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**APPROVED BY:**

<b>Approval Body</b>	<b>Name</b>	<b>Authentication Date</b>
President	Patricia E. Alvoet, EdD, MSN, RN, NPD-BC	04/22

## PURPOSE

This policy provides the framework for investigating and addressing sexual harassment under Title IX and Texas state law.

## DEFINITIONS

**Complainant** – An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent** – Sexual activity requires mutual consent. Consent is means a voluntary and positive agreement between the participants to engage in sexual activity. It is the responsibility of the person initiating a sexual activity to ensure consent of the other(s) in each instance of sexual activity before the person initiates the activity. One should presume that consent has not been given in the absence of a clear, positive agreement between the participants.

Consent must be clear and unambiguous for each participant at every stage of a sexual encounter and may be withdrawn at any time. Consent cannot occur in the setting of force, coercion, or incapacitation. A prior relationship does not indicate consent to future activity. A person who is mentally or physically incapacitated, either through the effect of drugs or alcohol or for any other reason, is not capable of giving valid consent.

**Education Program or Activity** – Includes but is not limited to locations, events, or circumstances over which the school exercises substantial control over both the respondent and the context in which the sexual harassment occurred. It includes activity that occurs at an affiliated institution where students perform clinical rotations.

**Formal Complaint** – A written document filed by a complainant or by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. If filed by the complainant, it can be a document or electronic submission and must contain the complainant's physical or digital signature or otherwise indicates the complaint is the person filing the formal complaint. The formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or any other method designated by the school.

**Respondent** – An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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

1. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, or objectively offensive that it effectively denies a person equal access to the school's education program or activity;
2. An employee of the school conditioning the provision of an aid, benefit, or service of the school on a student's participation in unwelcome sexual conduct;

3. Sexual assault, which is a forcible or nonforcible sex offense that meets the definition of rape, fondling, incest, or statutory rape;
4. Dating violence, which is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the (a) length of the relationship, (b) type of relationship, and (c) frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse;
5. Domestic violence, which is felony or misdemeanor crimes of violence committed by (a) a current or former spouse or intimate partner of the victim, (b) a person with whom the victim shares a child in common, (c) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (d) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or
6. Stalking, which is engaging in 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. Course of conduct is two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by an action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. A reasonable person is one under similar circumstances and with similar identities to the victim. Substantial emotional distress is significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**Supportive Measures** – Non-disciplinary, nonpunitive, individualized services offered as appropriate, reasonably available, and without fee or charge to either or both a complainant and/or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures will restore or preserve equal access for both the complainant and respondent to the educational program or activity without placing an unreasonable burden on either party or compromising the safety of the education environment while deterring further incidents of sexual harassment. They will be individualized, offered equitably to all involved parties, and may include, but not be limited to:

1. Referrals to community counseling resources;
2. Issuing a non-contact order prohibiting the parties from having contact with each other;
3. Extensions of assignment deadlines or testing dates, which may include leave of absence, where requested or appropriate;
4. Modifications to classroom, lab, or clinical assignments. In the case of employees, modifications to work responsibilities, including a change of work station location, if appropriate;

5. Making arrangements for alternative academic environments or remedies for employees contained in Tenet Healthcare or Baptist Health System policies;
6. Campus escorts and increased security presence;
7. No-contact orders between the complainant and respondent, applicable to both parties.

## **SCOPE**

This policy applies to employees, students, volunteers and other involved in Baptist Health System School of Health Professions education programs or activities, whether on or off campus.

Sexual discrimination or harassment involving employees is addressed in Tenet Healthcare and Baptist Health System policies.

## **POLICY**

The School of Health Professions complies with all applicable Federal civil rights laws and does not discriminate on the basis of age, race, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex (including pregnancy, childbirth, and related medical conditions), sexual orientation, and gender identity or expression.

Anyone participating in Baptist Health System School of Health Professions education programs or activities is prohibited from conduct that constitutes sexual discrimination or harassment.

Any complaint of sexual discrimination or harassment reported to the school will be addressed in accordance with this policy, Title IX, and Texas state law.

A preponderance of the evidence standard will be used in any investigation and/or hearing. Preponderance is the greater weight of the evidence and based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

The school will not subject students to disciplinary actions for violations (*e.g.*, alcohol or drug consumption, academic misconduct, or non-academic misconduct) disclosed during the course of any investigation and/or hearing. The absence of such disciplinary action encourages students to report sexual harassment and participate in proceedings without fear of reprisal.

Employees and students are expected to fully cooperate with school investigations regarding reported discrimination, harassment, or retaliation as defined by this policy. Full cooperation with an investigation requires participants to maintain confidentiality to respect the privacy and rights of the individuals involved, maintain a harmonious work environment, minimize any risk of retaliation, and preserve the integrity of the investigative process. The school's confidentiality requirement during a school investigative process does not prohibit filing a police report or filing a complaint with a government agency.

Except for disclosures required by local, state, or federal law, the school will disburse information regarding such cases only to the parties and to individuals responsible for preparing the school's response. The school does not require mental health counselors, pastoral counselors,

social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such a person, to report, without the individual's consent, incidents of sexual harassment to the school in a way that identifies the individual.

The school prohibits any school employee or student from retaliating against anyone for reporting or submitting a sexual harassment complaint. The school also forbids retaliating against anyone who helps in the investigation of a sexual harassment complaint. Any person who is aware of or observes retaliation should promptly notify the Title IX Coordinator or school President.

## **PROCEDURES**

### **Reporting**

1. Any employee who believes sexual discrimination or harassment has occurred must report the incident to must report the incident in person, by mail, by telephone, or by e-mail to the school President or directly to Human Resources. Instances involving employees will be investigated by Human Resources, not the Title IX Coordinator.
2. Any student or other person who believes sexual discrimination or harassment has occurred may report in person, by mail, by telephone, or by e-mail to the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the information.
3. If a crime has been alleged, the San Antonio Police Department should be contacted; and efforts to preserve evidence, as appropriate, should be followed.

Upon receipt of a report, the Title IX Coordinator must promptly and confidentially contact the complainant to:

- Discuss the availability of supportive measures with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the process for filing a formal complaint if one has not already been filed.

If the report is not a formal complaint, the Title IX Coordinator will confer with the school President and Compliance Officer, taking into consideration the complainant's wishes and only sign a formal complaint to initiate an investigation over the wishes of the complainant when it is not clearly unreasonable in light of the known circumstances.

When notified of such, the school will honor any court-ordered no-contact orders, restraining orders, or any other protection instruments in place. Violating supportive measures designed to maintain the parties' distance from each other may result in a separate non-academic misconduct charge independent of the initial complaint.

The school will refrain from disciplining the respondent prior to investigating a formal complaint of sexual harassment.

## Investigation of Formal Complaint

1. **Intake Assessment** – The Title IX Coordinator or designee will promptly perform an intake assessment upon receiving a formal complaint and initiate an investigation, unless the parties agree to an informal resolution.
2. **Informal Resolution** –The Title IX Coordinator or designee may be able to facilitate an informal resolution, such as mediation, providing the parties’ voluntary, written agreement to an informal resolution. The school may not require either the complainant nor the respondent to waive the right to an investigation and adjudication of the formal complaint. A formal complaint involving an employee cannot be resolved informally; in such cases, BHS Human Resources will take the lead in investigation and final determination.

If an informal resolution agreeable to the parties is not reached within a reasonable time, the Title IX Coordinator will call for a formal investigation

3. **Notice** – The Title IX Coordinator or designee will provide simultaneous written notice of the formal complaint to the complainant and respondent within a reasonable period of receiving the formal complaint.
4. **Advisor** – Parties have the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. A party may be accompanied by his or her advisor to any meeting or proceeding related to a complaint under this policy.
5. **Title IX Investigators** – The school President will identify Title IX investigators who will treat all parties (complainant, respondent, witnesses, etc.) equitably and fairly and objectively review all evidence. The Title IX investigators will conduct interviews with the complaint, respondent, and any witnesses, providing notice of any interviews, meetings, or hearings. Title IX investigators must disclose any conflicts of interest or personal bias related to any party; and if identified, the school President will select a replacement investigator(s). At no time may Title IX investigators solicit or use information protected under a legally recognized privilege, without the holder of that privilege having waived privilege.
6. **Investigation Report and Response** – After interviewing all parties and gathering all relevant evidence, the Title IX investigators will collaborate to complete a report, which will include a summary of the steps taken, with consideration given to the alleged incident, the identification of all parties and witnesses, findings of fact, evidence relevant to the incident, the specific policy alleged to have been violated, and any other information the investigators consider appropriate. The investigation report will provide relevant evidence that will be part of the hearing, if the complaint is not dismissed. The Title IX investigators will report their findings to the Title IX Coordinator and the school President. Before finalizing the investigative report, the Title IX Coordinator will provide the report to the complaint, respondent, and their advisors. The parties have 10 days to review the report, along with the evidence, and provide any response/rebuttal to the Title IX Coordinator.

Once the Title IX Coordinator or designee receives or should have received the parties’ written response to the investigation report, the Title IX Coordinator in collaboration with the

school President shall determine whether the investigation revealed allegations rising to the level of sexual harassment as defined in this policy. If so, the Title IX Coordinator shall arrange for a hearing conducted by a third-party hearing officer named by the school President. If the investigation does not prove Title IX sexual harassment occurred and all parties express agreement in writing, the matter will be considered closed. In such a case, other school misconduct policies may apply. Supportive measures may continue, if requested and appropriate.

- 7. Dismissal of Formal Complaint** – The school must dismiss a formal complaint under Title IX if the alleged conduct: (a) would not constitute sexual harassment, even if it were to be proven; (b) did not occur in one of the school’s educational programs or activities; or (c) did not occur against a person in the United States. Allegations raised in a formal complaint dismissed for these reasons may be considered under other school misconduct policies.

## **Hearing**

When the investigative report finds Title IX sexual harassment may have occurred, the school will hold a hearing conducted by a third-party hearing officer. The Title IX Coordinator shall provide the parties with simultaneous written notice of the hearing. The hearing officer will be an independent arbiter or mediator selected by the school President and without bias or conflicts of interest. The hearing officer cannot be the Title IX Coordinator or Title IX investigators. The Title IX Coordinator shall provide the hearing officer with the investigation report and the parties’ responses at or before the hearing. The hearing will be conducted live and will be recorded and/or transcribed. Upon request, the parties and their advisors may be located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the proceedings.

Both the complainant and respondent will have an opportunity to present witnesses and evidence at this hearing. The complainant and respondent may be accompanied by an advisor, which can be legal counsel. If either party does not have an advisor, the school will provide an advisor of the school’s choosing and at the school’s expense to conduct questioning during the hearing. Neither the complainant nor the respondent will question the other party; however, the hearing officer must allow each party’s advisor to question and cross-examine the other party and any witnesses. Personal attendance is not required from either party; neither is a party required to answer cross-examination questions. The hearing officer cannot use a party’s refusal to participate in the hearing against the party but will use other evidence offered, including statements (for example, emails and/or text exchanges between the parties), in considering a determination. At no time will information protected under a legally recognized privilege, without the holder of that privilege having waived privilege, be allowed.

## **Determination**

The Title IX Coordinator will deliver the hearing result, the result’s rationale, and any recommended remedies to the complainant, respondent, and their advisors in writing simultaneously and within a reasonable time period after the hearing. The hearing officer’s determination becomes effective 10 days after the parties received or should have received notice from the Title IX Coordinator. The Title IX Coordinator is responsible for effective implementation of any remedies and notice to the school’s Compliance Officer.

## Determination Resolutions

1. **Dismissal** – The school may dismiss a formal complaint at any time during the investigation, hearing, or appeal when: (a) The complainant withdraws the formal complaint or any allegations therein in writing to the Title IX Coordinator; (b) the respondent is no longer enrolled in or employed by the school; or (3) specific circumstances prevent the school from gathering evidence sufficient to reach a determination. In case of a dismissal under any circumstance, the Title IX Coordinator will notify the complainant, respondent, and their advisors in writing of the dismissal and the reason for the dismissal.
2. **Students** – If the investigation or hearing reveals sexual harassment was committed by a student, further action will be taken including, but not limited to, any and all disciplinary actions set forth in the school’s Non-Academic Student Misconduct policy.
3. **Employees** – If the investigation or hearing reveals sexual harassment was committed by an employee, further action will be taken as contained in Tenet Healthcare or Baptist Health System policies and Professional Standards.
4. **Third Parties** – If the investigation or hearing reveals sexual harassment was committed by a non-employee non-student individual, further action may be taken including, but not limited to, immediate severance and termination of any contractual or business relationships.

## Appeals

Either party may appeal in writing the school’s dismissal of a formal complaint and/or the determination of the hearing officer. The Title IX Coordinator will notify the complainant, respondent, and their advisors in writing and simultaneously of the filing of an appeal.

The school President will select the appeal officer, who may not be the Title IX Coordinator, Title IX investigator, or hearing officer. An appeal may be granted based on:

1. A procedural irregularity that affected the hearing officer’s determination.
2. New evidence not reasonably available at the time of the hearing officer’s determination or the school’s dismissal of the complaint.
3. Presence of a bias or conflict of interest on the part of the Title IX Coordinator, Title IX investigator, or hearing officer that affected the hearing officer’s determination.

Other bases for appeal may be brought forward for consideration by the appeal officer; however, the appeal officer will not conduct a rehearing or consider an appeal simply on the basis of a party’s disagreement with the hearing officer’s determination. The appeal officer will conduct a further investigation based on the basis of the appeal and make a determination as to the validity of the appeal. The appeal officer will also determine the impact, if any, on the hearing officer’s determination. This may or may not result in changing the determination. The Title IX Coordinator will provide the results of the appeal to the complaint, respondent and their advisors in writing simultaneously and within a reasonable time period. The results of the appeal become

effective 10 days after the parties received or should have received notice from the Title IX Coordinator. The decision of the appeal officer is final.

## **Records Retention**

All documents related to the formal complaint, dismissal, investigation, hearing, determination, and appeal (if applicable), including transcripts and/or audio or video recordings of hearings, will be maintained in the administration office for 7 years upon resolution or dismissal of the complaint.

## **REFERENCES**

34 US Code Subtitle I, Chapter 121, Subchapter III: Violence against women. From Title 34 – Crime control and law enforcement Subtitle I – Comprehensive acts, Chapter 121 – Violent crime control and law Enforcement, §12291 Definitions and grant provisions.

<https://uscode.house.gov/view.xhtml?path=/prelim@title34/subtitle1/chapter121/subchapter3&edition=prelim>

85 Fed Reg 30026. (2020, May 19). Rules and regulations.

<https://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf>

Texas Higher Education Coordinating Board. (2019, December 30). Sexual misconduct policy: Glossary/definitions. <https://reportcenter.highered.texas.gov/Training-materials/handouts/Sexual-Misconduct-Policy-Glossary/>

Thompson Coburn LLP (2020, July). An introduction to managing Title IX sexual harassment on campus: Title IX training series. <https://www.bshp.edu/current-students/student-life/title-ix/>

U.S. Department of Education (2021, August 24). Dear students, educators, and other stakeholders letter. [https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf?utm\\_content=&utm\\_medium=email&utm\\_name=&utm\\_source=govdelivery&utm\\_term=](https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VRLC.pdf?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=)