution may include, but is not limited to, one or more of the following approaches: Restorative Justice Conference, Restorative Justice Circle, Facilitated Conversation, and Shuttle Communication.

Participation in Adaptable Resolution is voluntary and either (or any) party can request to end Adaptable Resolution at any time prior to signing a written Adaptable Resolution Agreement. Additionally, the Title IX Coordinator can end Adaptable Resolution if the Coordinator determines it is no longer the appropriate avenue for resolution of a given report. If Adaptable Resolution is stopped prior to completion, information that is shared with or documented by the facilitator of the Adaptable Resolution will not be shared with the investigator, in the event that Disciplinary Resolution is initiated or resumed. A party's willingness to participate in Adaptable Resolution will not be considered as evidence in Disciplinary Resolution. The University will not compel a party to engage in any particular form of Adaptable Resolution.

Adaptable Resolution does not include an investigation or adjudication by the University under the Disciplinary Resolution process outlined in this policy, but may involve the respondent's agreement to appropriate and reasonable remedies, including supported direct conversation or interaction with the complainant, education, training, and/or other remedies agreed to by the parties.

The Title IX Coordinator will maintain records of all reports and conduct referred for Adaptable Resolution, which will typically be completed within 60 calendar days of the agreement to begin Adaptable Resolution. While the University will seek to honor confidentiality of the parties' communications with the facilitator during the Adaptable Resolution process to the extent necessary to facilitate the resolution, the University may share information discussed or created during this process, for example, without limitation to a judicial subpoena or a FERPA educational record request. However, if the respondent is found responsible for any violations of this policy in the future, information regarding the prior report processed through Adaptable Resolution may be used in the sanctioning phase for the subsequent report, provided that the respondent is granted the opportunity to address the prior report as well. If Adaptable Resolution is stopped prior to completion, statements made by a party in Adaptable Resolution may not be used in a Disciplinary Resolution process related to that matter.

If a party requests the initiation of an Adaptable Resolution process and the Title IX Coordinator agrees that the matter is appropriate for Adaptable Resolution, the Title IX Coordinator will provide to each party a written notice that discloses:

- the allegations;
- the requirements of the Adaptable Resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;



- the parties' right to withdraw from Adaptable Resolution and resume or initiate Disciplinary Resolution with respect to the formal complaint; and
- information about maintenance of records or how records could be shared.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them and which is approved by the Title IX Coordinator (in consultation with other appropriate University administrators as deemed necessary). A party may withdraw from the Adaptable Resolution process at any time prior to their signing of a written Adaptable Resolution agreement. Upon signing a resolution agreement, neither party may initiate a Disciplinary Resolution process regarding the same factual allegations, and the parties agree to comply with the terms of the resolution agreement. Failure to comply with a resolution agreement, once signed and approved, may result in disciplinary consequences, which may include the University placing an appropriate hold on the student's account until the terms of the agreement are met, or employment discipline up to and including termination.

The University will not offer or facilitate an Adaptable Resolution process to resolve allegations that an employee engaged in Prohibited Conduct against a student.

## **16. Timeframe for Investigation and Resolution**

The University will seek to complete the fact-gathering portion of the investigation in approximately 90 calendar days following the issuance of the notice of the investigation. In some instances, the notice of investigation may be issued the same date as the date of the report of the incident; in other instances, based on information gathered in the initial assessment, the notice of investigation may be issued at a later date. This policy designates reasonably prompt timeframes for the major stages of the investigation and resolution process (typically set forth in business days), but the University may extend any timeframe in this policy for good cause. An extension may be required for good cause to ensure, for example, the integrity and thoroughness of the investigation; to comply with a request by law enforcement; on account of the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this policy.

Reasonable requests for delays by the parties will serve to extend the 90-calendar-day time period for investigation of the report. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances. The University will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX investigation as soon as it is notified by the law enforcement agency that doing so is not likely to interfere with the law enforcement process. The University will not, however, wait for the conclusion of a criminal proceeding or otherwise be unduly delayed in proceeding with its own investigation and, if needed, will take immediate steps to provide appropriate supportive measures.

Investigations will proceed according to the timeframes in this policy to the extent possible during the summer and at other times when classes at the University are not in session. The Title IX Coordinator will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation. Meetings and interviews may be conducted by the use of remote video conferencing technology as deemed appropriate by the Title IX Coordinator and/or the investigator. Timeframes for all phases of the disciplinary process, including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both the complainant and the respondent.

### **17. Expectations Regarding Participation in Investigations and Formal Resolutions**

All University community members are expected to provide truthful information in any report or proceeding under this policy. Consistent with the University's Student Code of Conduct and University Community Code of Conduct, submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

ETBU expects all members of the University community to cooperate fully with the investigation and resolution procedures. It is understood that there may be circumstances in which a complainant or respondent wishes to limit their participation, and the University will respect the choice of the complainant or respondent as to how to engage in proceedings under this policy. The University may, however, move forward with an investigation and disciplinary action without the participation of a party or parties. If a complainant or respondent chooses not to answer any or all questions, or otherwise participate in an investigation for any reason, the University will evaluate whether to continue the disciplinary process. The University will not draw any adverse inference from a complainant's or respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the complainant or respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the case.

The University also recognizes that witnesses may be reluctant to participate in the process, but they are strongly encouraged to participate as requested by the University.

The University will not retaliate against an individual because they refuse to participate in an investigation or hearing under this policy.

### **18. Administrative Holds and Continuation of Disciplinary Resolution**

The University will place a temporary administrative hold on a respondent's transcript pending the completion of the Disciplinary Resolution process. If a respondent withdraws while the investigation is pending, Texas law requires that the University proceed with the investigation and resolution process.

### **19. Disciplinary Resolution When the Respondent is a Student**

During the Disciplinary Resolution process, both parties have equal rights, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information as provided below; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the determination, rationale, and, as appropriate, any sanction; and to an appeal of the finding.

Determinations regarding responsibility by hearing officers, as described below, will be made by a preponderance of the evidence. A preponderance of the evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the alleged policy violation occurred. Evidence is relevant if it has a tendency to make a fact more or less likely than it would be without the evidence, and the fact is of consequence in the hearing officer's determination.

To the extent required by applicable law, the University's application of the procedures outlined below will be designed to ensure equal access for individuals with disabilities.

The following procedures will apply to Title IX Sexual Harassment matters and Non-Title IX Misconduct matters when the respondent is a student. The hearing procedure is different for Title IX Sexual Harassment matters and Non-Title IX Misconduct matters. If the formal complaint included allegations of Prohibited Conduct pertaining to Title IX Sexual Harassment and Non-Title IX Misconduct, the Title IX hearing procedures will be utilized.

#### **A. Notice**

If the University initiates an investigation under the SIM policy, it will provide to the parties a written notice (by electronic or other means) that includes:

- Information about the University's resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the University's presumption of good faith reporting and a summary of false complaint-related information outlined in this policy;
- Notification that parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notification that the parties will have the opportunity to inspect and review evidence during the investigation and resolution process, as provided in procedures detailed below;

- The name of the investigator and how to challenge participation by the investigator on the basis of a conflict of interest or bias;
- The importance of preserving any potentially relevant evidence in any format;
- The prohibition against retaliation; and
- A link to a copy of this policy.

If in the course of an investigation the University decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

## **B. Investigations**

### **1. Investigators**

In cases that will be investigated, the Title IX Coordinator will appoint one or more investigators (referred to in this policy as “the investigator”) to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a University

employee and/or an experienced external investigator. Any investigator used by the University will receive annual training on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of complainants while promoting accountability. In selecting the investigator for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The Title IX Coordinator will notify the parties of the identity of the investigator and parties may, within three business days of such notice, object to the service of the investigator by providing a written statement (which may be transmitted electronically) as to why the party believes that the investigator has a conflict of interest or bias. Objections after this three-day period must be based on newly acquired information. The Title IX Coordinator will make decisions regarding such objections and the appointment of an alternate investigator, as necessary.

### **2. Conduct of Investigations and Relevant Evidence**

During an investigation, the investigator will seek to meet separately with the complainant, respondent, and relevant witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters. The respondent is presumed not responsible for the alleged policy violation(s), and the investigator will not make a determination regarding responsibility.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties. Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. Parties are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence. Parties whose participation is invited or expected will receive written

notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

Witnesses may not participate solely to speak about an individual's character. Where witnesses are interviewed as part of the investigation, the name of the witness and a summary of relevant information gathered in the interviews will be shared with the parties in the investigative report described below. The investigator will also gather other relevant information or evidence, including documents, photographs, and communications between the parties and witnesses, and other information, including electronic records, as appropriate.

All interviews may be audio recorded at the investigator's discretion.

While the investigator, not the parties, is responsible for gathering relevant evidence to the extent reasonably possible, both the complainant and the respondent are encouraged to submit any information they believe may be relevant, and both the complainant and respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. In the event that a party declines to provide material information, the University's ability to gather and consider all facts may be impacted.

The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The Title IX Coordinator does not actively monitor social media or online sources, however, and as with all potentially relevant information, the complainant, respondent, or witness should bring online information to the attention of the investigator.

Similarly, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation and will also share any information about alleged retaliation or violation of the terms of a supportive measure with the Title IX Coordinator for further action.

The investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

If there is a concurrent criminal investigation, the University may contact the law enforcement agency that is conducting any investigation to inform that agency that a University investigation is also in progress, to attempt to ascertain the status of the criminal investigation, and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation.

In general, a person's medical and counseling records are confidential and are not accessible to the investigator unless the person voluntarily chooses to share those records with the investigator. The investigator will not access, consider, disclose or otherwise use a party's privileged records without the party's voluntary, written consent to do so, and such information will not be deemed relevant to an investigation or adjudication absent the voluntary, written consent of the party. In those instances, the relevant information from the records must be shared with the other party; it should be noted, however, that irrelevant information may be redacted by the

investigator from such records, as appropriate.

The investigator will review all information identified or provided by the parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the investigator will not consider as relevant statements of personal opinion or statements as to any party's general reputation for any character trait. The amount and type of evidence that may be relevant, including witnesses, may vary. The investigator has discretion to determine which witnesses to interview and will carefully consider requests or recommendations for witnesses made by the complainant and respondent. Not every complainant- or respondent-suggested witness may be interviewed, for example, if their knowledge is not relevant, is duplicative, or only pertains to facts that are not contested, or if the witness is uncooperative or cannot reasonably be reached.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The investigator will provide periodic updates to the parties about the status of the investigation.

### **C. Review of Directly Related Information and Parties' Written Response**

In conjunction with the provision of a preliminary investigative report prepared by the investigator, the investigator or designee will provide each party with an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which the University may not rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Such evidence will include any statements made by the parties and witnesses, written or electronic communications, social media posts, videos, photographs and any other relevant documentary evidence gathered by the investigator, redacted as necessary to comply with any applicable federal or state law regarding confidentiality. Such evidence will not include privileged records or information that may have been gathered or received during the investigation, without written consent from the party holding the privilege (provided however that appropriately redacted otherwise-privileged records may be shared with consent).

The University will provide to each party and the party's advisor, if any, the evidence subject to review in an electronic format. Parties and advisors are not permitted to download, print or copy such evidence subject to inspection and review, and are not permitted to re-disclose such evidence without the University's permission. Violations of these prohibitions may subject parties to College discipline under applicable conduct codes.

The complainant and the respondent will have an opportunity to concurrently review such information and may, within 10 calendar days, submit a written response to the investigator. The parties' written responses will be considered by the investigator prior to completion of the investigative report, and some or all of the responses may be

attached or otherwise incorporated into the investigative report. In the event that new, relevant information is provided or identified at this stage, the information will be incorporated into the investigative report as deemed appropriate by the investigator.

#### **D. Final Investigative Report**

When deemed appropriate by the investigator, the investigator will prepare a final investigative report, which will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator. The parties may provide a written response to the investigative report within ten calendar days of the issuance of the final investigative report.

The investigative report and the parties' written responses, if any, will be provided to the hearing officer in advance of the hearing.

#### **E. Hearings**

Hearings will be conducted pursuant to either Title IX Sexual Harassment Hearings Procedures (section 1 below), or Non-Title IX Sexual Misconduct Hearing Procedures (section 2 below):

##### **1. Title IX Sexual Harassment Hearings**

###### **a. Scheduling of Hearings**

Hearings will be scheduled no earlier than ten days after the issuance of the final investigative report.

###### **b. Hearing Officers**

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator. In selecting a hearing officer for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The University will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within 3 business days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary. Parties and their advisors are prohibited from contacting the hearing officer for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting the hearing officer about the resolution process after its completion.

###### **c. Advisors**

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the University will without fee or charge to the party provide an advisor of the University's choice (that is, an "assigned advisor") for the limited purpose of conducting cross-examination on behalf of that party.

The University will maintain a list of advisors who are available if the parties desire an advisor but are unable to identify one on their own. Parties should inform the Title IX Coordinator of the identity of any advisor whom they have chosen to accompany them to the hearing or that they will not be bringing an advisor, so that the University will know whether or not it needs to arrange for the presence of a University-provided advisor. Parties may prepare questions for assigned advisors to relay to the other parties and/or witnesses; the assigned advisor's role is limited to relaying questions drafted by their party.

Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing.

At a time and manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during a recess in the hearing. If the advisor is determined by the hearing officer to be disruptive, the appointment of an alternate University-provided advisor may occur.

#### **d. Requests for Appearance of Witnesses**

Witnesses present at the hearing are restricted to individuals already interviewed in the fact-gathering process. As noted above, the University will not retaliate against University students or employees for refusing to participate in a hearing.

#### **e. Conduct of Hearings and Relevance**

Before the hearing, the hearing officer will receive a copy of the investigative report, any attachments thereto, and copies of the parties' written responses to the investigative report, if any, which will be part of the information of record to be considered by the hearing officer. Regarding the evidence subject to inspection and review that was provided to the parties and their advisors as described above, a copy of such evidence will be made available at the hearing, and each party and/or their advisor may have an equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the facilitator, followed by opening statements from any party who wishes to provide one, followed by the hearing officer's asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion



of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility. Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant initial questions to each witness, then the parties' advisors will be permitted to ask relevant questions of witnesses. Cross-examination by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Before a complainant, respondent, or witness answers a cross-examination question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Neither advisors nor parties are permitted to object to hearing officer decisions regarding relevance during a hearing.

Only relevant questions may be asked of a party or witness. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

As noted above, this policy prohibits attempts to commit Prohibited Conduct. In assessing whether an individual attempted to commit Prohibited Conduct, the hearing officer will consider elements such as circumstances and context of the encounter, statements made by a party or the parties, and the actions of a party or the parties.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), will not be admitted unless the person holding the privilege has waived the privilege.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing.

At the request of either party, the University will provide for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Formal rules of evidence do not apply to hearings conducted by the University. The Hearing Officer may at their discretion consider statements of a party or witness made before or at a hearing and/or other information, regardless of whether the party or witness appears at or answers some or all cross-examination questions at a hearing. The

Hearing Officer will determine the appropriate weight for such information based on the totality of available relevant evidence. Hearing officers will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing. The respondent is presumed not responsible for violating this policy through the course of the hearing.

#### **f. Record of Hearings**

The University will create a transcript of any live hearing and make it available to the parties for review.

### **2. Non-Title IX Misconduct Hearings**

#### **a. Scheduling of Hearings**

Hearings will be scheduled no earlier than ten days after the issuance of the final investigative report.

#### **b. Hearing Officers**

Hearings will be presided over by a hearing officer, who will make the decision by a preponderance of the evidence as to whether or not the respondent violated the policy provisions at issue. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator. In selecting a hearing officer for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The University will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within 3 business days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary. Parties and their advisors are prohibited from contacting the hearing officer for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting the hearing officer about the resolution process after its completion.

#### **c. Advisors**

Throughout the entire proceeding, including any investigation or hearing, each party has the right to consult with an advisor of their choosing, and may be accompanied by their respective advisor at any stage, including interviews and the misconduct hearing. The advisor may be any person, including an attorney. The University will maintain a list of advisors who are available if the parties desire an advisor but are unable to identify one

on their own.

Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing

While the advisor may provide support or advice to the party at any interview, meeting, and/or the hearing, the advisor may not participate in the proceedings or speak on behalf of the party. Parties should inform the Title IX Coordinator of the identity of the advisor, if any, they have chosen to accompany them to the hearing no later than five calendar days before the hearing.

#### **d. Requests for Appearance of Witnesses**

Witnesses present at the hearing are restricted to individuals already interviewed in the fact-gathering process. The Title IX Coordinator or designee will inform the witness that their presence at the hearing is required (to the extent that the University has jurisdiction to require the presence of the witness) or requested. The University may compel University faculty, staff, and/or students to participate in the hearing process.

#### **e. Conduct of Hearings and Relevance**

Before the hearing, the hearing officer will receive a copy of the investigative report, any attachments thereto, and copies of the parties' written responses to the investigative report, if any, which will be part of the information of record to be considered by the hearing officer. Regarding the evidence subject to inspection and review that was provided to the parties and their advisors as described above, a copy of such evidence will be made available at the hearing, and each party and/or their advisor (as applicable) will have an equal opportunity to refer to such evidence during the hearing.

The hearing officer has the discretion to determine the hearing format. A broad overview will be provided to both parties prior to the hearing. Both the complainant and the respondent have a right to be present at the hearing, but neither party is required to participate in the hearing in order for the hearing to proceed. Either party may request alternative methods for participating in the hearing that do not require physical proximity to the other party, including participating through electronic means. The University has the discretion as well to choose whether the hearing occurs with all parties physically present in the same geographic location or, whether any or all parties or witnesses may appear at the live hearing virtually.

Although as a general rule the University expects that the parties will participate in the hearing, the hearing officer may proceed without either party after considering the party's stated reason for not participating. The hearing officer maintains discretion to require any witness to appear and give testimony.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the facilitator, followed by opening statements from any party who wishes to provide one, followed by the hearing officer's asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise

address the hearing officer or anyone else present at the hearing.

Each party will have the opportunity to be heard and to respond to any questions of the hearing officer. The parties may not directly question one another, although they or their advisors may proffer questions for the hearing officer, who may choose, in their discretion, to pose appropriate and relevant questions.

Only relevant questions may be asked of a party or witness. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

As noted above, this policy prohibits attempts to commit Prohibited Conduct. In assessing whether an individual attempted to commit Prohibited Conduct, the hearing officer will consider elements such as circumstances and context of the encounter, statements made by a party or the parties, and the actions of a party or the parties.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), will not be admitted unless the person holding the privilege has waived the privilege.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing. The respondent is presumed not responsible for violating this policy through the course of the hearing.

#### **f. Record of Hearings**

The University will create a transcript of any live hearing and make it available to the parties for review.

#### **F. Determinations Regarding Responsibility**

Within 15 business days after the hearing process, the hearing officer will prepare and issue a written determination regarding responsibility and any sanctions. In determining responsibility, the hearing officer will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the Prohibited Conduct section(s) of this policy, and of any other University policy sections considered in the investigation, alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;

- Conclusions regarding the application of the University's definitions of Prohibited Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and
- Identification of the University's procedures and permissible bases for the complainant and respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

If sanctions are deemed appropriate, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination and, as appropriate, any sanctions as determined through the procedures outlined below.

## **20. Imposition of Sanctions**

### **A. Imposition of Sanctions**

If the hearing officer under either hearing process finds that the respondent engaged in behavior that violates this SIM policy (or other University policies under investigation, as applicable), the hearing officer will subsequently determine an appropriate sanction or sanctions, and other actions as appropriate. The hearing officer will issue a written determination that will include a statement and rationale regarding responsibility as described in more detail above, a statement of and rationale for any sanction(s) the University is imposing on the respondent, and whether remedies designed to restore or preserve equal access to the educational program or activity of the University will be provided by the University to the complainant.

Sanctions may include any of the sanctions that are listed below or set forth for violations of the University's Student Code of Conduct.

This policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the hearing officer has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the complainant and surrounding community, and accountability for the respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, remedy its effects and restore or preserve the complainant's equal access to University education programs or activities, while supporting the University's educational mission. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, and/or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion. In determining the appropriate sanction, the hearing officer may consider factors including but not limited to the following:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the complainant;

- the impact or implications of the conduct on the community or the University;
- prior misconduct by the respondent, including the respondent's relevant prior discipline or criminal history (if available);
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination. For violations of this policy, the following sanctions, listed in ascending order of severity, may be imposed:

**Warning:** A formal admonition, which appears in an individual's disciplinary record at the University.

**Disciplinary Probation:** A more serious admonition may be assigned for a definite period of time. Findings of misconduct that resulted in disciplinary probation may be considered in determining subsequent sanctions, even if the probation period has ended. Any future violation may be grounds for more severe sanctions, including suspension, suspension with conditions, or, in especially serious cases, expulsion from the University.

**Restitution:** Requirement to reimburse or otherwise compensate another and/or the University for damage or loss of property resulting from a student's misconduct. Common assessment or group billing may be made to students in a residence hall for damages occurring in common areas shared by groups of residents (determinations about whether and to what extent that will occur are made by the University's residence life administrators, not through the procedures provided in the Student Code of Conduct).

**Residential or Other Facilities Restrictions or Removal:** Restriction or removal from residence halls or other campus facilities as designated in the written notification.

**Withholding of Degree:** In cases involving seniors or graduate students in their final semester, the University may withhold a student's ETBU degree for a specified period of time. This penalty is imposed instead of suspension at the end of senior year or final year of graduate study when all other degree requirements have been met. Degrees may also be withheld indefinitely when all other degree requirements have been met. The sanction of withholding a degree may also occur if an expulsion-level offense occurs after all other degree requirements have been met but before the degree is conferred.

**Suspension:** Student status at the University may be terminated for a specified period of time.

**Suspension with Conditions:** Student status at the University may be terminated for at least the period of time specified by the suspension, with the suspension to continue until certain conditions, stipulated by the officer or panel applying this penalty, have been fulfilled. These conditions may include, but are not limited to, restitution of damages and formal apology.

**Expulsion:** This is permanent termination of student status at the University, without any opportunity for readmission. Relevant information remains in the student's disciplinary record at the University and may be disclosed by the University when the student consents in writing or as otherwise required or permitted by law.

*The following outcomes may accompany the preceding sanctions, as appropriate:*

**Community Service:** Community service up to 10 hours per week may be added to disciplinary probation for a portion or duration of the probationary period or following a warning.

**Restriction of Access to Space, Resources, and Activities:** When appropriate, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit opportunities for contact between the parties.

**Educational Programs:** In addition to any of the sanctions listed above, a student may be required to participate in educational programs.

**No Contact Directives:** No contact directives may be imposed as an administrative matter (but not necessarily a sanction) when the University determines that doing so is in the best interests of an affected individual or individuals, and/or the best interests of the University.

The fact that these additional outcomes are listed here as examples does not limit the University's ability to issue interim or administrative measures such as restriction of access to space, resources and activities, and/or no contact directives at its discretion even where no policy violation has been investigated or charged, and/or where no policy violation has been found.

## **B. Other Information About Sanctions**

Sanctions will be suspended during the period of any appeal, in a manner that preserves both the respondent's rights and the University's ability to carry out the sanctions as determined by the hearing officer. In cases adjudicated prior to the last day of classes, if the final sanction is separation from the University (i.e., suspension, suspension with conditions, or expulsion), the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the hearing officer.

A student who is suspended or expelled for a violation of this policy will have the notation "Ineligible to Reenroll" placed on his or her academic transcript. On request by the student, the University may remove the notation from the academic transcript if (1) the student is eligible to reenroll, or (2) the University determines that good cause exists to remove the notation. Such requests should be directed to the Title IX Coordinator in writing. The removal of the notation from the academic transcript shall not require the University to make any modification to the student's disciplinary records at the University.

## **C. Additional Remedies**

Regardless of the outcome, the hearing officer may recommend additional remedies for the complainant to address the effects of the conduct on the complainant, restore or preserve the complainant's equal access to University programs and activities, and restore to the complainant, to the extent possible, benefits and opportunities lost as a result of the alleged Prohibited Conduct. The hearing officer may also identify remedies to address the effects of the conduct on the University community.

The Title IX Coordinator will review the remedies recommended by the hearing officer

and will consider the appropriateness of continuing supportive measures on an ongoing basis. Extended supportive or other measures may be included in the sanctions.

#### **D. Administrative Measures**

Regardless of whether a policy violation is found to have occurred in a particular case, the University may implement non-punitive, non-disciplinary administrative measure such as, for example, no contact directives and/or reasonable restrictions from certain University premises, at any time after a matter is reported, if the University determines that doing so is in the best interests of a party, both parties and/or the University.

### **21. Disciplinary Resolution When the Respondent is an Employee**

When the Title IX Coordinator receives a report that a member of the faculty or staff violated this policy, the Title IX Coordinator will work with the Provost's Office and/or Human Resources to investigate in a manner consistent with the SIM policy, ETBU personnel policies, and all applicable law. The resolution process will follow the procedures for student respondent cases outlined above based on the type of Prohibited Conduct (Title IX Sexual Harassment or Non-Title IX Misconduct). The Title IX Coordinator will have the authority to exercise oversight of the resolution process.

For employees of the institution, the sanction will be determined by the Provost/Vice-President for Academic Affairs or designee. The Sanction may include (in accordance with the employment policies governing the employee in question) counseling or training, written warning, financial penalty, unpaid leave of absence, suspension, demotion, reassignment of duties, referral to other staff or faculty procedure (for the determination of sanction only), or termination. Complainants will only receive information about such disciplinary action when appropriate and/or required by law.

Sanctions will be determined based on the seriousness of the misconduct and on the individual's prior disciplinary history, if any. Sanctions will be communicated to the parties, as appropriate, in writing by the hearing officer and the Provost/Vice-President for Academic Affairs or designee, through the joint written determination preparation process described above. The notification will include the parties' rights of appeal within the bounds of this process. In all cases involving sexual harassment or sexual misconduct, the file will be archived by the Title IX Coordinator as provided below.

### **22. Appeals**

Either party to a matter covered by this SIM policy may file an appeal from: 1) a determination regarding responsibility; and/or 2) the Title IX Coordinator's dismissal of a formal complaint or any allegations therein from the Title IX Sexual Harassment process, on the following grounds:

- a. Procedural irregularity that affected the outcome of the matter;
- b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter;



and/or

- d. The decision of the decision-maker was arbitrary or capricious.

An appeal must be submitted in writing to the Title IX Coordinator.

Appeals must be filed no later than seven calendar days after the date on which the University transmitted the hearing officer's written determination to the parties or the Title IX Coordinator's decision to dismiss the matter for purposes of Title IX. The Title IX Coordinator may extend this deadline if warranted by the circumstances.

The appellate officer will be appointed by the Title IX Coordinator or designee. In selecting an appellate officer for a particular matter, the Title IX Coordinator or designee will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The Title IX Coordinator or designee will notify the parties of the identity of the appellate officer and parties may, within three calendar days of such notice, object to the service of the appellate officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the appellate officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate appellate officer, as necessary. The appellate officer will not be the same person as the hearing officer, the investigator, the Title IX Coordinator, or a person who made a decision to dismiss a formal complaint.

The University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The other party may then have a period of five business days to submit a statement in support of the written determination and/or in opposition to the appeal. Any such statement will be shared with the party who filed the appeal and their advisor.

The appellate officer will issue a written decision describing the result of the appeal and the rationale for the result, and the University will provide the written decision simultaneously to both parties. The appellate officer's decision on any appeal is the final step in the adjudication process, except as provided in such decision.

The appellate officer may deny the appeal, or if one or more of the appeal grounds have been met, may:

- return the case to the original hearing officer for reconsideration; or
- appoint an alternate decision maker to review the case; or
- change or modify the decision.

It is the responsibility of the appellate officer to determine which if any aspects of the case merit a new review, and to direct the Title IX Coordinator accordingly.

Absent extenuating circumstances, the appellate officer or Title IX Coordinator will notify the complainant and respondent of the appeal decision simultaneously in writing within 20 business days of the appeal receipt deadline, and will notify the Title IX Coordinator in writing of any instructions for further action. This deadline may be extended if warranted by the circumstances. If this deadline is extended, the parties will be notified in writing at the time the extension is determined.

The decision made by the appellate officer to grant or deny the appeal is final. If an appeal is granted, the subsequent determination and/or sanction is/are final.

### **23. Record Retention**

In accordance with the record retention practice, the Title IX Coordinator will maintain, for example, records of all reports, Disciplinary Resolution, Adaptable Resolution, and steps taken to eliminate prohibited conduct, prevent its recurrence, and address its effects. Findings of responsibility will also be included in a student's disciplinary record maintained by the Dean of Students and/or an employee's personnel records.

### **24. Violations of Law**

Conduct that violates this policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a respondent to criminal prosecution by the presiding authority. More information about violations of Texas criminal law can be found in the University's Annual Fire Safety and Security Report. Conduct that violates this policy also may subject a respondent to civil liability.

Students and employees studying, working, or engaging in other activities at locations outside of Texas are governed by the applicable laws regarding sexual assault and other criminal offenses implicated by this policy. Where the University has jurisdiction to investigate and address reported conduct that would constitute conduct prohibited by this policy, the definitions and standards in this policy will apply for purposes of University discipline, regardless of the definitions of various crimes used in the laws of the locality where the conduct reportedly occurred.

### **25. Prevention and Awareness Programs**

The University is committed to the prevention of Prohibited Conduct 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. The University provides coordinated programming and training through multiple areas, including the Title IX Coordinator, Student Life, ETBU Security Department, Human Resources, the Provost's Office, Counseling Center, and other University departments.

### **26. Annual Review**

This policy is maintained by the Title IX Coordinator. The University will review this policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution processes (including the fairness of the processes, the time needed to complete the processes, and the sanctions and remedies imposed). The review may incorporate feedback from parties and an aggregate view of reports, resolution, and climate.

# Fire Safety Report

January 1, 2021 – December 31, 2021

In accordance with an amendment to the Higher Education Act (HEA), any institution that maintains on-campus student housing facilities must collect fire statistics, publish an Annual Fire Safety Report and keep a fire log. A log of all fires will be kept in the University Security Office (located in Marshall Hall, Office 106) and made available for review upon request. The Annual Fire Safety Report and fire statistics will be compiled by calendar year and disclosed to the University community by October 1 of each year.

## Fire Statistics in Campus Housing

2021 Statistics & Related Information Regarding Fires in Residential Facilities						
Facility Name	Address	Total Fires per Facility	Cause	Injury Number Required Treatment	Number of Fire Related Deaths	Value of Property Damage
Ornelas Residential Hall	1301 Ornelas Drive, Marshall, TX 75670	1	Mechanical	0	0	\$800
2020 Statistics & Related Information Regarding Fires in Residential Facilities						
Facility Name	Address	Total Fires per Facility	Cause	Injury Number Required Treatment	Number of Fire Related Deaths	Value of Property Damage
N/A	N/A	0	N/A	0	0	\$0
2019 Statistics & Related Information Regarding Fires in Residential Facilities						
Facility Name	Address	Total Fires per Facility	Cause	Injury Number Required Treatment	Number of Fire Related Deaths	Value of Property Damage
N/A	N/A	0	N/A	0	0	\$0

To view a list of all student housing facilities for which we maintain fire statistics, click on OPE Campus Security Statistics website, or access their web address: <http://ope.ed.gov/security>. To find the ETBU Fire Statistics click on “Get Data for One Institution/Campus.” Then, enter “East Texas Baptist University” in the name field in order to view the fire statistics.

## Fire Safety Systems for Residential Facilities

Centennial Hall (2014, remodeled 2020, 2021)

- Fire Alarm System with panel.
- Individual smoke detectors in every unit of occupancy-hard wired with battery backup.
- Fire extinguishers located on every floor within 30' of each other.
- Fire pull stations and smoke detectors located in all common spaces (stairways, hallways, study rooms, Great room, etc.).
- Fire pull stations in all common spaces wired into fire annunciator panel in area C.
- All common space smoke detectors also wired directly into annunciator panel.
- Elevators also wired into annunciator panel (for shutdown in case of fire).
- Emergency exits clearly labeled for emergency exit.
- Fire pump system (located in fire pump room) also equipped with fire alarm panel and fire pump monitoring system.
- Dry sprinkler system in attic space.
- Fire extinguishers in attic space.

Fry Hall (1977, remodeled 2008, 2017) – Men's five bedroom apartments without kitchen

- Smoke detectors in every bedroom and lobby – 110 volt hardwired with battery backup.
- Fire extinguishers (4) on walls of courtyard.

Linebery Hall (1961, remodeled 2015, 2018, 2020) – Women's and Men's residence hall (2 per room)

- Fire Alarm System with panel – smoke detectors in hallways.
- Nine-volt battery powered smoke detectors in each residence room.
- Fire extinguishers in hallways and lobby.
- Pull stations in hallways.

Mabee Housing Complex (1992, remodeled 2017, 2021) – Men's four bedroom apartments with kitchen

- Fire Alarm System with panel.
- Smoke detectors – five per apartment (4 bedrooms and living room).
- Fire extinguishers in 32 apartments and lobby.
- Fire extinguishers in lobby and porches of courtyards.
- Pull stations under covered walkways.

Ornelas Residential Center (1996, remodeled 2018, 2021) – Women's four bedroom apartments with kitchen

- Fire alarm system with panel.
- Smoke detectors – five per apartment (4 bedrooms and living room).
- Fire extinguishers in 48 apartments and lobby.
- Fire extinguishers in lobby and porches of courtyards.
- Pull stations under covered walkways.

University Apartments (2002, remodeled 2017, 2018, 2019, 2021) – Men’s and Women’s four bedroom apartments with kitchen

- Smoke detectors in every bedroom – 110 volt hardwired with battery backup.
- Smoke detector in lobby and Director’s apartment.
- Fire extinguishers in every apartment and lobby.

University Park Row Houses (2017, 2018)

- Fire Alarm System with panel, monitored off-site.
- Sprinkler system in each unit.
- Smoke detector in each unit.

The Oaks on Grove Townhouses (2019, 2021)

- Fire Alarm System with panel, monitored off-site.
- Smoke detector in each unit.
- Fire extinguishers in each unit.

University Owned Houses (remodeled 2021)

- Nine volt battery powered smoke detectors in each house
- Fire extinguishers in each house

NOTE: In residence halls and houses with battery powered smoke detectors the batteries are checked and changed twice each year.

### **Community Living Policies**

The University is an alcohol/drug/tobacco free campus. All students are prohibited from having alcohol, drugs and/or tobacco on campus, in their automobiles, or on their person at any time.

Firearms and other weapons are not permitted on campus.

Students should take responsibility to ensure halls are free of fire hazards. Open flames such as candles, incense, matches, or lighters are prohibited due to their potential as fire hazards. These items may be removed from student's rooms without notification. Certain items will be returned at the end of the semester. Irons and cooking appliances should never be left on when the room is unoccupied. Electrical outlets should not be overloaded.

Refrigerators, microwaves, or MicroFridge units are allowed in all residence hall rooms, but only one of these items are allowed per room. Refrigerators cannot be more than 2.7 cubic feet and 2.5 amps.

The use of personal ovens, skillets, hot plates, crockpots, toasters, electrical heaters, and other heat appliances are prohibited in Centennial and Fry.

The use of ovens, skillets, hot plates, crockpots, toasters, electric heaters, and other heat appliances are allowed in Ornelas, Mabee, and University Apartments, University Park Row, and

The Oaks on Grove.

## **Emergency Contacts**

In the event of an emergency or fire-related incident students are encouraged to contact 911 and then notify a Resident Director or Resident Assistant. A directory containing emergency contact numbers and email addresses of the Resident Director is posted in each residence hall room or apartment. At the beginning of the semester, Resident Directors send an email to each resident containing a list of names and contact numbers to use in the event of an emergency. All residents are strongly encouraged to place these emergency contact numbers in their cell phones.

## **Fire Evacuation Procedures**

1. If a fire alarm sounds, residents should take their room keys with them and begin an immediate and orderly evacuation along the designated routes. They should exit the building and wait for instructions or permission to reenter the building.
2. Residents should not run. They should move quickly out of the nearest designated stairwell and exit.
3. Staff members will check rooms, baths, closets, and lobby areas of the halls. Anyone who does not evacuate or comply with the instructions of staff members may face disciplinary action.
4. The residence hall staff will signal that the building is safe and ready for reentry. No one is to reenter until the signal is given by ETBU personnel.

## **Fire Safety Education**

Mandatory supervised fire drills were conducted once each fall and spring semester in the following residential facilities: Centennial, Fry, Linebery, Mabee, Ornelas, The Oaks on Grove, and University Park Row. Drills were scheduled late in the evening to ensure that the maximum number of residents were present to participate in the drills.

No fire drills are mandated for University Apartments.

## **Fire Safety Inspections**

All campus buildings are inspected annually prior to the fall semester by the Marshall Fire Department. All fire alarms systems and sprinkler systems are inspected and tested annually. Additionally, all fire extinguishers are inspected and serviced on an annual basis.

## **Future Improvements to Fire Safety Program**

The University will continually evaluate our fire safety program to determine if potential changes are needed to improve the safety of our students living in campus housing. The Office of Student Engagement will require safety education and training for all students

living in University residence halls or apartments each year. This training will take place during mandatory meetings in each residence hall and will involve discussing fire safety responsibilities as well as evacuation routes. This education and training will also be required of students living in the University Apartments, University Park Row Houses, The Oaks on Grove Townhouses, and campus houses. The University Security Department has posted evacuation routes including fire safety zones for each residential facility. The evacuation route postings will be checked annually by the University Security Department and will be updated and/or replaced as needed.