

## ***-Title IX (Discrimination, Harassment, and Sexual Misconduct)***

TMU strives to maintain high standards of professional ethics and sustain an atmosphere in which individuals do not abuse their personal authority or power in interpersonal relationships. 1 Corinthians 13 teaches us that love is patient, love is kind. Love does not dishonor others, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. <sup>6</sup> Love does not delight in evil but rejoices with the truth. <sup>7</sup> It always protects, always trusts, always hopes and always perseveres. And now these three remain: faith, hope and love. But the greatest of these is love.

Consistent with the Title IX of the Educational Amendments of 1972 (20 U.S.C. §§ 1681 et seq.), its corresponding implementation regulations (34 C.F.R. Part 106), and the Violence Against Women Reauthorization Act of 2013, the University prohibits all forms of discrimination and harassment on the basis of sex against any member of the University community, whether faculty, staff, or student. These laws prohibit all forms of sexual or sex-based harassment. This standard applies to interpersonal relationships, such as student to student, faculty/staff to student, and faculty/staff to faculty/staff.

The full text of the federal regulations of Title IX is here:

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>

### ***Definitions***

*Advisor* for the purposes of this Policy means **any person** of the Complainants or Respondent's choosing to serve as the advisor for the Title IX process. This person may be an attorney, but does not have to be. The Advisor has specific responsibilities and requirements for participation in the process such as cross-examination at the live hearing. TMU will provide a trained Advisor to the student at no charge.

*Business Day(s)* refers to a Business Day or Business Days in which the University is open for operation. This is generally Monday through Friday, from 8:00 a.m. until 4:30 p.m. and excludes weekends, holidays, designated closures including but not limited to weather delays and closures.

*Coercion* means the improper use of pressure to compel another individual to initiate or continue sexual activity or sexual misconduct against that individual's will. Consent cannot be obtained through coercion. The Decisionmakers will evaluate the following in determining whether coercion was used, including, but not limited to:

1. The frequency of the application of pressure,
2. The intensity of the pressure,
3. The degree of isolation of the person being pressured, and
4. The duration of the pressure.

5. Any other inappropriate pressure.

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

*Confidential Employees* is defined as employees who are specifically trained and licensed to be confidential when they are acting in a confidential capacity. Gideon Hendrix, Susan Thurber and interns at the TMU Counseling Center are confidential employees when they are acting in their role as a counselor.

A confidential employee must explain to any person who informs the confidential employee of conduct that reasonably may constitute sex discrimination under Title IX or this part:

- (i) The employee's status as confidential for purposes of this part, including the circumstances in which the employee is not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination;
- (ii) How to contact the recipient's Title IX Coordinator and how to make a complaint of sex discrimination; and,
- (iii) That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

*Consent* means that agreement to a sexual activity is knowingly and freely given and communicated, through words or actions, to create a mutual understanding regarding the sexual activity. Affirmative, clear consent is required.

Consent is not valid when it involves:

- Coercion, such as physical force, threats, or intimidation;
- Minors under the age of consent,
- People whose mental disabilities prohibit sound judgment;
- People who are physically or mentally incapacitated, either voluntarily or involuntarily, as result of alcohol or other drug consumption; and/or,
- Individuals who are unconscious, unaware, or otherwise physically incapacitated.

Silence cannot be interpreted as consent. Lack of consent may be communicated by non-verbal expressions or actions indicating resistance. Consent may be withdrawn at any time.

Past consent to sexual activity does not imply ongoing future consent with that person or consent to that same sexual activity with another person. In determining if consent was present, one factor may be whether the Respondent has a position of influence over the Complainant.

*Force* means the use or threat of physical violence to overcome an individual's freedom of will to choose whether to participate in sexual activity or to consent to the sexual activity. Consent obtained by force is not valid. There is no requirement that a Complainant resist the sexual

advance, or request for sexual activity, to demonstrate the use of force. However, evidence of resistance by the Complainant will be viewed as a clear demonstration of a lack of consent.

*Formal complaint* means a written document, such as an email, received from a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that TMU investigate the allegation of sexual harassment.

*Incapacitation* is defined as a physical or mental state in which an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding of the fact, nature, or extent of the act (e.g., to understand who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. Examples of incapacitation include, but are not limited to, individuals who:

- Are asleep;
- Are unconscious;
- Are unaware that sexual activity is occurring;
- Cannot understand the nature of the activity or communicate due to a mental or physical condition; or
- Are under the influence of alcohol, drugs or other medication.

Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's:

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

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew, or should have known, that the Complainant was unable to consent due to incapacitation. Whether the Respondent reasonably knew or should have known that the Complainant was incapacitated will be evaluated using a preponderance of the evidence standard.

The fact that the Respondent was unaware of the Complainant's incapacity is irrelevant to this analysis. Consent cannot occur when:

- The Respondent failed to take reasonable steps to determine the Complainant's incapacitation;
- The Respondent's incapacitation from alcohol or drugs caused the Respondent to misjudge the Complainant's incapacity.

Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.

### *Officials with Authority*

Title IX regulations clarify what triggers a response obligation by the University. A response obligation means that TMU must institute corrective measures, such as initiating an investigation or offering supportive measures. The triggering event centers on when TMU receives actual knowledge of allegations of sexual harassment. Actual knowledge means that the Title IX Coordinator or an Official with Authority received notice of sexual harassment or allegations of sexual harassment.

The Officials with Authority are:

Amy Brown  
Title IX Coordinator  
[titleix@truett.edu](mailto:titleix@truett.edu)

Jenni Shepard  
Vice President, Student Life and Athletics  
[jshepard@truett.edu](mailto:jshepard@truett.edu)

Jason Graffagnino  
Vice President, Finance and Operations  
[jgraffagnino@truett.edu](mailto:jgraffagnino@truett.edu)

Rachael Meggitt  
Director, Human Resources  
[titleix@truett.edu](mailto:titleix@truett.edu)

*Quid pro quo* harassment and Clery Act/VAWA offenses are not evaluated for severity, pervasiveness, offensiveness or denial of equal educational access because such misconduct is sufficiently serious to deprive a person of equal access.

### *Reporting Responsibilities/Responsible Employees*

**All** TMU employees (faculty, staff, and student employees) are considered Responsible Employees and are mandated to report incidents or disclosures of sexual harassment, including sexual assault, discrimination and *quid pro quo*, which occurred on TMU property or at a University event in the United States. Truett McConnell University expects all members of the campus community to share in the responsibility for ensuring that our environment is free from any form of abuse, violence, or verbal or physical intimidation. TMU requires that all Responsible Employees share any report of misconduct with the Title IX Coordinator.

*Respondent* is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. The respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of TMU's procedure for complaints of sex discrimination.

*Sexual Harassment* is broadly defined to include any of three types of misconduct on the basis of sex, all of which jeopardize equal access to education that Title IX is designed to protect. The three types of misconduct are:

- unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive, that it effectively denies a person equal access to a school's education program or activity;

- an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (*quid pro quo*); or
- sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

*Supportive measures* mean individualized service reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

*Third-Party* refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a Complainant.

### *Complaint*

Truett McConnell University encourages anyone who believes that he/she has been subjected to prohibited harassment, including sexual harassment or some other civil rights violation, to make a prompt complaint to the Title IX Coordinator. The University will investigate the complaint promptly.

Such prohibited conduct will be investigated through the Title IX process. Any sexual misconduct or inappropriate behavior that falls outside of the scope of Title IX will be addressed as a disciplinary issue by the Office of Student Life for students and Human Resources for employees.

Students may also direct complaints of sexual harassment to one of the following TMU personnel *via* email, phone, or in person during business or via email and phone during non-business hours:

Amy Brown, JD  
Title IX Coordinator  
[abrown@truett.edu](mailto:abrown@truett.edu)  
[titleix@truett.edu](mailto:titleix@truett.edu)  
Nix Student Center  
706.865.2134 ext. 4102

Jenni Shepard, Vice President  
Student Life and Athletics  
[titleIX@truett.edu](mailto:titleIX@truett.edu)  
Nix Student Center  
706.865.2134 ext. 5221  
cell 706.491.6327

Faculty and Staff may direct complaints to:

Rachael Meggitt  
Director of Human Resources  
Deputy Title IX Coordinator  
[rmeggit@truett.edu](mailto:rmeggit@truett.edu)  
[titleix@truett.edu](mailto:titleix@truett.edu)  
Miller 106

706.865.2134 ext. 3601

Complaints should include as much information as possible including the names of the Complainant, Respondent, and anyone else involved. If possible, Complaints should also include times, dates, locations, as well as pertinent circumstances or details.

The Title IX Coordinator is responsible for overseeing TMU's response to complaints of violations, as well as identifying and addressing any patterns or systemic problems revealed by complaints. This would include ensuring that appropriate steps are taken to investigate or otherwise determine what occurred. When investigations reveal that reported sexual misconduct creates a hostile environment, the Title IX Coordinator is responsible for taking prompt and effective steps to end sexual misconduct, eliminate a hostile environment, prevent its recurrence and, as appropriate, remedy its effects using supportive measures, etc.

TMU reserves the right to hold students and employees accountable for acts of sexual harassment that occur on or off campus in the United States. This includes prohibited conduct at locations, events or circumstances over which TMU exercises substantial control over both the Respondent and the context in which the sexual harassment occurs. This also includes University-sponsored events which take place off-campus (i.e., athletic events, concert tours, trips, conferences, or retreats).

***Dismissal of a complaint.***

TMU may dismiss a complaint of sex discrimination, for any of the following reasons:

- TMU is unable to identify the respondent after taking reasonable steps to do so;
- The Respondent is not participating in TMU's education program or activity or is not a TMU employee;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and TMU determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- TMU determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX.

Prior to dismissing the complaint under this paragraph, TMU must make reasonable efforts to clarify the allegations with the complainant.

Upon dismissal, TMU must promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, TMU will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

TMU will notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then TMU will also notify the Respondent that the dismissal may be appealed.

If the dismissal is appealed, TMU must:

- Notify the parties of any appeal, including notice of the if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the Decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the Decisionmaker for the appeal has been trained;
- Provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

If TMU dismisses a Complaint it must, at a minimum:

- Offer supportive measures to the Complainant;
- For dismissals in which the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and,
- The Title IX Coordinator is required to take other appropriate, prompt and effective steps to ensure that sex discrimination does not continue or recur within TMU's education program or activity.

## Confidentiality

The University will undertake to protect, as much as possible, the confidentiality of Complainant or any person reporting harassment or other types of discrimination and of those charged with a Title IX violation. However, the University has a legal and moral obligation to investigate all complaints of sexual harassment and civil rights violations and, if appropriate, to take corrective action. Therefore, complete confidentiality cannot be guaranteed.

State law requires TMU to notify appropriate authorities, such as Child Protective Services, of the suspected abuse of a child under the age of 18. Child abuse and/or neglect reports are taken 24 hours a day, seven days a week at 855 GACHILD (855-422-4453).

TMU provides confidential resources on campus through the Counseling Center, which is in the Hood office building. Use this link for additional information [University Counseling Services - Truett McConnell University](#). Use this link to schedule an appointment [TMU University Counseling Center](#).

Or contact:

Gideon Hendrix  
Counseling Center Coordinator  
Ghendrix@truett.edu

706-348-2428

Students may also contact: National Sexual Assault Hotline (800) 656-HOPE (4673)  
Bridging Hope at (770) 503-7273 or (800) 721-1999

### *Reporting Sexual Assault*

In the event of sexual assault, any or all the following may be notified: Student Life staff, the Title IX team, TMU Campus Security, or the Cleveland City Police.

Sexual assault or exploitation may be reported to the following:

- For emergencies, call 911
- TMU Campus Security – 706.969.0588
- Cleveland Police Department (non-emergencies) – 706.348.7078
- Student Life may be contacted through [studentlife@truett.edu](mailto:studentlife@truett.edu). Title IX may be contacted through [titleIX@truett.edu](mailto:titleIX@truett.edu)

Regardless of whom the victim chooses to file a report with, he or she is encouraged to take the steps listed below. If the victim is physically or psychologically unable to make his or her own decisions, standard emergency medical or psychological procedures will be followed, including calling 911 and/or 988, calling Campus Security (706.969.0588), taking the victim to the hospital and calling a member of the TMU Student Life staff.

Truett McConnell University encourages all victims to consider the following:

1. The victim is advised to immediately contact the Residence Director (RD), Resident Assistant (RA), University faculty or staff, Bridging Hope (800.721.1999), a friend or someone with whom they feel safe.
2. To protect an individual's own health and to address any injuries, possible pregnancy, or infections (such as sexually transmitted diseases) that may arise from an assault, the victim is advised to seek medical attention at a hospital of the victim's choice. Emergency room personnel are trained in the collection of physical evidence, which will be helpful and necessary if a person should choose, then or later, to utilize the legal avenues available in prosecuting his or her case.
3. To preserve all evidence, the victim is advised not to change clothes, shower, bathe, or douche and if possible, to not urinate. In addition, victims are advised to save all clothing, linens, or other items that may have been touched by the assailant so that they may be given to the Cleveland City Police for evidence. All physical evidence, including seminal fluids, hair, blood, and fingernail scrapings may be used in court.

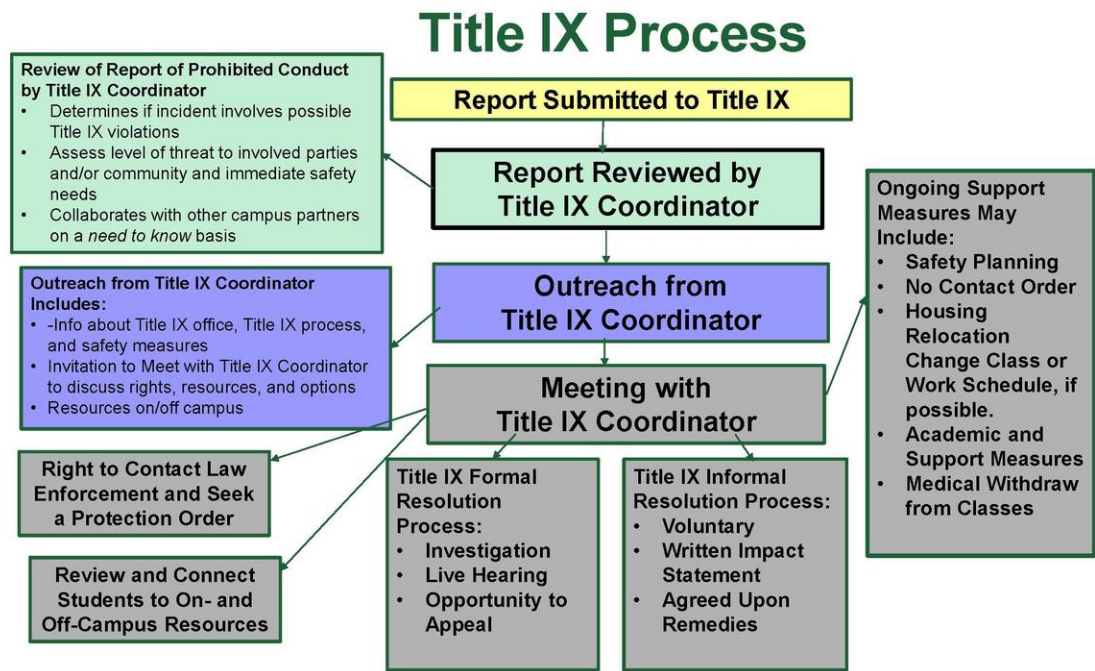


4. To collect evidence and solicit clear recollections of facts and events, the victim is advised to call 911 immediately following an assault. TMU employees will help the victim notify the authorities if the student requests their assistance. Once the assault is reported to the police, if the evidence warrants such action, the police will file charges. To assure that the victim and other potential victims have a safe campus environment after an incident, the victim is advised to alert the appropriate administrative personnel of the University of the assault as soon as possible. At Truett McConnell University, this official includes any member of the Title IX Team or Student Life personnel. Reporting a sexual assault does not commit a victim to filing a complaint with the University or the police. The information will be kept confidential as permitted by law. Incidents of sexual assault may be reported by the victim, or by another person to the Student Life Office. Victims are encouraged to file a formal complaint with Title IX staff.
5. In order that the victim receives the confidential help and emotional support necessary to cope with the incident, the victim is advised to utilize as many of the following services as will be helpful: Student Life personnel, Resident Assistants, Resident Directors, TMU's counseling center as well as local health centers.

#### *Title IX Reporting Process*

When a report of a sexual harassment is filed with the Title IX Coordinator, the following procedure will be applied in a reasonably prompt timeframe and in a neutral manner. This process ensures that Complainants and Respondents are treated equitably prior to any disciplinary sanctions.

1. Any person may report sexual harassment, whether the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment. Formal complaints of sexual harassment may only be submitted in writing by individuals (Complainants) participating in or attempting to participate in the educational program or activity of TMU.
2. TMU reserves the right to remove a Respondent from its education program or activity on an emergency basis, after TMU undertakes an individualized safety and risk analysis, determines that an imminent and serious threat to the health or safety of a Complainant or students, employees, or other persons arising from the allegations of sex discrimination justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
3. If the Title IX Coordinator signs the formal complaint, the Title IX Coordinator is not a Complainant or a party and must comply with requirements for Title IX personnel to be free from conflicts and bias.
4. Upon receipt of a formal complaint, the Title IX Coordinator will contact the complainant to offer supportive measures and explain the process as well as any informal resolution options. The process can be summarized as follows:



5. Next, the Title IX Coordinator will provide written notice to the Complainant and Respondent concerning the allegations potentially constituting sexual harassment, including sufficient details known at the time and details concerning TMU's investigation process. The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Title IX process.
6. An objective investigation of the alleged incident will be conducted, which will include the solicitation of statements from the Respondent and Complainant and others who might provide pertinent information.
7. The Title IX Coordinator, and others involved in the investigation and resolution of the complaint, will treat all individuals equitably by facilitating an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
8. TMU will afford the parties equal opportunity to have an Advisor during any aspect of the complaint process. If a party does not have an advisor, TMU will provide an Advisor, free of charge, to advise them and conduct cross-examination at the live hearing.

### Investigations

TMU will investigate the allegations in any formal complaint and send written notice to both parties of the allegations upon receipt of a formal complaint.

When investigating:

The burden of gathering evidence and burden of proof is on TMU, not the parties.

TMU uses the preponderance of evidence standard.

The Complainant and Respondent will be provided with equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence.

The parties have the same opportunity to select an appropriate Advisor of their choice.

TMU will send *via* email to official TMU email addresses written notice of any investigative interviews, meetings or hearing. The notice may be encrypted.

TMU will send the parties and their advisors, the preliminary investigative report and the final investigative report. The preliminary investigative report fairly summarizes relevant evidence, and the parties have ten days to respond.

All investigations will be conducted in an objective, timely and impartial manner. The parties will be informed of the projected timeline for conclusion of the process. There may be temporary delays of the process and limited extensions of time frames for good cause. The parties will be provided written notice of the delay and reasons for such delay.

The Title IX Coordinator will select up to two trained investigator(s) to conduct a reasonable, impartial, and prompt investigation of the Complaint. The investigator(s) may be TMU employees or from an outside source. The Title IX Coordinator will notify the parties, in writing, of the name of the designated investigator(s) at the time the Title IX Coordinator issues the notice of a formal resolution process. The parties have two Business Days from the date of notice to object to the investigators based on bias or conflict of interest. The objection must be in writing and sent or delivered to the Title IX Coordinator.

The investigator(s), in consultation with the Title IX Coordinator, will establish a preliminary timeline and process for conducting the investigation and report the timeline to the parties. The parties will also be notified in writing of any delays and the new timeline.

The investigator(s) will interview both parties and relevant witnesses, including fact and expert witnesses, and gather documentary evidence provided by the parties and witnesses. This evidence will include both inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on TMU and not on the parties. The parties may submit a written statement to the investigator(s). The statements will be included in the Reports.

The investigator(s) will prepare a summary of each interview, which will be shared with the interviewed person. The person interviewed will have the opportunity to correct or comment on the statements made in their summary. The interviewed person will sign an acknowledgement that he or she reviewed the summary, and it is accurate. Otherwise, the interviewed person may

submit a written response directly to the investigator(s) within two Business Days to make changes to the statement. The response will be included in the Title IX preliminary and final report. If no response is received from the interviewed person, their summary statement will be presumed to be accurate, and it will be included in the Title IX report.

The investigator(s) may use, if available, all of the following, but, are not limited to the following:

- Police reports;
- Video or audio recordings;
- Social media posts;
- Witness statements;
- Party statements;
- Email, diaries, correspondence;
- Campus Reports, such as scan logs and incident reports; and
- All other appropriate reports, recordings, etc.

A party's medical, psychological and similar treatment records are private and cannot be used or accessed unless TMU obtains the party's voluntary, written consent.

The investigator(s) may conduct follow-up interviews with both parties and/or witnesses based upon testimonial and documentary evidence gathered during the initial phase of the investigation. To the extent additional material, witnesses or evidence are identified, the investigator(s) will conduct additional interviews and gather additional evidence as necessary to ensure a complete gathering of evidence.

### **Preliminary Report**

The Investigator(s) will prepare a Preliminary Title IX Report. The Preliminary Report is a written summary of the evidence gathered during the investigation. The investigator(s) will state specific factual findings in the Preliminary Report (e.g., "Complainant arrived at the Hoe Down at 9:30 P.M."). The standard for determining each factual finding is the preponderance of evidence standard. This standard of proof is that the evidence presented during the investigation must be more likely than not to be factual. The investigator(s) will not state ultimate findings as to whether the Respondent committed a Title IX violation.

All interview summaries and documentary evidence gathered as part of the investigation will be attached to the Preliminary Report. This includes any evidence which TMU does not intend to use in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence obtained from any source. The investigator(s) will submit the Preliminary Report to the Title IX Coordinator. After reviewing the Report, the Title IX Coordinator may require the investigator(s) to conduct additional investigation consistent with the above-referenced procedures.

The Title IX Coordinator will send copies of the Preliminary Report to the parties and their Advisors *via* TMU email. The parties and their Advisors should keep the Preliminary Report confidential and should not duplicate, distribute, or allow another person to do so. The parties have ten days from the date the Preliminary Report was emailed to them, to submit a written response to the Title IX Coordinator. The parties may submit additional information, corrections, an explanation or request additional investigation. The parties may request follow-up interviews, or requests for interviews with additional witnesses. The investigator(s) will consider any written response provided by the parties in preparing the Final Report.

If neither party requests additional investigation, the investigator(s) will prepare the Final Report and submit it to the Title IX Coordinator for distribution at least ten days prior to the live hearing. If either party requests additional investigation, the investigator(s) will review the request in consultation with the Title IX Coordinator to determine whether the request will assist them in completing the investigation. If necessary, the Title IX Coordinator will send an updated timeline to the parties. If the investigator(s) conduct additional investigation, they will prepare an Addendum to the Preliminary Report.

The investigator(s) will prepare a Final Title IX Investigative Report. The Final Report consists of the testimonial and documentary evidence from the investigation, the Preliminary Report, the Addendum (if applicable), and the parties' responses.

The Title IX Coordinator will review the Final Investigative Report and simultaneously send a copy to the parties and their Advisors *via* TMU email. This email and others from the Title IX Coordinator may be encrypted. The Final Report is confidential and neither party nor their Advisors shall duplicate or distribute the Final Report or allow another person to do so.

If a TMU employee fails to keep the Preliminary Report or the Final Report confidential, they may be subject to employee discipline.

## **Live Hearing**

Live hearings are administrative hearings. At the live hearing, the Decisionmakers must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The Decisionmakers will be made of three TMU employees and/or from an outside entity. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination question or other question, the Decisionmaker must first determine whether the question is relevant and exclude a question that is not relevant. Such cross-examination questions must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Live hearings may be conducted with the parties physically present in the same geographic location or, at TMU's discretion, or the request of either party, any or all parties, witnesses, and other participants may appear at the hearing virtually. At the request of either party, TMU must provide for the entire live hearing (including cross-examination) to occur with the parties in separate rooms with technology enabling the parties to see and hear each other. Truett McConnell University must create an audio or audiovisual recording, or transcript, of any live hearing.

Other than cross-examination, Advisors may not participate in the hearing and may only communicate with the party whom they advise, through whispers or written word. If a party does not have an Advisor present at the live hearing, TMU will provide without fee or charge to that party, an Advisor of the University's choice to conduct cross-examination on behalf of that party.

Evidence regarding the Complainant's prior sexual behavior is irrelevant unless it is offered to prove that someone other than the Respondent committed the alleged misconduct, or offered to prove consent. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are designed to explore whether someone other than the Respondent committed the conduct alleged by the Complainant. Cross-examination of the Complainant's prior sexual behavior with respect to the Respondent is relevant and permissible to prove consent.

The preponderance of evidence standard will be used by the Decisionmaker whether the Respondent is a student or an employee. The Decisionmaker will issue a written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the Respondent. The written determination must be sent simultaneously by the Title IX Coordinator to the parties and will include information about how to file an appeal.

Each Party will receive simultaneously written notification *via* TMU email from the Title IX Coordinator, which may be encrypted, of the outcome of the live hearing. The written decision of the Decisionmakers will include:

- Allegations
- Procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the parties, interviews with the parties and witnesses, site visits, and any other method used to gather information.
- Findings of fact supporting the Decisionmaker's decision.
- Rationale for the decision regarding responsibility for each allegation.
- Sanctions, if any, imposed on the Respondent and remedies designed to preserve or restore equal access to the Complainant's education program or activity.
- Rationale for the decision regarding responsibility for each allegation.

- Sanctions, if any, imposed on the Respondent and remedies designed to restore or preserve equal access to the Complainant's program or activity.
- A description of the procedure for permissible appeal of the decision.

### *Appeal*

Either party may file an appeal from a determination regarding responsibility or the sanctions, or from TMU's dismissal of a formal complaint or any allegations therein on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. Newly discovered evidence that could affect the outcome of the matter; and/or,
3. Title IX personnel had a conflict of interest or bias that affected the outcome of the matter.

An appeal must be submitted in writing to the Title IX Coordinator within ten calendar days from the date the written determination was sent *via* TMU email to the parties. The Title IX Coordinator will appoint an internal or external Appeal Officer and give the parties two Business to object to the appointment of a particular Appeal Officer on the grounds of bias and/or conflict of interest.

Once the Appeal Officer is appointed, the Officer will first issue a detailed written opinion as to whether any of the three above-referenced bases for appeal exist. If none of the three bases exist, the Appeal Officer's review of the matter ends when the written opinion with detailed rationale is issued. The decision of the Appeal Officer is final and cannot be appealed.

If the Appeal Officer determines that one of the bases for an appeal exists, the Appeal Officer will then examine the record, evidence and investigative report in the matter. Within 30 calendar days from the date of the Appeal Officer's decision regarding the existence of a basis for appeal, the Title IX Coordinator will simultaneously email the parties via TMU email the final decision, which cannot be appealed.

The written decision will include the issue presented on appeal, the Appeal Officer's analysis of the issue using the preponderance of evidence standard, rationale and decision. The Appeal Officer must include whether the Decisionmaker's decision is affirmed or overturned, and the appropriate procedure, if any, such as a new hearing, a hearing on a particular issue or a revised sanction.

If a case is returned to the Title IX Coordinator, the Coordinator may:

1. Decide to drop the case (e.g., based on insufficient information to believe that a policy violation may have occurred), or
2. Send the case to the original Decisionmakers for reconsideration, or
3. Send the case to new Decisionmaker panel with the same or different charges.

When a case is sent back for a new hearing, it is possible that a different decision (i.e., the decision of responsibility and/or sanctions) may subsequently result.

### *Informal Resolution*

TMU may, in its sole discretion, choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. The facilitator must be trained in conducting informal resolution.

TMU will never require as a condition of employment or continuing employment, or enrollment or continuing enrollment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Additionally, TMU will not require the parties to participate in informal resolution and will not offer informal resolution to the parties unless a formal complaint is filed by the Complainant.

TMU will never offer or facilitate an informal resolution process to resolve allegations of *quid pro quo* between a university employee and a student.

The Title IX Coordinator will meet separately with the parties and their Advisors prior to the date of informal resolution and provide an overview of the process, answer questions the parties have, and have the parties sign an agreement that they are entering into this process voluntarily. The parties will sign an agreement or acknowledgement drafted by the facilitator at the conclusion of the informal resolution and email it to them. The agreement will detail the allegations and the resolution the parties agree to follow. Failure to follow the agreement will result in a disciplinary employee action or a student conduct violation.

Entering into an agreement through Informal Resolution will not result in the Respondent having a disciplinary record.

The parties have two Business Days after the agreement is emailed to them, to notify the Title IX Coordinator in writing *via* email to [titleix@truett.edu](mailto:titleix@truett.edu), or in delivered in person in the Student Life Office in the Nix Building that they wish to revoke the facilitated agreement. If a request is not received in writing, or is not submitted within two Business Days, the informal resolution will be considered final and binding.

If the agreement is revoked, the matter will be scheduled for an investigation. If the parties do not reach an agreement, they will sign an acknowledgement stating that they put forth a good faith effort to address and resolve the allegations but were unable to reach an agreement. The



acknowledgement will include a statement that they understand the allegations could be addressed in a live hearing before Decisionmakers.

### *Retaliation Prohibited*

#### **Retaliation is expressly prohibited.**

TMU prohibits retaliation against a person for: reporting discrimination and harassment; filing a complaint of discrimination or harassment; or participating in the investigation or adjudication of such a complaint. Retaliation is also prohibited against persons who assist others in bringing a Complaint of discrimination or harassment by offering advice and moral support or by giving testimony or documentary evidence in response to a Complaint.

Retaliation is defined as conduct that may reasonably be perceived to:

- adversely affect a person's educational, living, or work environment because of his or her good-faith participation in the reporting, investigation, and/or resolution of a report of a violation of this policy; or
- discourage a reasonable person from making a report or participating in an investigation under this policy, or any other local, state, or federal complaint process, e.g., filing a complaint with an entity such as the U.S. Department of Education.

Retaliation includes, but is not limited to, acts or words that constitute intimidation, threats, or coercion intended to pressure any individual to participate, not participate, or provide false or misleading information during any proceeding under this policy. Retaliation may include abuse or violence, other forms of harassment, and/or making false statements about another person in print or verbally with intent to harm their reputation.

Retaliation can be committed by any individual or group of individuals, not just a Complainant or Respondent. Retaliation constitutes a violation of this policy even when the underlying allegations do not result in a finding of responsibility. Any person who retaliates against an individual reporting, filing, or participating in the investigation or adjudication of is subject to disciplinary action up to and including expulsion or termination. Retaliation is prohibited even if the underlying complaint is eventually dismissed or is deemed to lack merit.

Complaints alleging retaliation must be submitted to the Title IX Coordinator *via* email at [titleIX@truet.edu](mailto:titleIX@truet.edu) or delivered in person in the Student Life Office. The exercise of First Amendment rights does not constitute retaliation.

### **Sanctions**

The following are possible sanctions which may be assigned after a finding of responsibility. This list is not exhaustive and may be modified to meet the circumstances of any given case.

1. Expulsion: Permanent severance of the student's relationship with TMU. This severance includes being barred from campus.
2. Disciplinary Suspension: Temporary severance of the student's relationship with TMU for a specified period of time. This may include the student being barred from campus.
3. Limited Suspension: A student may be denied certain privileges for a specified period of time. These privileges may include, but are not limited to, class attendance, housing, parking on campus, participation in extracurricular activities, ID card privileges, access to institutional facilities, and access to the campus.
4. Disciplinary Probation: Notice to the student that any further, major disciplinary violation may result in suspension. Disciplinary probation might also include one or more of the following: the setting of restrictions or the issuing of a reprimand.
5. Reprimand (oral or written).
6. Work assignment changed

#### **Record Keeping**

Title IX Records will be maintained for seven years [and in accordance with Truett McConnell University's Records Retention Policy.

Title IX records include:

1. Investigations
2. Determinations
3. Recordings
4. Transcripts
5. Sanctions
6. Remedies
7. Appeals
8. Informal Resolutions
9. Training Materials