

Policy 412 - Sexual Misconduct Policy

Responsible Department: Title IX Office

Responsible Administrator: Title IX Co-Coordinators

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I. PURPOSE

The purpose of this policy is to maintain a work and academic environment that is free of sexual misconduct, as defined herein. This policy provides information related to sexual misconduct reporting, supportive measures, and prompt and equitable procedures to resolve complaints.

II. SCOPE AND JURISDICTION

This policy provides reporting options, supportive measures and prompt and equitable procedures to resolve sexual misconduct complaints for ACU students, employees, or anyone else participating in or attempting to participate in ACU's Educational Programs and Activities. As explained below, its application is not necessarily limited solely to

ACU's campus but extends to its Educational Programs or Activities or conduct that, while occurring elsewhere, impacts the educational or employment environment.

Misconduct that is alleged to have occurred outside of these contexts or that is committed by a person outside the ACU community (i.e., not an employee or student) does not fall under this policy. Still, where the university's response is so limited, it will advise the reporting party regarding their right to any applicable Supportive Measures, local resources and rights to file a complaint with the alleged Respondent's school or local law enforcement within the jurisdiction where the misconduct occurred. Reports related to misconduct of vendors serving ACU through third-party contracts can be made to the Title IX Office, but are subject to the policies and procedures of the vendor's employers.

III. POLICY

A. Prohibition Against Sexual Misconduct – Sexual misconduct, as defined below, will not be tolerated at Abilene Christian University. It is a breach of community that expresses disrespect, exploits and undermines relationships based on trust, and interferes with learning and productive work. Inquiries about the application of these laws may be referred to one of the Title IX Co-Coordinators or the Assistant Secretary of the Department of Education, whose contact information can be found [here](#).

B. Responding and Reporting – In keeping with Biblical teaching, responding to personal harms like sex discrimination can operate at three levels: individual rebuke, supported resolution, and/or institutional discipline. This policy addresses these options as follows:

1. Individual Action – Any person who experiences Sexual Misconduct may object to this behavior by telling the Respondent to stop and addressing the harms caused.
2. Supported Resolution – As set out in Section XII, a person may also report Sexual Misconduct to the Title IX Office, who will walk alongside the person in determining how best to address the Respondent's behavior and help the parties develop appropriate solutions to address the harms caused; and/or
3. Internal Investigation – As set out in Section XIII, a person may also report Sexual Misconduct to the Title IX Office and ask the office to undertake a formal internal investigation of the incident in order to determine (1) if a policy violation occurred and (2) if so, an appropriate disciplinary response.

ACU encourages all reports to be made in good faith. If an investigation results in a finding that an accusation of Sexual Misconduct or retaliation was made in bad faith or maliciously, the accuser may be disciplined appropriately. However, filing a complaint or providing information that a party or witness genuinely believes is accurate but which is ultimately dismissed due to insufficient evidence or found to be untrue does not constitute intentional false reporting.

C. Amnesty from Code of Conduct Violations – Sometimes, Complainants or witnesses are hesitant to report or participate in resolution processes because they fear

that they themselves may be in violation of certain policies, such as curfew, underage drinking, illegal drug use or the university's Sexual Stewardship Policy.

Under Texas law, however, the university may not take any disciplinary action against an enrolled student or employee who in good faith reports being the victim of, or a witness to, an incident of sex-based harassment, sexual assault, dating violence, or stalking for a violation by the student or employee of the university's code of conduct occurring at or near the time of the incident. This means that while the university may provide support and education options, it will not discipline students or employees for conduct violations in such cases. Such immunity does not apply to students or employees who are the subject of the complaint or to more serious code of conduct violations that would typically result in suspension or expulsion (e.g., illegal drug distribution).

D. No Retaliation – Neither ACU nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this 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 under this part. Intimidation, threats, coercion, or discrimination, including charges against an individual for Code of Conduct violations that do not involve Sexual Misconduct, 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 this policy, constitutes retaliation. A party may also be responsible for retaliation by someone affiliated with them (e.g., a friend or family member). Any such behavior should be reported to one of the Title IX Co-Coordinator immediately. Allegations of retaliation will be investigated and addressed under the process set out in this policy.

E. Conflicts of Interest or Bias – If the Complainant or Respondent contends that anyone from the Title IX Office or anyone else that plays a role in the resolution process (i.e., Co-Coordinators, Investigator, Adaptable Resolution Facilitator, or a Decision Maker) has a conflict of interest or bias in fulfilling their responsibilities under this policy, the university encourages the party to raise those issues with ACU's [Office of General Counsel](#) so that they can be considered and addressed. Parties must raise the issue of a conflict of interest within two business days of learning the identity of the administrator and their role in the process. Failure to raise a conflict of interest concern within two business days of learning the identity of the administrator assigned will act as a waiver of any perceived conflict.

F. Notification and Training – In an effort to prevent Sexual Misconduct, ACU will provide, near the beginning of each long semester, all employees and students with a notification regarding this policy and protocols for reporting, including where to file a complaint. It will also provide periodic training for employees and training for all new freshmen and undergraduate transfer students before or during the first semester enrolled. Participation in such training is required.

IV. DEFINITIONS AND PROHIBITED CONDUCT

A. "Report" – information related to an alleged incident of Sexual Misconduct

- B. **“Reporter”** – the person that reports the alleged Sexual Misconduct to the Title IX and Sexual Misconduct Office (Title IX Office) or one of the Title IX Co-Coordinators. Reporters might be the Complainant or someone else like an employee, friend, or parent.
- C. **“Supportive Measures”** – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed (also known as Interim or Protective Measures)
- D. **“Complainant”** – an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct
- E. **“Respondent”** – an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct
- F. **“Formal Complaint”** – A written document signed by the Complainant and/or one of the Title IX Co-Coordinators alleging sexual misconduct against a Respondent and requesting the university resolve the complaint.
- G. **“ACU’s Educational Program and Activities”** – includes locations, events, or circumstances over which ACU exercised substantial control over both the Respondent and the context in which the Sexual Misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by ACU. This includes ACU’s remote learning platform (Canvas).
- H. **“Sexual Misconduct”** – A broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature as defined further below. Sexual Misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex. Based on varying applicable laws, ACU has developed the following categories and related definitions for the types of Sexual Misconduct, some that fall under the legal requirements of Title IX and others that do not. (The conduct discussed in this policy may also constitute violations of criminal and civil law, which may provide opportunity for redress beyond the scope of this policy. Criminal definitions under state and federal law for some of the conduct described under this policy can be found in Appendix A to this policy. The university will respect a Complainant’s decision either to pursue law enforcement remedies or to decline to pursue that option as discussed further in Section VI.C.)
 - 1. **Non-Title IX Sexual Misconduct (Category 1)**
 - 1. Sexual Harassment in Employment Context – unwelcome, sex-based verbal or physical conduct which unreasonably interferes with a person’s work performance or creates an intimidating, hostile, or offensive work environment
 - 2. Sexual Harassment in Education Context – unwelcome, sex-based verbal or physical conduct which is sufficiently severe, persistent, or pervasive that the conduct interferes with a student’s ability to participate in or benefit from educational programs or activities at a postsecondary educational institution. (ACU is

committed to the principles of academic freedom and responsibility, as set out in the Faculty Handbook (p. 12). This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom. Therefore, this policy shall be interpreted in a manner consistent with that principle as it relates to academic research, discussions and assignments related to issues of sex and sexuality.)

3. Sexual Exploitation – A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above, for their own benefit or for the benefit of anyone other than the person being exploited. Examples of Sexual Exploitation include, but are not limited to:
 - i. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - ii. Exposing one's genitals or inducing another to expose their genitals in non-consensual circumstances.
 - iii. Taking pictures, video, or audio recording of another person in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
 - iv. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - v. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 - vi. Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious sexual situations without their consent.
2. **Non-Title IX Sexual Misconduct (Category 2)** – Applies to conduct on the basis of sex occurring anywhere that negatively impacts the Complainant's educational or employment environment
 1. Sexual Assault – An offense that meets the definition of rape or other sex offenses:
 - a) *Rape* – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the victim's consent.

- b) *Other Sex Offenses* – Any sexual act directed against another person without the victim’s consent, including instances where the victim is incapable of giving consent.
 - (a) *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification, without the victim’s consent, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
 - (b) *Statutory Rape* – Sexual intercourse with a person who is under the statutory age of consent.
- 2. Dating Violence – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 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.
- 3. Domestic Violence – A felony or misdemeanor crime of violence committed by (i) a current or former spouse or intimate partner of the victim; (ii) a person with whom the victim shares a child in common; (iii) a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (iv) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (v) any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- 4. Stalking – 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.
 - a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;
 - b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim;
 - c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 5. Complicity in Sexual Assault – Any act that knowingly aids, facilitates, promotes, or encourages the commission of Sexual

Assault by another person. A Complainant may allege that someone besides the Respondent is complicit in the Sexual Assault and that allegation will be investigated and addressed pursuant to the policies set out here as an allegation of Complicity in Sexual Assault.

3. **Title IX Sexual Misconduct** – Applies only to conduct on the basis of sex occurring in ACU's Education Programs and Activities within the United States. (Title IX legal requirements apply to these violations.)

1. Title IX Sexual Harassment

- a) *Quid Pro Quo Harassment by Employee* – An ACU employee conditioning the provision of aid, benefit, or service on an individual's participation in unwelcome sexual conduct
- b) *Denial of Equal Access* – Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the ACU education program or activity (including employment)

2. Title IX Sexual Assault – Any attempted or actual sexual act including Rape, Sodomy, Sexual Assault With An Object, or Fondling directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent. The National Incident-Based Reporting System (NIBRS) offers the following definitions of sex offenses:

- a) *Rape* – (Except Statutory Rape) The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- b) *Sodomy* – Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
- c) *Sexual Assault With An Object* – To use an object or instrument (other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- d) *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- e) *Statutory Rape* – Sexual intercourse with a person who is under the statutory age of consent.

3. Title IX Dating Violence – 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 consideration of the following factors: (i)The length of the relationship; (ii) the type of relationship; (iii)The frequency of interaction between the persons involved in the relationship. For purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or threats of such abuse.
 4. Title IX Domestic Violence – Conduct that constitutes a felony or misdemeanor crime of violence committed (a) by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, (b) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (c) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or (d) by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
 5. Title IX Stalking – Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.
 - a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;
 - b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim;
 - c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- I. **“Other Violations”** – Based on the personal nature of the complaints filed under this policy and the desire to ensure a fair and equitable process, the following are also prohibited under this policy:
1. Unauthorized Disclosure - Distributing or otherwise publicizing materials created or produced during an investigation or resolution process except as required by law or as expressly permitted by the Title IX Office; or publicly disclosing institutional work product that contains personally identifiable information without authorization or consent. Nothing in this section restricts the ability of the parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this policy); consult with their family members, confidential resources, or Advisors; or otherwise prepare for or participate in the resolution process.

2. Failure to Comply/Process Interference - Intentional failure to comply with the following: the reasonable directives of the Title IX Office in the performance of their official duties, including with the terms of a no-contact order; emergency removal or interim suspension terms; terms of a Supported Resolution agreement; or sanctions. It is also a violation to intentionally interfere with the resolution process, including, but not limited to: destruction of or concealing of evidence; actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence; intimidating or bribing a witness or party.
- J. **“Consent”** - knowing, voluntary, and clear permission by word or action to engage in on-going and mutually acceptable sexual activity. Consent is evaluated based on the totality of the circumstances from the perspective of what a reasonable person would conclude are mutually understandable words or actions.
1. Knowing and Voluntary - Consent is not valid if acquired through means of force, the threat of force, coercion, incapacitation, or any other fact that would eliminate an individual’s ability to exercise their own free will to choose whether or not to participate in sexual activity.
 2. Clear - For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. However, relying solely on non-verbal communication can lead to misunderstandings and harmful consequences for all of the parties involved because this form of communication may be unclear. Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
 3. Words or Actions – Silence, passivity or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. In other words, just because someone didn’t say “stop” or “no” is not in and of itself consent to engage in sexual activity. Still, while resistance is not required or necessary, it is a clear demonstration of non-consent.
 4. On-going – Consent to some sexual contact cannot be assumed to be consent for other sexual activity. A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent or limitations on the scope of their consent, those conditions and limitations must be respected. Consent also cannot be implied or inferred by attire, time or place (e.g., being invited to a person’s residence at a certain time of night). Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease.
- K. **“Force”** – Force is the use of physical violence and/or physical imposition or strength to gain sexual access. Sexual activity that is forced is, by definition, non-

consensual. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. A threat often occurs when someone says or implies that there will be negative consequences from failing to acquiesce to or comply with sexual activity. Similarly, coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued/repeated pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, and duration of the pressure involved.

- L. **“Incapacity”** - Any state where a person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption. This includes person whose incapacity results from a temporary or permanent physical or mental health condition. Because consent may never be provided by an incapacitated person, one must assume consent has been withdrawn should an individual become incapacitated at any point during a sexual act or encounter.
1. Intoxication – While drug or alcohol intoxication in and of itself is not the same as being incapacitated, it can be difficult to know when someone has passed from the state of intoxication to the point of incapacitation. This includes instances when someone has “blacked out” but appears to be a willing sexual participant. Therefore, engaging in sexual activity with someone who has been drinking raises the risk of confusion related to consent. Moreover, engaging in sexual activity while under the influence of alcohol or drugs can impair an individual's ability to make sure they have received consent. Still, the use of alcohol and/or drugs by the person initiating sexual activity will never be an excuse for failing to obtain consent.
 2. Must know or should have known of incapacitation - If the Respondent neither knew nor should have known the Complainant to be incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

V. **EMERGENCY ASSISTANCE, MEDICAL TREATMENT, AND EVIDENCE PRESERVATION**

ACU encourages individuals who have experienced sexual assault or relationship violence to visit Hendrick Medical Center for medical treatment and evidence preservation, regardless of reporting to police or the university. This helps maintain legal

options and may support ACU complaints. If available, ACU may use forensic test results from law enforcement or medical providers in any related internal investigations.

ACUPD officers trained to assist Complainants can explain rights, options, and resources. For example, ACUPD can help with hospital transportation for sexual assault exams, connect to resources, and assist with restraining orders. (For more details, see [Emergency Help and Medical Treatment](#).)

If relevant to their report, the Title IX Office will share the following with the Complainant during the initial meeting:

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or a secure evidence container (if provided one by law enforcement)
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.

VI. REPORTING OPTIONS AND EMPLOYEE OBLIGATIONS

This section describes ways that persons who have experienced a violation can report and the obligation of ACU employees to report such violations. A Report provides notice to ACU of an allegation of a violation of this policy and provides an opportunity for the Title IX Office to provide information, resources, and supportive measures. A Formal Complaint is a written and signed request to the Title IX Office that the Complainant would like to initiate an appropriate resolution procedure (e.g., Supported Resolution or Internal Investigation). A Complainant or individual may initially make a Report, and a Complainant may then decide at a later time to make a Formal Complaint stemming from that Report. Regardless of whether an individual ultimately chooses to make a Formal Complaint, upon receiving a Report, the university will provide Complainants with options related to Supportive Measures and provide information regarding making a Complaint and related resolution options. Reports or Complaints may be made using any of the following options.

- A. **Direct Reporting to Title IX Office** – Reports/complaints to the Title IX Office may be made using the [electronic reporting form](#), by email or telephone voice mail at any time, or in-person during business hours.

Title IX Co-Coordinators

Chris Riley, J.D., MPA
Hardin Administration Building, Rm. 204
Abilene, Texas 79699
325-674-6802
chris.riley@acu.edu

Sherita Nickerson, M.Ed.
McKinzie Hall, Room 142 (Title IX Office)
Abilene, Texas 79699

325-674-6802
sherita.nickerson@acu.edu

As noted above, reporting to the Title IX Office does not require pursuing a Formal Complaint (Please see Section VII for more information). When using the online reporting form, providing contact information is optional except in situations where employees are required to report under Texas law, as explained in Section E. Anonymous Reporters should understand that while the university will do its best to address anonymous reports, it may be limited in its ability to investigate and otherwise respond to or address them.

- B. Confidential Reporting/Support Options** – If a Complainant wants to report but desires that their personally identifiable information not be reported to the Title IX Office, they are encouraged to speak to a Confidential Employee outlined below under Section E (“Employee Reporting Requirements”) or an [off-campus confidential resource](#).
- C. Reporting to Law Enforcement** – Separate and apart from violations of this policy, many sexual misconduct offenses may also be crimes in the state or locality in which the incident occurred (see Appendix A).
1. Reporting Encouraged and Assistance Available – ACU encourages any related criminal violations to be reported to ACUPD so that Complainants can consider legal options. The Title IX Office can provide a Complainant with assistance in notifying ACUPD, or if a Complainant declines to report the crime to law enforcement, the Title IX Office will only provide the type of incident reported and its approximate location as required by federal law. These options are available to the Complainants, who may change their minds about pursuing them at any time. For example, Complainants may seek a protective order from a court against the alleged Respondent(s), pursue a civil action, and/or participate in a law enforcement investigation and criminal prosecution of the alleged Respondent. The university will honor such protective orders. It is important to note that reporting to ACUPD or any other law enforcement does not require filing criminal charges and that there are options for filing criminal complaints using a pseudonym. ACUPD can be contacted at:

ACU Police Department
325-674-2305 (non-emergency)
325-674-2911 (emergency)
acupolice@acu.edu
ACU Box 28010
1634 Campus Court
Abilene, Texas 79699

2. Cooperation with Law Enforcement Requests – The University will comply with a law enforcement request for cooperation, and such cooperation may require the University to temporarily suspend any fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The University will promptly resume its resolution/investigation of the complaint after receiving approval from law enforcement or as soon as notified that law enforcement has completed the evidence gathering process, whichever is earlier. This length of time will vary depending on the specific circumstances of each

case, but in no case will the university suspend any investigation for an ongoing or indefinite period.

- D. **External Reporting** – Complainants always have the right to file a complaint with the United States Department of Education. A complaint must be filed within 180 calendar days of the date of the alleged conduct unless the time for filing is extended by OCR for good cause shown under certain circumstances.

Office for Civil Rights Dallas
Office U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
Telephone: 214-661-9600
Facsimile: 214-661-9587
Email: OCR.Dallas@ed.gov

U.S. Department of Education, Office for Civil Rights (OCR)
Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100
1-800-421-3481
ocr@ed.gov

- E. **Employee Reporting Requirements** – Under Texas law, all university employees (besides Confidential Employees identified below) are considered mandatory reporters. This means if, in the course and scope of their employment, they witness or receive information regarding the occurrence of an incident that (1) they reasonably believe constitutes Sexual Misconduct under this policy and (2) is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident, they must promptly report (preferably within 24 hours) the incident to the Title IX Office (preferably through the [electronic reporting form](#)). Regardless of method, the report should provide all relevant details needed to determine what occurred and address the situation, including the name(s) of the parties or witnesses and any relevant facts, including date, time, and location and requests for confidentiality.

1. Exceptions to Reporting Requirements

- a) *Student Employees* – The above requirements do not apply to student employees, which are individuals whose employment is incidental to their status as students at the university. However, based on their unique role and interaction with students, student employees in Residence Life and the SOAR Office are considered mandatory reporters for information learned about students during the course and scope of their employment.
- b) *Employee as Complainant* - The above obligations do not apply to an employee who has been personally subject to conduct that reasonably may constitute a violation.

2. Modifications to Reporting Requirements

- a) *Confidential Employees* – There are three categories of ACU employees who are considered Confidential Employees: i) those who receive such information under circumstances that render the employee's communication confidential or privileged under other law (e.g., on-campus medical and

mental-health providers whose employment requires confidentiality under the law and who receive information while functioning within the scope of their duties); ii) those designated by ACU as a person who can speak confidentially about these matters (e.g., the two ACU Campus Ministers (ACU Campus) or Dean of Vocational Formation (ACU Dallas), who ACU has designated as confidential resources); and iii) people who learn about violations while conducting academic human subjects research as part of a study approved by ACU's Institutional Review Board (IRB). See [Resources](#) for contact information about making a confidential report. These individuals will maintain the confidentiality of a Complainant's identity unless (i) they are given permission to share information by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 17; or (iv) as otherwise required or permitted by law or court order. Additionally, employees who fall under the first two categories of Confidential Employees above will also submit anonymous statistical information for legally-mandated reporting purposes to the Title IX Office excluding any information that would violate the legal expectation of privacy, absent consent to do so (e.g., type of incident, location, date).

- b) *Public Awareness Events* – Employees who learn of incidents as a part of a public awareness event sponsored by ACU or related student organizations (e.g., Take Back the Night) are not required to report.
3. Confidentiality – Although employees are required to report conduct under this policy to one of the Co-Coordinators, they will otherwise maintain the privacy of the information related to the matter reported. In other words, notification to an employee does not necessarily mean information will be shared with the accused individual.
4. Notice of Obligations – To the extent possible, the employee should explain this obligation to the Reporter before the report is made, identify reporting options (i.e., confidential, direct, and law enforcement), and clarify that the individual has an option to ask that the Co-Coordinators maintain his or her confidentiality.
5. Importance of Information – Even if no action is requested by the reporter or they are unsure about what they want to do, such reporting to Title IX is legally required by Texas law and is necessary for various reasons, including to ensure that persons possibly subjected to such conduct receive appropriate services and information; that ACU can track incidents and identify patterns; and that, where appropriate, ACU can take steps to protect the university community. Reported allegations will be reviewed by one of the Co-Coordinators, who will assess the report and consult with the Complainant.
6. Failure to Report – Employees who have an obligation to report under this policy and fail to do so may be subject to disciplinary action, including termination, as required by Texas law for failure to report Sexual Misconduct. Determinations related to such action will be made in accordance with any applicable disciplinary procedure as established by policy or contract (e.g., Special Termination).

VII. INTAKE, SUPPORTIVE MEASURES AND NOTICE OF RIGHTS AND OPTIONS

- A. Determination of Scope and Jurisdiction** – Within one (1) business day of receiving a Report, the Title IX Office will determine whether the conduct as alleged falls within the policy’s scope and jurisdiction. If so, the Title IX Office will reach out to the Complainant. If not, the Title IX office will refer the report to the appropriate ACU office(s), refer the Complainant to any relevant internal/external resources, and/or if applicable, notify the Complainant of the dismissal in keeping with Section X.
- B. Intake, Rights, and Options** – Once scope and jurisdiction is established, the Title IX Office will attempt to contact the Complainant within one (1) business day to offer Supportive Measures and explain the Complainant’s rights and options under this process, including evidence preservation, support in notifying law enforcement, prohibitions against retaliation, an explanation of the relevant resolution procedures, and the Complainant’s ability to pursue no action or file a Formal Complaint that results in either Supported Resolution or an Internal Investigation. The Complainant will be provided with a copy of the relevant rights and options and provided a link to this policy.
- C. 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) before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. They are designed to restore or preserve equal access to ACU’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or ACU’s educational environment or to deter Sexual Misconduct.
1. Availability - The Title IX Office will promptly make supportive measures available to the parties upon receiving a report or complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the Title IX Office will inform the Complainant, in writing, that they may file a Complaint either at that time or in the future. The Title IX Office will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures. Moreover, these measures and resources are available to Complainants even if they choose not to file or pursue a Formal Complaint.
 2. General Examples – Such measures can include but are not limited to counseling or academic support services, leaves of absence, increased security and monitoring of certain areas of campus, or modification of classes or ACU work schedules (e.g., either a Complainant or Respondent may be permitted to drop an academic course without any academic penalty when the parties are enrolled in the same course). (To the extent possible, Complainant and Respondent will be offered counseling services by different counselors in the ACU Counseling Center.) The parties will also be informed regarding relevant on-campus and off-campus resources, which include the assignment of a Title IX Liaison, academic support services, and the right to report a crime or seek a protective/restraining order from campus or local law enforcement. These measures and resources are available to Complainants even if they choose not to file or pursue a Formal Complaint or if the status of a Respondent to the university is unclear (e.g., un-enrolled student or non-employee). In keeping with

legal requirements, such measures should be individualized and appropriate based on the information gathered by the Co-Coordinator, making every effort to avoid depriving any student of her or his education. The Co-Coordinator is responsible for ensuring the implementation of Supportive Measures.

3. Temporary Mutual No Contact Order – Mutual restriction on contact between the parties may be ordered by one of the Co-Coordinators upon request of either party or based on the administrative prerogative of the Co-Coordinator as a Supportive Measure. Such an order will be in writing and serves to bar any communication between the parties allegedly involved prohibiting any attempt to contact or respond to any communication from the other party, either directly or through others (e.g., friends, family members). One of the Co-Coordinators will work with the parties involved to facilitate the order between the parties so that they may attend classes and use common university facilities as appropriate. A No Contact Order may be extended after the conclusion of any resolution process at the request of either party or based on the determination by the Decision Maker (i.e., Permanent Mutual No Contact Order). In cases where a demonstrated violation of this No Contact Order has been shown, the responsible party may face disciplinary sanction under this policy, including separation from the university pending the final resolution.

D. Emergency Removal of a Student – If based on a report of a violation of this policy, a Co-Coordinator believes that the safety of any person is in imminent danger as a result of the incident, he/she will notify the President. The university also reserves the right to remove a student from its educational programs or activities, partially or entirely, based on the Co-Coordinator’s individualized safety and risk analysis that determines the student presents an imminent and serious threat to the health or safety of any student or other individual. Notification of emergency removal and the reasons for it will be communicated to the student as part of the removal process and sent to the student’s email following the process. The email will also explain that the student has the immediate opportunity to appeal the removal decision by email to the Vice President for Student Life. If the appeal is granted, the student may be allowed to return pending other necessary stipulations. If the appeal is denied, the removal will remain in effect until a final decision has been made pursuant to the standard procedures unless, before a final decision is made, the Co-Coordinator determines that the reasons for imposing the removal no longer exist.

E. Administrative Leave of an Employee – A Co-Coordinator may place an employee on paid or unpaid administrative leave based on Reports of Sexual Misconduct pending the outcome of any subsequent structured or adaptable resolution process.

VIII. COMPLAINANT'S RESPONSE

After understanding their rights, Complainants have the option of requesting no action be taken or filing a Formal Complaint in order to move forward with either Supported Resolution or Internal Investigation.

A. Request for No Further Action – If the Complainant does not wish to file a Complaint, one of the Co-Coordinators, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to

initiate a Complaint themselves. A Co-Coordinator will evaluate such requests by balancing the Complainant's desire with the university's responsibility to provide a safe and nondiscriminatory environment as well as its ability to proceed based on the available evidence and Complainant's willingness to participate as a witness. In other words, while the university wants to respect the Complainant's request, it is important to note the law may require the university to override the request, especially in cases involving sexual violence that possess a serious and imminent threat to someone's safety or if ACU cannot ensure equal access without initiating a Complaint. In making this decision, the university will consider a number of factors, including but not limited to:

- The seriousness of the alleged incident (e.g., force or violence was used, weapon involved, multiple Respondents);
 - Whether the institution has received other reports of Sexual Misconduct committed by the alleged Respondent;
 - Whether the alleged incident poses an increased risk of harm to others;
 - Does the incident pose an increased risk of the alleged Respondent committing additional acts (e.g., other complaints against the Respondent or threats of additional action by Respondent)?
 - Does the incident pose an increased risk of someone else committing additional acts under similar circumstances (e.g., a pattern of acting or a certain location)?
 - Whether the university possesses other means to obtain relevant evidence to proceed without Complainant's participation (e.g., security cameras or physical evidence).
1. Honoring Complainant's Request – If the university determines that it can honor the Complainant's request, the case will be closed with the understanding that the Complainant can later change his or her mind. The university will still take any steps it determines necessary to protect the health and safety of the ACU community in relation to the report consistent with the Complainant's requests. For example, this might include taking steps to limit the effects of alleged misconduct, such as providing increased monitoring, supervision, or security at a location where the misconduct occurred or additional prevention or public awareness training with specific groups.
 2. Moving Forward Without Complainant – When the university determines it must move forward despite the Complainant's request, the university will inform the Complainant of its need to move forward prior to commencing a Formal Complaint, which would include the identity of the Complainant. In response, the Complainant may request that the university inform the Respondent that he or she asked the university not to move forward, and the university will honor that request. In this type of case, a Co-Coordinator will sign the Formal Complaint but will not be considered the adverse party or Complainant.
- B. Filing a Formal Complaint** – Moving forward with either a Supported Resolution or Internal Investigation (see Sections XII and XIII) requires that the Complainant make and a Respondent receive a Formal Complaint, which is a written document signed by the Complainant (or a Co-Coordinator, if the Complainant is no longer involved) alleging Sexual Misconduct against a Respondent.

1. Contents – The university will provide the Complainant with a form that will allow the Complainant to provide a summary of the allegations, including time, date, and location of the alleged conduct and the name of the Complainant as well as the specific offenses implicated. The Complaint will also include which resolution process Complainant prefers. The Complainant will either complete and sign the form themselves or verbally provide the information to a Co-Coordinator, who can fill it out, so that Complainant can sign.
2. Timing of Complaint – There is no time limit for the submission of a Formal Complaint under this policy. Although laws specify timeframes within which any related legal claim must be brought, the University will assess all Formal Complaints as outlined below.

IX. INITIAL ASSESSMENT OF FORMAL COMPLAINT

No later than five (5) business days after receiving the Formal Complaint, one of the Co- Coordinators will make an initial assessment related to whether (if assumed true) the alleged conduct would constitute Sexual Misconduct. This is sometimes referred to as a reasonable cause determination. No reasonable cause exists when, even assuming that all the facts reported by the Complainant are true, no violation of this policy could exist. If reasonable cause exists, the Notice of Complaint will be provided to the parties, as explained in Section X.

- A. Mandatory Dismissal (No Reasonable Cause)** – The Co-Coordinator will dismiss the Complaint if the initial assessment reveals the alleged conduct, even if proved as Complainant alleges, would not qualify as Sexual Misconduct under this policy. The case will be closed, and a Notice of Dismissal will be provided to the parties in accordance with Section X.
- B. Discretionary Dismissal** – The Co-Coordinator may dismiss the Complaint if the initial assessment reveals that the Respondent cannot be identified, Respondent is no longer enrolled or employed by the university at the time the Complaint is filed, specific circumstances prevent ACU from gathering evidence sufficient to reach a determination as to the alleged conduct, or Complainant, after filing a Complaint, does not participate in the resolutions process. A Co-Coordinator may also dismiss a Formal Complaint if at any time the Complainant notifies the Co-Coordinator in writing that he/she would like to withdraw the complaint or any allegations. If dismissed, the case will be closed, and a Notice of Dismissal will be provided to the parties, as explained in Section X. If a Formal Complaint is dismissed for any reason, any related reports of University Code of Conduct violations may be forwarded to the Dean of Students or to Human Resources, as applicable, to be addressed under those policies and processes.
- C. Category One Transfer (Students)** – If a Co-Coordinator determines that reasonable cause exists, but the Formal Complaint identifies a student Respondent and alleges Non-Title IX Sexual Misconduct (Category 1) under Section IV. H. 1., he/she may transfer the case to the Dean of Students to be handled pursuant to the process outlined in the Student Code of Conduct in order to decide if a violation of the Sexual Misconduct policy occurred and if so, the appropriate sanctions. In that case, a Notice of Transfer will be provided to the parties in writing along with a copy of the Formal Complaint.

X. NOTICE OF DISMISSAL OR COMPLAINT

Depending on the outcome of the initial assessment of the Formal Complaint, one of the Co-Coordinator will issue a Notice of Dismissal or Notice of Formal Complaint to the parties.

- A. Notice of Dismissal** – The written Notice of Dismissal will include the Formal Complaint as well as the Coordinator’s rationale and basis for the dismissal. It will also include whether the Coordinator has provided any information related to the alleged conduct to the Dean of Students or Human Resources, as applicable, to be addressed under other university policies and processes. A Complainant may file an appeal related to the Co-Coordinator’s decision to dismiss the complaint pursuant to Section XV, F of this policy.
- B. Notice of Complaint** – The written Notice of Complaint will include the Formal Complaint as well as one of the Co-Coordinator’s determination of the appropriate category of the alleged conduct (i.e., Non-Title IX (Category 1); Non-Title IX (Category 2) or Title IX Sexual Misconduct) and outline the available resolution process (See Definitions, Section IV. H. and Resolution Processes, Sections XII-XV). The notice will also contain legally required statements related to Respondent’s presumptions of innocence, the availability of advisors, access to evidence, the prohibition against false statements and retaliation. Moreover, throughout the investigation, parties will receive written notice of the date, time, location, participants, and purpose of all investigative interviews, hearings, or other meetings to which they are a participant, with sufficient time for the party to prepare to participate. If in the course of an investigation, ACU decides to investigate allegations that are not included in the notice, ACU will provide notice of the additional allegations.
- C. Timeframes for Resolution Processes** – From the date of the Notice of Complaint is issued, a Supported Resolution can typically be resolved in 30-45 days, whereas an Internal Investigation takes between 60-120 days. The Supported Resolution Process can usually be accomplished within 30 days plus time for the parties to review and sign any resulting resolution agreement. Generally, for an Internal Investigation, the university attempts to conclude the initial investigation within 30-60 calendar days. As set out in the relevant sections below, an additional 30-60 calendar days is typically required for (1) parties to review the draft investigation reports (and related evidence); (2) the investigator finalize the report; (3) Decision Makers to conduct a live hearing, where applicable; (4) Decision Makers to consider the evidence and draft a ruling; and (5) a separate Decision Maker to consider and rule on any appeals.

Depending on the complexity and extent of the alleged conduct, more or less time may be required. In other words, the timeframes are not exact as the university allows for temporary delays of the resolution processes or the limited extension for good cause with written notice to the parties of the delay or extension and the reasons for the action. Good cause may include considerations such as the temporary absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

XI. RESPONDENT'S RESPONSE TO NOTICE OF COMPLAINT AND DETERMINATION OF RESOLUTION PROCESS

- A. Initial Meeting with Respondent** – After receiving the Notice of Complaint, the Respondent will have the opportunity to meet with one of the Co-Coordinators to address any questions related to the process and to explain the Respondent's relevant rights and options, including (1) available Supportive Measures and resources and (2) preferred method of resolution.
- B. Refusal to Participate, Withdrawal, or Transfer** – If a Respondent refuses to respond or participate, one of the Co-Coordinators will move forward with the applicable structured process. Pursuant to Texas law, after the Notice of Complaint has been issued alleging that the Respondent committed any sexual harassment, sexual assault, dating violence, or stalking, ACU may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility. Upon a student's request, the university may remove the transcript hold if the institution determines that good cause exists. Such requests should be made in writing to one of the Co-Coordinators. In such incidents, ACU will expedite the resolution process as possible and necessary to accommodate the parties' interests in a speedy resolution.
- C. Determination of Resolution Process** – One of the Co-Coordinators will ultimately decide the appropriate resolution process. Examples of factors the Co-Coordinator will consider in determining whether and how to proceed include, but are not limited to:
- Category of offense
 - The parties' preferences
 - Likelihood of success of a potential Supported Resolution
 - The nature and severity of the alleged misconduct and ongoing risk
 - Respondent's disciplinary history

Once made, that determination will be shared with the parties in writing.

- D. Advisor** – Parties involved in a resolution process may be more comfortable navigating the process with the help of a support person (Advisor). An Advisor is someone whom the party trusts to provide advice and support during the process. The Advisor need not be affiliated with the university but may not have personal involvement regarding any facts or circumstances of the alleged misconduct (e.g., the Advisor can be a friend, a family member, a person from a support or advocacy agency, or an attorney). The Advisor may accompany the party to any part of the resolution process, including any meetings with university personnel. (The process will not be significantly delayed to accommodate the Advisor's schedule.) During the process, the Advisor's only function will be to assist and/or consult with the party they are advising. In other words, the Advisor may not actively participate in the process in any way. The Advisor may not act as a spokesperson or in any way interfere with the meetings or investigation. As explained further below, during any Live Hearing, the Advisor also serves the required role of cross-examining the other party or any witnesses. For students, in order for the university to disclose any case

information to the selected Advisor, there must be a signed FERPA release form on file for that individual.

XII. SUPPORTED RESOLUTION

Supported Resolution (SR) provides an opportunity for a trained facilitator to walk alongside the Complainant in determining how best to address the Respondent's behavior and find appropriate solutions to address the harms caused. SR is not permitted to resolve complaints involving allegations by a student against an employee. SR requires that the parties voluntarily participate, but in some instances (e.g., involving Non-Title IX offenses), one of the Co-Coordinators may recommend that the parties attempt a form of SR before pursuing an Internal Investigation. Still, in those instances, one or more of the parties may disregard that recommendation. Moreover, if the parties attempt SR and do not resolve the Complaint, the Complainant may still elect to pursue an Internal Investigation. Finally, to avoid conflicts of interests, the SR facilitator will not be permitted to participate in any related Internal Investigation. Providing these alternatives is not meant to discourage an individual from pursuing an Internal Investigation.

A. SR Options – SR can include but is not necessarily limited to the options listed below. These are just the most common ways that complaints are resolved through SR.

1. Educational Conversation/Warning – When a Co-Coordinator can resolve the matter by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant to do so. Sometimes this might involve other parties as necessary (e.g., supervisors, coaches, etc.). This provides opportunities to clarify the behavior that the Complainant finds harmful and to explain how repetition could lead to an investigation and related sanctions. This conversation is non-disciplinary and non-punitive but may include a verbal warning. Such conversations will be documented as the SR for the matter. Additionally, a Co-Coordinator may implement remedial actions to ensure clarity of policies and expectations and to minimize the risk of recurrence of behaviors that may not align with institutional policy.
2. Accepted Responsibility and Resolution – When, based on the notice alone, the Respondent is willing to accept responsibility for violating policy and is willing to agree to actions that will be enforced similar to sanctions, and the Complainant(s) and Recipient are agreeable to the resolution terms.
3. Complaint Resolution Agreement
 - a) *Purpose* – A form of dispute resolution/restorative practice where a SR facilitator helps the parties reach an agreement related to what should be done to address the harm caused by the alleged misconduct. Rather than focusing on what policies have been violated, this process attempts to identify the harm caused, provides opportunities for those who caused harm to take responsibility for their behavior, and identifies mutually agreeable actions necessary to repair the harm.
 - b) *Process and Agreements* - The parties may, but are not required to, have direct or indirect contact during this process. Examples of possible options that may be utilized include but are not limited to the following: facilitated

dialogues, exchange of written letters or statements that address structured questions, or other restorative practices. Any agreements that are reached during the process must be documented, approved by the Co-Coordinator, and signed in-person or electronically by both parties. If no agreement is reached, the matter may be referred to a Co-Coordinator for further action.

B. SR Conditions – Prior to engaging in any SR process, the parties will be provided with written notice that explains the following:

1. Participation in this process does not constitute a finding of a Sexual Misconduct policy violation and therefore is not reflected on a student's disciplinary record;
2. Participation is voluntary and either party can end the SR process at any time prior to coming to a resolution (and Complainant retains the ability to file a formal complaint);
3. SR can only be used once per Respondent;
4. Neither party will rely on or share statements or information disclosed as a part of the SR process in any subsequent Internal Investigation. However, parties must be aware that information used during the SR process is subject to subpoena for use in any related legal action.
5. Any agreements that are reached during SR must be documented, approved by one of the Co-Coordinators, and signed in-person or electronically by both parties;
6. If no agreement is reached, the matter may be referred to one of the Co-Coordinator for further action;
7. If the parties agree to a resolution at the end of the SR process, they cannot start or resume an Internal Investigation based on the same allegations.
8. If a resolution is reached but not followed, it may result in disciplinary actions, such as dissolving the agreement, referring to the conduct process for non-compliance, or enforcing the agreement terms.
9. If the Respondent is later found responsible for any violations in the future, the agreement can be used in the sanctioning phase; and
10. University reserves the right to suspend or terminate the process at any time, prior to both parties resolving the complaint, and revert to the Internal Investigation process.
11. The Title IX Office only keeps copies of the complaint, notices, and final resolution agreements reached through the SR process.

XIII. INTERNAL INVESTIGATION (GENERALLY)

ACU has established two internal investigation tracks that apply based on how the Coordinator categorizes the alleged conduct (e.g., Non-Title IX (Category 1 or 2) or Title IX Sexual Misconduct): The Non-Hearing Internal Investigation track applies to Non-Title IX Sexual Misconduct, while the Live Hearing Internal Investigation track applies to Title IX Sexual Misconduct. These processes are outlined below. However, the following information applies to all tracks. (It is important to note that at any time prior to reaching a determination under the structured process, the parties, with the Co-Coordinator's approval, can voluntarily agree to pursue a Supported Resolution.)

- A. **Goals** – The goals of the structured resolution processes are to determine (1) if a preponderance of the evidence shows that the alleged violation occurred (i.e., it is more likely than not) and (2), if so, what actions the university should take to respond to the violation and prevent a recurrence. In so doing, the university strives for the resolution processes to be prompt, fair, and equitable.
- B. **Investigator** - Depending on what is being alleged, one of the Co-Coordiators will serve as the internal investigator, or he/she will assign the case to an external investigator. In keeping with Section III.E., once the parties are notified who will serve as the investigator, any concerns of conflict or bias should be reported to the Office of General Counsel.
- C. **Gathering Evidence** – Although each investigation will vary based on allegations, offenses, and other factors, the parties will be provided an equal opportunity to be interviewed regarding the alleged conduct and present relevant witnesses and other relevant evidence. During the course of the investigation, the investigator may utilize some or all of the following methods, in whatever order the investigator deems most appropriate: preparation of written statements (Non-Title IX Investigations); interviewing the parties and key witnesses in order to gather relevant information; documenting or evidence-gathering or review, and consulting expert witnesses including local law enforcement or forensic experts (as necessary and available). It is the responsibility of the investigator, not the parties, to gather the relevant evidence from the parties and witnesses to the extent reasonably possible. Throughout the process, the investigator will maintain appropriate documentation and provide status updates to the parties.
1. Written Statements – In Non-Title IX investigations, the Co-Coordinator or the Investigator may request that parties prepare written statements related to their versions of the relevant facts surrounding the complaint, including evidence of a violation under this policy or relevant evidence related to consent, incapacity, or force as herein defined.
 2. Party Interviews – The Investigator will interview the Complainant and the Respondent separately. This meeting is an opportunity for the participant to discuss his/her recollection of the event in question, voice any concerns, and work with the Investigator to determine what information may be helpful in the investigation of the allegations, including the impact that this experience has had on them. The Investigator may interview the parties more than once, as necessary.
 3. Witness Interviews – The parties have the right to identify any relevant witnesses, and the Investigator will attempt to contact and interview any witnesses that he or she deems relevant to the resolution of the complaint. Witnesses should only be encouraged to cooperate and to speak the truth. If either party, individually or through others (e.g., friends, family members, attorneys), attempts to threaten, intimidate, or otherwise improperly influence a witness, such action may result in a separate disciplinary action by the university. The Investigator will attempt to contact and interview any witnesses identified by the parties that the Investigator deems to be relevant to the resolution of the complaint. The Investigator may also interview any other persons who he/she finds to be potentially relevant to this matter. Witnesses may not bring support persons to their interviews. The Investigator will employ

best efforts to interview relevant witnesses who are no longer on campus, attempting to contact them by telephone or email.

4. Expert Witnesses – The Investigator reserves the right to consult with any experts deemed necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the investigation.
5. Document Review – The Investigator will attempt to obtain any documents or other materials deemed relevant to the investigation.
6. Privileged Information – Investigators or Decision Makers, including Hearing Officers, will not require, allow, or 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.
 - a. *Medical Records* – The university, as a part of any structured process, cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent.
 - b. *Sexual History* – Questions and evidence about the party's sexual predisposition or prior sexual behavior are not relevant unless such questions and evidence about prior sexual behavior related to (1) Respondent attempting to prove that someone other than the Respondent committed the conduct alleged by the Complainant, (2) specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; and (3) attempts to prove that Respondent has a prior pattern or practice as it relates to the conduct alleged in the Complaint.

XIV. NON-HEARING INTERNAL INVESTIGATION (NON-TITLE SEXUAL MISCONDUCT)

- A. Review of Investigation Report Draft and Relevant Evidence** – Once the investigation has been completed, the Investigator will evaluate the information obtained during this process and prepare a preliminary draft report summarizing the relevant facts received through the investigation, noting and disclosing any evidence relevant and probative to whether the alleged conduct occurred (including both inculpatory and exculpatory evidence). This includes summaries or transcripts of interviews, any written or electronic communications between the parties, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality. The Investigator will share the preliminary report with the parties and give them one week to provide written comments or feedback to the Investigator.
- B. Report Finalized and Submitted** – The Investigator will then take up to an additional week to consider the feedback, revise the report as the Investigator deems necessary, and prepare a final report. The final report will include written findings of facts and the Investigator's recommendation as to whether a violation occurred, based on a preponderance of the evidence (whether a policy violation is more likely than not). The Investigator may also draw conclusions regarding the credibility of witnesses and reliability and relevance of documentation.

C. Determination

1. Determination by Co-Coordinators - If the Investigator was external, one of the Co-Coordinator will review the report to ensure all issues regarding the complaint have been investigated and addressed, and if so, take up to five (5) business days to review the report and relevant evidence and determine whether it is more likely than not that the accused individual(s) violated the policy. In making this decision, the report will be considered and given deference by a Co-Coordinator but is not binding on his/her decision. If a Co-Coordinator concludes that it is more likely than not that the policy was violated, he/she will also consider sanctions for violations (See Section XVI). If a Co-Coordinator concludes that the preponderance of the evidence does not support a violation, the parties will be notified as set out below.
2. Determination by a Decision Maker - If the Investigator was internal, meaning one of the Co-Coordinators served as the Investigator, the Office of General Counsel will appoint a trained Decision Maker to consider the report. The Decision Maker will take up to five (5) business days to review the report and relevant evidence and determine whether it is more likely than not that the accused individual(s) violated the policy. In making this decision, the report will be considered and given deference by the Decision Maker but is not binding on his/her decision. If the Decision Maker concludes that it is more likely than not that the policy was violated, the Decision Maker will also consider sanctions for violations (See Section XVI). If the Decision Maker concludes that the preponderance of the evidence does not support a violation, the parties will be notified as set out below.

D. Notice of Determination – When a determination is reached regarding findings and/or sanctions, a Co-Coordinator or Decision Maker will concurrently provide both parties with written notice of the same within five (5) days of the decision through email. The notice will inform both parties regarding the basis of the decision based on the preponderance standard. The Complainant should also be informed of any other remedies offered to him or her individually or actions taken by the university to prevent a recurrence. Finally, the notice will also include information regarding the parties' right to appeal. Sanctions are typically not imposed until after the parties have had time for appeal. However, a Co-Coordinator or Decision Maker may decide to impose sanctions immediately if deemed appropriate so long as that decision is communicated to the parties in the notice of determination. Additionally, a Co-Coordinator or Decision Maker also has the discretion to allow a student Respondent to complete any pending coursework remotely if deemed appropriate by the relevant faculty members.

E. Appeal – Either party may appeal the findings or sanctions imposed to a different Decision Maker(s) by filing a written appeal with the Office of General Counsel (via email to ogc@acu.edu) within three (3) business days of the above notification. The appeal must indicate whether the findings or sanctions (or both) are being appealed and under which of the grounds for appeal. The only grounds for appeals are as follows:

1. Procedure – Procedural irregularity that affected the outcome

2. New Evidence – 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; and
3. Conflict or Bias – The relevant Co-Coordinator, Decision Maker or Investigator 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.

After receiving an appeal, the Office of General Counsel will provide the appeal to a Decision Maker, who will conduct an initial determination regarding whether the appeal meets one (or more) of the above grounds. If the Decision Maker determines that the appeal, even if proved as alleged, would not meet one (or more) of the grounds for appeal, the Office of General Counsel will notify the appealing party that the appeal will be denied for failure to state an appropriate ground for appeal and notify the parties that the decision is final. If the Decision Maker determines that the appeal, if proved as alleged, would meet one (or more) of the grounds for appeal, the Office of General Counsel will notify the opposing party of the appeal and allow him or her the opportunity to file a response within seven (7) days). The appeal will be considered by a Decision Maker(s) selected by the Office of General Counsel.

The Decision Maker will review the written appeal, any response from the opposing party, the final report, and the original decision. An appeal is not an opportunity for the Appeal Decision Maker to substitute their judgment for that of the original Decision Maker merely because they disagree with the finding and/or sanction(s). Instead, Appeal Decision Makers are to be deferential to the original determination, making changes to the finding only when there is clear error. All decisions are made by majority vote (if there are multiple Appeal Decision Makers) and apply the preponderance of the evidence standard of proof.

- J. **Appeal Outcome** - An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision Maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator and/or Decision Maker or the Title IX Office (as in cases of bias), the Appeal Decision Maker may order a new investigation and/or determination with different individuals serving in the Investigator and Decision Maker roles. Within fourteen (14) days after the appeal is filed or the response is received, the Appeal Decision Maker will issue a final written decision simultaneously to both parties. Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final.

XV. LIVE HEARING INTERNAL INVESTIGATION (TITLE IX SEXUAL MISCONDUCT)

- A. **Review of Pre-Hearing Investigation Report Draft and All Directly Related Evidence** – Once the investigation has been completed, the Investigator will evaluate the information obtained during this process and prepare a draft pre-hearing report summarizing the relevant evidence received through the investigation. The

Investigator will provide the parties and their Advisors, if any, with an opportunity to inspect and review both a copy of the draft report and any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including inculpatory or exculpatory evidence whether obtained from a party or other source. Such evidence will be provided in either electronic format or hard copy and will be preceded by a non-disclosure agreement for any Advisors. This typically includes but is not limited to interview transcripts, any written or electronic communications between the parties, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality. The parties will have ten calendar days to review this material and provide any written comments or feedback to the Investigator.

- B. Report Finalization and Rereview to Parties** – The Investigator will then take up to an additional seven (7) calendar days to consider feedback from the parties, revise the report as the Investigator deems necessary, and prepare a final report. The final report will include sections related to the allegations, procedure and findings of facts. Then, at least ten (10) calendar days prior to any hearing, the Investigator will provide the parties and their Advisors, if any, with a copy of the final report in either an electronic format or hard copy. The parties will then have the option of providing feedback on the final report to the Office of General Counsel's Office prior to the hearing.
- C. Pre-Hearing Review** – The Office of General Counsel will select a Decision Maker and a Hearing Officer for the hearing. Prior to the hearing, the Decision Maker(s) will consider both the final report and any feedback to the report provided by the parties. Procedures for the hearing will be provided at least ten (10) calendar days in advance to all parties by the Office of General Counsel. If a party does not have an Advisor, ACU will assign an Advisor to the party. The Hearing Officer may also elect to meet with the parties and their Advisor to discuss any relevant evidentiary issues prior to the hearing and review the hearing process that sets out additional information related to the format of the hearing and roles of participants. The Hearing Officer may require the Advisors to submit in advance of the hearing an initial list of cross examination questions for a determination of relevance as described in subsection D3 below.
- D. Live Hearing** – The Decision Maker(s) and designated Hearing Officer will conduct a live hearing during which both parties' Advisors will have the opportunity to cross-examine any participating parties and any available witnesses that the Hearing Officer deems relevant.
1. General Format – The hearing will be conducted live, either in person or virtually (at ACU's discretion), with technology enabling participants simultaneously to see and hear each other. Regardless of format, ACU will create a recording or transcript and make it available to the parties upon request for inspection and review.
 2. Roles and Cross-Examination
 - a. *Hearing Officers* – The Hearing Officer will oversee the hearing process, consider each question posed by the parties' Advisors or anyone else for relevance, and explain any decision to exclude a question that is not relevant. The Hearing Officer may invite an explanation or argument related to why a question is relevant prior to making this decision.

b. Advisors – Advisors’ only role in the hearing is to ask relevant questions of the other party if they choose to participate in cross-examination, and any available witnesses.

c. Parties – Parties may not directly question the other party or witnesses.

d. Decision Maker(s) – The Decision Maker, who will make the decision following the hearing, will consider the evidence presented at the hearing and may pose relevant questions to the parties and witnesses either directly or through the Hearing Officer.

3. Evidence

a. Relevance – As mentioned above, relevance is the primary standard of admissibility of evidence and questions posed. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining whether the allegation occurred. Although relevant, the Hearing Officer may exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or being misleading, or by considerations of undue delay, or needless presentation of cumulative evidence.

b. Evidence Not Subject to Cross-Examination – Even if a party or witness does not submit to cross-examination at the hearing, the Decision Maker(s) may rely on any prior statement of that party or witness in reaching a determination regarding responsibility. In other words, a decision-maker may consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged misconduct, and relevant statements about the alleged misconduct, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. A Decision Maker may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing. However, the Decision Maker(s) cannot 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.

c. Availability of Evidence – The University will ensure that directly related evidence that is subject to the parties’ inspection and review is available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of any cross-examination.

E. Written Determination of Outcome – Following the hearing, the Decision Maker(s) will decide whether it is more likely than not that the policy was violated, and if so, the Decision Maker(s) will also consider appropriate sanctions for violations (See Section XVI). When a determination is reached regarding findings and/or sanctions, the Decision Maker(s) will concurrently provide both parties with written notice of the same within seven calendar days of the decision through email. The notice will address the following areas:

- Allegation – Identification of the allegations potentially constituting a policy violation;
- Procedure – A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any

- notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of Fact – Findings of fact supporting the determination;
 - Conclusion – Conclusions regarding the application of the policy to the facts;
 - Rationale and Remedies – A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions ACU imposes on the Respondent, and whether remedies designed to restore or preserve equal access to ACU's education program or activity will be provided by ACU to the Complainant; and
 - Appeal – ACU's procedures and permissible bases for appeal.

The Complainant should also be informed of any other remedies offered to him or her individually or actions taken by the university to prevent a recurrence. Sanctions, especially those requiring separation from campus, may be implemented immediately if deemed appropriate. A Coordinator also has the discretion to allow a student Respondent to complete any pending coursework remotely if deemed appropriate by the relevant faculty members.

- A. Appeal** – Either party may appeal the findings or sanctions imposed to a different Decision Maker(s) by filing a written appeal with the Office of General Counsel (via email to ogc@acu.edu) within seven business days of the above notification. The appeal must indicate whether the findings or sanctions (or both) are being appealed and under which of the grounds for appeal. The only grounds for appeals are as follows:
- i. Procedure – Procedural irregularity that affected the outcome
 - ii. New Evidence – 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; and
 - iii. Conflict or Bias – The relevant Co-Coordinator, the Investigator(s), the Decision-Maker(s) or Hearing Officer 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.

After receiving an appeal, the Office of General Counsel will provide the appeal to a Decision Maker, who will conduct an initial determination regarding whether the appeal meets one (or more) of the above grounds. If the Decision Maker determines that the appeal, even if proved as alleged, would not meet one (or more) of the grounds for appeal, the Office of General Counsel will notify the appealing party that the appeal will be denied for failure to state an appropriate ground for appeal and notify the parties that the decision is final. If the Decision Maker determines that the appeal, if proved as alleged, would meet one (or more) of the grounds for appeal, the Office of General Counsel will notify the opposing party of the appeal and allow him or her the opportunity to file a response within one week. The appeal will be considered by an Appeal Decision Maker(s) selected by the Office of General Counsel. Within fourteen calendar days, after the appeal is filed or the response is received, the Appeal Decision Maker will issue a final written decision simultaneously to both parties.

- B. Appeal Outcome** - An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Decision Maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the Decision Maker, the Investigator, or the Title IX Office (as in cases of bias), the Appeal Decision Maker may order a new investigation/hearing and/or a new determination with different individuals serving in the Investigator and Decision Maker roles. Within fourteen (14) days after the appeal is filed or the response is received, the Appeal Decision Maker will issue a final written decision simultaneously to both parties. Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final.

XVI. SANCTIONS

- A. Range of Sanctions** – Anyone who violates this policy will be subject to appropriate disciplinary sanctions. Disciplinary measures available to remedy violations include, but are not limited to, the following: verbal warning/reprimand; written warning/reprimand placed in employee or student files; mandatory education and training on harassment; psychological assessment or treatment; probation; alternative placement (e.g., off-campus restrictions), suspension, expulsion, or termination; or other action the university deems appropriate under the circumstances. Additionally, supportive or emergency measures may become permanent. If a student or student group is found to be in violation of this policy, any of the sanctions set forth in the ACU Student Code of Conduct may also be involved. If a faculty member is found to have violated this policy and if the discipline is determined to include termination, this process will substitute for any other, including Special Termination in the Faculty Handbook.
- B. Determining Sanctions** – In determining what sanctions are appropriate, the university will consider the totality of the circumstances, including but not limited to: number of Complainants and Respondents involved; employment/student positions or status of the parties; relevant portions of the prior disciplinary record of the Respondent; threatened or actual harm caused by the Respondent; frequency and/or severity of the alleged conduct; and/or Respondent's acceptance of responsibility.
- C. Transcripts** – Texas law requires that the university include a notation on the transcript of any student ineligible to re-enroll at ACU for a reason other than an academic or financial reason, including violation of this policy. Additionally, on request by another university, ACU is required to provide to the requesting university information relating to a determination by ACU that a student enrolled at the institution violated this policy by committing sexual harassment, sexual assault, dating violence, or stalking. Upon a student's request, the university may remove the notation if the student is eligible to re-enroll or the institution determines that good cause exists to remove the notation. Such requests should be made in writing to one of the Co-Coordinators.

APPENDIX A

Selected State of Texas Definitions

Sexual Assault: (a) A person commits an offense if the person: (1) intentionally or knowingly: (A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent; (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or (2) intentionally or knowingly: (A) causes the penetration of the anus or sexual organ of a child by any means; (B) causes the penetration of the mouth of a child by the sexual organ of the actor; (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor. (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if: (1) the actor compels the other person to submit or participate by the use of physical force or violence; (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat; (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist; (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring; (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; (8) the actor is a public servant who coerces the other person to submit or participate; (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor; (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or adaptably married to each other under Chapter 2, Family Code. Tex. Penal Code § 22.011.

Assault: (a) A person commits an offense if the person: (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. Tex. Penal Code § 22.01.

Dating Violence: (a) "Dating violence" means an act, other than a defensive measure to protect oneself, by an actor that: (1) is committed against a victim: (A) with whom the actor has or has had a dating relationship; or (B) because of the victim's marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and (2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual

assault. (b) For purposes of this title, "dating relationship" means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of (1) the length of the relationship; (2) the nature of the relationship; and (3) the frequency and type of interaction between the persons involved in the relationship. (c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a "dating relationship" under Subsection (b). Tex. Fam. Code § 71.0021.

Family Violence: "Family violence" means: (1) an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself; (2) abuse, as that term is defined by Sections 261.001(1)(C), (E), and (G), by a member of a family or household toward a child of the family or household; or (3) dating violence, as that term is defined by Section 71.0021. Tex. Fam. Code § 71.004.

- Household: "Household" means a unit composed of persons living together in the same dwelling, without regard to whether they are related to each other. Tex. Fam. Code § 71.005.
- Member of a Household: "Member of a household" includes a person who previously lived in a household. Tex. Fam. Code § 71.006.

Stalking: (a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that: (1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening: (A) bodily injury or death for the other person; (B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or (C) that an offense will be committed against the other person's property; (2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and (3) would cause a reasonable person to: (A) fear bodily injury or death for himself or herself; (B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship; (C) fear that an offense will be committed against the person's property; or (D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended. Tex. Penal Code § 42.072.