



## TITLE IX

### University of the Incarnate Word SEXUAL MISCONDUCT POLICY

**Effective Date:** March 2016

**Contact:** Alexandria Salas, Director of Title IX (Title IX Coordinator).

### **PURPOSE**

To establish a work, educational and living environment at the University of the Incarnate Word that is free from sexual misconduct, including sexual harassment; sexual assault; sexual exploitation; stalking; and relationship violence (including domestic and dating violence), through guidelines to promote and foster a safe campus climate.

To comply with state and federal guidelines regarding sexual misconduct and Title IX.

Resources to address sexual misconduct are available at [www.uiw.edu/titleix](http://www.uiw.edu/titleix)

Questions about this policy may be sent to the Director of Title IX, Alexandria Salas at

(210) 283-6977 or [ansalas@uiwtx.edu](mailto:ansalas@uiwtx.edu)

To report an incident of sexual misconduct you can go to: <https://my.uiw.edu/titleix/index.html>

### **OVERSIGHT RESPONSIBILITIES FOR THIS POLICY**

1. Oversight of this policy is assigned to the Director of Title IX.
2. The policy will be published at <https://my.uiw.edu/titleix/index.html>.
3. The Director of Title IX will assure policy compliance and report results as required by state and federal guidelines.
4. This policy will be reviewed annually for potential updates.

**Approved:** March 4, 2016

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## **SECTION 1: POLICY STATEMENT AND SUMMARY**

Unlawful discrimination has no place at the University of the Incarnate Word. It violates the University's core values, including its commitment to equal opportunity and inclusion, and will not be tolerated. Sex discrimination and harassment are prohibited by this University of the Incarnate Word policy and can constitute violations of state and/or federal law. State and federal law, including Title IX of the 1972 Education Amendments (34 C.F.R 106), prohibits sex-based discrimination in all the University's programs and activities, and Title VII of the 1964 Civil Rights Act, and its state counterpart, TEX. LAB. CODE ANN §§ 21.001—21.446, prohibits sex-based discrimination in employment. University of the Incarnate Word policy, the Violence Against Women Act (VAWA), as amended, Texas Education Code Chapter 51, Subchapters E-2 and E-3, and other state and federal laws prohibit sexual assault, stalking and relationship violence (including dating and domestic violence).

### **1.1 Prohibited Conduct**

The University of the Incarnate Word is committed to providing a campus environment free of sex discrimination and sexual harassment. To that end, the University of the Incarnate Word prohibits sexual misconduct that, under this policy, can include:

1. sexual harassment;
2. sexual assault;
3. sexual exploitation
4. stalking; and
5. relationship violence (including dating and domestic violence).

Under University of the Incarnate Word policy, sexual misconduct can occur in any sex configuration (i.e., between the same sex or different sex) and regardless of sexual orientation or gender identity. The University of the Incarnate Word in accordance with State law and federal laws prohibits retaliation for complaints made in good faith.

Sexual misconduct is not limited to the workplace or the educational environment. It can extend beyond University property and could occur at any University sponsored program, activity, or event in the United States. Sexual misconduct can occur between students, employees and third parties such as visitors, vendors, contractors and other community members. The University of the Incarnate Word will consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus.

### **1.2 University Response to Allegations of Sexual Misconduct**

The Title IX Coordinator is charged with the responsibility of coordinating the University of the Incarnate Word's efforts to comply with its obligations under Title IX and State Law, including addressing complaints of sexual misconduct, coordinating investigations and providing appropriate interim measures through the Dean of Student Success or other designee.

The University takes all allegations of sexual misconduct seriously and is committed to providing information, education, resources, support, interim measures, and clear direction to University of the Incarnate Word community members to prevent and address such conduct. The University will

always attempt to respond to sexual misconduct that it knows or should know about in order to stop prohibited conduct, prevent the recurrence of any conduct of concern, prevent and/or eliminate any hostile environment, and, where appropriate, address any effects on campus from such prohibited conduct. The University of the Incarnate Word is committed to addressing and working towards preventing crimes of sexual violence.

Violations of this policy are subject to disciplinary action. Depending on the nature of the violation, disciplinary consequences for violations of this policy may include denial of privileges, disciplinary probation, remedial trainings, transcript notations, suspension and expulsion for students, and may include warnings (verbal or written), demotions, suspensions, remedial trainings, and termination for employees.

The conduct discussed in this policy may also constitute violations of the law, to which other laws and regulations may apply beyond the scope of this policy and University of the Incarnate Word's disciplinary measures. Criminal definitions under state and federal law for some of the conduct described in this policy can be found in Appendix A to this policy. The University of the Incarnate Word will honor a complainant's decision either to pursue a law enforcement remedy or to decline to pursue that avenue of remedy.

It is the responsibility of the Title IX Coordinator<sup>1</sup> to make inquiries into reports of sexual misconduct on behalf of the University. Violations of this policy can be filed through the applicable internal procedures and guidelines. The procedure that applies is called the Sexual Misconduct Adjudication Process (SMAP). A copy of the SMAP can be found at <https://my.uiw.edu/titleix/>.

The Title IX Investigator and/or the Title IX Deputy Coordinators will conduct investigations for matters brought under the Sexual Misconduct Policy. All violations of this policy will be decided by the "preponderance of the evidence" standard, that is, whether it is more likely than not that the alleged conduct occurred. Additional information about the adjudication process can be found at <https://my.uiw.edu/titleix/>.

### **1.3 Support and Interim Measures**

The University of the Incarnate Word is committed to assisting complainants, accused students, and witnesses through many resources available to support them. The University encourages those who wish to receive confidential support services regarding sexual misconduct to seek assistance from:

1. Behavioral Health Services;
2. Student Health Services; or
3. University Mission and Ministry.

The University of the Incarnate Word seeks to empower complainants by informing them that there are options to address sexual misconduct through our disciplinary process and/or through the

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<sup>1</sup> The Director of Title IX and the Title IX Coordinator are the same person and shall be referred to as the Title IX Coordinator throughout the entirety of this policy.

legal system. Complainants can use any or all of these options simultaneously to address sexual misconduct. The University affirms the right of complainants to decide whether they wish to be involved in any process to address sexual misconduct—or not. However, should the conduct at issue pose a threat to campus safety (which includes but is not limited to threats of further violence, the use of weapons and/or repeat offenders), the University must take action regardless of whether the complainant wishes to proceed with their individual employee or student complaint.

The University will use its best efforts to provide interim measures in response to sexual misconduct in order to stop prohibited conduct, prevent the recurrence of any conduct of concern, prevent and/or eliminate any hostile environment, and, where appropriate, address any effects on campus from such prohibited conduct. Interim measures and other support options are available regardless of whether disciplinary or criminal claims are pursued. In some instances, interim measures may lead to a person's immediate removal from campus. Various available and appropriate interim measures and support options include but are not limited to: health and counseling services, no-contact orders, no trespass orders, schedule and housing changes, academic supports or adjustments, and information about financial aid issues.

#### **1.4 Reporting Obligations of Responsible Employees and Mandatory Reporters**

All employees, including part-time employees, of the University of the Incarnate Word are “Mandatory Reporters” as set out in Texas State Law and are “Responsible Employees” as set out in Title IX of the Education Amendments of 1972. As such, all employees are required to promptly report allegations of sexual misconduct that the employee witnesses or receives information about to the Title IX Coordinator.

Employees are required to report the allegations of sexual misconduct online via the Maxient system at the following website: <https://my.uiw.edu/titleix/> by clicking on the “Report an Incident” button or by using the “Report an Incident” link on the University of the Incarnate Word homepage ([www.uiw.edu](http://www.uiw.edu)).

Employees as must provide all known details of the situation, including names, dates, times, locations and facts. Employees are required to report all incidents of sexual misconduct, even if the person concerned about or affected by the misconduct is unsure about pursuing a disciplinary complaint. Reported allegations will be reviewed by the Title IX Coordinator, who will assess the report and consult with the complainant.

Responsible employees who witnessed or received information about but did not report allegations of sexual misconduct are subject to termination from employment at the University. Additionally, employees who witness, hear, or receive information about but did not report allegations of sexual misconduct may be subject to criminal charges and fines under state law.

Although employees are required to report conduct under this policy to the Title IX Coordinator, they will otherwise maintain the privacy of the information related to the matter reported.

#### **1.5 Behavioral Health, Health Services, & Mission and Ministry**

Designated employees with the office of the Behavioral Health Services, UIW Health Services, and Mission and Ministry or any other member of the chaplaincy, all of whom have legally defined



confidentiality privileges, are designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, domestic violence, stalking or any other act under this policy. Employees who hear or receive information regarding such an incident under the circumstances that render the employee's communications confidential or privileged under the law shall, in making a report state only the type of incident reported and may not include any information that would violate the student's expectation of privacy.

### **1.6 Timely Reporting**

All employees are required to file a report in a timely manner. University policy requires all employees to file a report within 24 hours of witnessing or learning of the incident that they reasonably believe constitutes an incident that falls or may fall under Title IX or the Sexual Misconduct Policy.

### **1.7 Required Programs for New Students**

The University of the Incarnate Word provides online alcohol education, a review of the Sexual Misconduct Policy and training on topics that include sexual harassment, sexual assault, sexual exploitation, stalking and relationship violence. All first year and new transfer students are required to take each of these online courses. The programs are offered free of charge to the student and must be completed by the posted deadline to ensure eligibility for registration the following semester.

### **1.8 Officials of the University with Authority to Institute Corrective Measures**

The following individuals have been identified as officials of the University with authority to institute Corrective Measures.

1. Title IX Coordinator
2. Director of Human Resources
3. Associate VP of Human Resources
4. President
5. Academic Deans
6. Provost
7. Vice-Presidents
8. Associate Provost & Vice Provost
9. Dean of Campus Life
10. Director of Student Advocacy and Accountability

## **SECTION 2: IMPORTANT DEFINITIONS**

### **2.1 Consent**

To be effective, consent must be an informed, deliberate and voluntary decision to engage in mutually acceptable sexual activity.

#### **1. What is consent?**

Consent occurs when individuals willingly, unambiguously, and knowingly agree to engage in sexual activity. Consent can be given by words or actions if those words or actions create clear, mutually understandable permission regarding the conditions of sexual activity.

It is important to remember:

- Consent to one sexual act does not constitute or imply consent to another act.
- Previous consent cannot imply consent to future sexual acts.
- Consent cannot be assumed based on the parties' relationship status or sexual history together.
- Consent can be withdrawn by any person, at any time during the encounter.
- Consent must be knowing and voluntary.

#### **2. Consent Can Never Be Given By**

- **Someone who is incapacitated.**

A person can be incapacitated through the use of drugs, alcohol or any other intoxicating substance, or when they are unconscious, asleep or otherwise unaware the sexual activity is occurring. It is a violation of the Sexual Misconduct Policy to engage in sexual activity with someone an individual knew or should have known was incapacitated.

- **Someone under the legal age of consent.**

The legal age of consent in Texas is seventeen (17). Sexual activity with a person who is under the age of consent (17) is an automatic violation of the Sexual Misconduct Policy, regardless of whether or not the person under the age of 17 was a willing participant in the conduct.

- **Someone who is mentally disabled or cognitively impaired.**

Certain mental disabilities or cognitive impairments can cause a person to be unable to knowingly consent to sexual activity. It is a violation of the Sexual Misconduct Policy to engage in sexual activity with a person whose mental disability or cognitive impairment renders them incapable of giving consent and the disability/impairment is known or should have been known to the non-disabled sexual partner.

## **2.2 Consent and the Use of Alcohol or Drugs**

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. The use of alcohol and/or drugs by the person initiating sexual activity will never be an excuse for failing to obtain consent.

## **2.3 Force**

The use of force to cause someone to engage in sexual activity is by definition, non-consensual contact. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, or any combination of these behaviors.

### **2.3.1 Physical Force, Violence**

Physical force is the use of power, violence or strength upon another person's body. An individual's use of physical force, or violence, or threat of physical force or violence to make another person participate in or perform a sexual activity they might not have otherwise agreed to, or did not want to engage in, is a violation of this Sexual Misconduct Policy.

### **2.3.2 Threats**

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. It is a violation of this policy if an individual uses threats to make another person participate in or perform a sexual activity that they might not have agreed to engage in otherwise.

### **2.3.3 Intimidation or Abuse of Power/Authority**

Intimidation or abuse of power/authority occurs when individuals use their real or perceived authority to influence other people to acquiesce or submit to sexual activity.

The University of the Incarnate Word's Employee Handbook contains a Consensual Relationship Policy that prohibits employees from engaging in romantic and/or sexual conduct with or directed toward any employee whom that person supervises or evaluates in any way. The Consensual Relationship Policy can be found in Section 9.8 of the UIW Employee Handbook on the Human Resources website at <https://my.uiw.edu/hr/>.

## **SECTION 3: POLICY AGAINST CONSENSUAL RELATIONSHIPS WITH STUDENTS.**

Employees are expected to conduct themselves and their activities in an ethical and moral manner that is a positive reflection on the UIW and consistent with the Mission of the University. Therefore, the University strives to maintain a learning and working environment that is based on mutual respect for all students and employees. Employees should also be aware that there is a risk of entering into a sexual and/or romantic relationship with another employee or person connected to UIW and that the University has the right to protect its interests and take appropriate action to avoid or address potential problems in this area.

It is the policy of UIW that persons with direct teaching, coaching, supervisory, advisory or evaluative responsibility over employees, students, or student employees recognize and respect the ethical and professional boundaries that must exist in such situations.

### **3.1 Prohibited Consensual Relationships Undergraduate Students/High School Students**

It is inappropriate and prohibited conduct for any faculty member, staff, administrator or other employee of the University to engage in romantic and /or sexual conduct with or directed toward any student currently enrolled as an undergraduate at the University and taking courses for college credit. Further, it is prohibited conduct for any faculty member, staff, administrator or other employee to engage in romantic and/or sexual conduct with or directed toward any student enrolled in high school, including high school students taking college courses at the University.

Faculty, staff, administrators or other employees may also be subject to legal ramifications where the student is a minor.

The University also prohibits any graduate student from engaging in romantic and/or sexual conduct with or directed toward any undergraduate student whom he or she educates, advises, coaches, supervises, or evaluates in any way.

### **3.2 Graduate Students/Professional School Students**

It is inappropriate and prohibited conduct for any member of the University community to engage in romantic and/or sexual conduct with or directed toward any graduate student whom he or she educates, advises, coaches, supervises, or evaluates, or whom he or she has previously educated, advised, coached, supervised, or evaluated in any way, while the student is still enrolled.

### **3.3 Supervisors**

It is inappropriate and prohibited conduct for any member of the University community to engage in romantic and/or sexual conduct with or directed toward any employee whom that person supervises or evaluates in any way.

Faculty, staff, administrators or other employees of the University involved in such relationships notated above are subject to allegations of sexual harassment, including third party sexual harassment charges by students, faculty members, administrators, staff or other employees. As such, these relationships are inimical to the education process and have a negative impact on the work, learning and overall community environment of UIW.

### **3.4 Discouraged Consensual Relationships**

Relationships between employees in more senior level positions (non-supervisory roles) and employees in less senior level positions are discouraged as they may give the appearance of favoritism due to influence over the salary, benefits or continued employment held by the person in the more senior position. Senior level employees should also recognize that it could be difficult to prove that a relationship with a less senior level employee was welcome or that there was mutual consent if a complaint is subsequently made. Additionally, employees are strongly discouraged from engaging in sexual and/or romantic relationships with coworkers in the same department because it could be difficult to prove that the relationship was welcome and consensual if a complaint is subsequently made and such relationships are deemed to interfere with normal business operations.

### **3.5 Exceptions, Accountability, and Reporting**

These prohibitions do not apply to marital relationships which are addressed in the Employment of Relatives Policy, Section 7.5. However, the existence of a marital relationship may have implications for the propriety of one of the working and/or educational relationships discussed above or in the case of a person who contemplates enrolling in a class taught by his or her spouse.

Exceptions to any of these prohibitions will be considered on a case-by-case basis by the Divisional Vice President or Provost and the Associate Vice President for Human Resources. The individual with the power or status advantage in the relationship must request the exception in writing. The Divisional Vice President, Provost, or Associate Vice President for Human Resources shall respond in writing.

The individual with the power or status advantage in the relationship will bear the burden of accountability, though this does not preclude disciplinary action for other parties. Individuals who violate this policy are subject to disciplinary action, including termination of employment.

Individuals who are aware of any violation of this policy are obligated to report this violation to the Director of Human Resources.

## **SECTION 4: DEFINING AND RECOGNIZING SEXUAL MISCONDUCT**

Sexual misconduct may encompass many different forms or behaviors, including but not limited to, the following categories:

- Sexual Harassment
- Sexual Assault
- Sexual Exploitation
- Stalking
- Relationship Violence (including dating and domestic violence)

### **Statutory Definitions**

#### **4.1 Sexual Harassment (Federal Definition)**

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
3. Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

This definition will be utilized in the Title IX Coordinator's evaluation of federal jurisdictional requirements.

#### **4.2 Sexual Harassment (State Definition)**

Sexual Harassment means unwelcome, sex-based verbal or physical conduct that:

1. in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
2. in the education context, 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 institution of higher education.

Sexual harassment can occur between and/or among students, staff, faculty and/or third parties and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

#### **4.3 Sexual Assault**

Sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse. Sexual assault can be committed by anyone, including an acquaintance or a stranger.

#### **4.4 Sexual contact**

Any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. If this contact occurs with the absence of consent, it is a violation of this policy. Force is not limited to physical violence but also includes threats, intimidation, abuse of power, coercion and/or duress.

#### **4.5 Sexual intercourse**

Sexual intercourse or penetration includes, but is not limited to: penetration (oral, anal or vaginal) with any object or body part.

#### **4.6 Sexual Exploitation**

Sexual exploitation can take many forms including those noted below.

##### **1. Photographing or Video/Audio Taping of Sexual Activity**

Photographing or taping someone (via audio, video or otherwise) involved in sexual contact, or in any state of undress, without their consent constitutes sexual exploitation and is a violation of this policy. The act of taking those images/recordings without consent is one form of sexual exploitation.

The act of sharing images such as photographs or video/audio of someone involved in sexual contact or in a state of undress, without their consent, constitutes an additional act of sexual exploitation that is separate from the act of taking the images/audio. This additional act of sexual exploitation can be committed by anyone in possession of the images, even if that individual was not responsible for the creation of the original images and was not engaged in the recorded sexual contact. Sharing those images or audio can be done by digitally forwarding and/or posting copies of the materials or by simply showing someone else those images without relinquishing possession.

##### **2. Voyeurism**

Voyeurism is the act of intentionally observing, spying on or listening to a person involved in sexual contact or in any state of undress, without their consent.

##### **3. Indecent Exposure**

Indecent exposure is exposing one's intimate parts, such as genitalia, groin, breast and/or buttocks to someone without their consent. This behavior is the deliberate showing of parts of the body and may include a sex act.

#### **4.7 Stalking**

Stalking means a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress. Stalking that is motivated by sex or gender will be handled under this policy. Stalking that is not motivated by sex or gender may still be a violation of University of the Incarnate Word policy.

**For purposes of this section:**

**4.7.1 Course of Conduct**

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.

**4.7.2 Reasonable Person**

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

**4.7.3 Substantial Emotional Distress**

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

**4.8 Relationship Violence (Including Dating and Domestic Violence)**

Under this policy, relationship violence includes both dating and domestic violence. Relationship violence can occur at any stage in a relationship, including after its termination.

**4.9 Domestic Violence**

Domestic violence also called family violence in Texas, is 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.

**4.10 Dating Violence**

Dating violence means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

**4.11 Actual Knowledge**

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University.

**4.12 Education Program or Activity**

Education program or activity means locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.



Education Program or Activity must meet the jurisdictional requirements of Title IX of occurring in the United States.

#### **4.13 Complainant**

An individual who is alleged to be the victim of conduct that could constitute sexual harassment or other prohibited conduct under this policy.

#### **4.14 Respondent**

An individual who has been alleged to be responsible for the prohibited conduct that is alleged in the complaint.

#### **4.15 Informal Complaint**

A report filed by a complainant or any other person through the UIW online reporting system (Maxient). This report is a preliminary complaint. Once received the Title IX Department will follow-up with the named complainant to determine if the department shall proceed with a Title IX investigation.

Follow-up is subject to the confidential reporting exceptions, should a confidential or anonymous report be filed then the Title IX department may be limited in their ability to investigate the complaint.

#### **4.16 Formal Complaint:**

A document initiated and signed by a complainant or by the Title IX Coordinator alleging sexual harassment or other prohibited conduct under this policy against a respondent and requesting that the University investigate the allegation of sexual harassment or other prohibited conduct under this policy.

#### **4.17 Retaliation**

Retaliation is any form of disciplinary action or discrimination against an individual for raising good faith concerns about conduct or otherwise reporting behavior that may be prohibited by law or policy.

## **SECTION 5: REPORTING SEXUAL MISCONDUCT**

If you have experienced any of the behaviors described in this policy, the University of the Incarnate Word encourages you to seek help and support by reporting this conduct. The University will provide individuals with the support options, as appropriate, regardless of whether or not the individual chooses to file a disciplinary or a criminal complaint.

Reporting sexual misconduct can be difficult and complainants may experience a multitude of emotions when considering whether or not to report the conduct. The University encourages complainants to prioritize their personal safety and physical/emotional well-being to maintain health and safety.

There are several options on campus for individuals to discuss an incident of sexual misconduct:

### **5.1 Confidential Resources**

Confidential resources include medical providers, mental health providers, rape crisis counselors and ordained clergy, all of whom have privileged confidentiality that is recognized by law. These individuals will maintain the confidentiality of a complainant's disclosures unless:

1. they are given permission to share information by the person who disclosed the information;
2. there is an imminent threat of harm to self or others;
3. the conduct involves suspected abuse of a minor under the age of 17; or
4. as otherwise required or permitted by law or court order.

#### **5.1.1 Immediate Confidential Reporting/Support Options**

##### **1. Physical Well-Being (Medical Services)—CONFIDENTIAL**

- **University of the Incarnate Word Health Services**  
Located at the ground level of the Agnese/Sosa parking garage, with the entrance across from the Nursing Building.  
(210) 829-6017  
<http://www.uiw.edu/health/>
- **Methodist Specialty and Transplant Hospital**  
8026 Floyd Curl Drive  
San Antonio, TX 78229  
(210) 575-8110

Methodist Specialty and Transplant Hospital offers the services of a Sexual Assault Nurse Examiner (SANE) who has special training in medical examinations as well as the legal, forensic and psychological needs of a complainant of sexual misconduct. The Sexual Assault Response Team at Methodist Specialty and Transplant Hospital provides a compassionate environment for sexual assault survivors ages 18 and up. Through an exclusive agreement with local law enforcement agencies, a SANE trained examiner by the Texas Attorney General's office, provides comprehensive care to sexual assault survivors and collects physical evidence that can be used to prosecute offenders. Follow-up care, counseling and treatment of related injuries are also provided.

A Methodist Healthcare chaplain and advocate from the Rape Crisis Center provide counseling and support to the survivor and family.

One of the roles of the SANE procedures is to assist in the gathering of legal, physical and forensic evidence. Gathering of physical evidence can provide important evidence in support of criminal charges. Complainants who may wish to pursue criminal action (or wish to keep that option available), should be aware of the importance of immediately reporting the incident so that physical evidence can be preserved at the scene, as well as on the person. However, complainants should know that while a delay in reporting could limit the amount of physical and other evidence available which could impact a criminal investigation, they can always report the incident days, weeks, months or even years after the sexual misconduct occurred.

It may be difficult to know in the immediate aftermath of a sexual assault whether or not an individual will want to pursue legal charges. Having evidence collected does not commit an individual to reporting or prosecuting the assault. Evidence can usually be collected up to four (4) days after an assault, though likelihood of capturing evidence decreases with time. Showering, urinating and brushing teeth may destroy evidence. Clothing and bedding may contain evidence and can be taken to Methodist Specialty and Transplant Hospital in a paper bag (not plastic). Drugs used in a sexual assault often leave the body very quickly.

It is also important to consider preserving other forms of evidence, including but not limited to text messages, emails, social media postings, photographs and/or video.

**2. Emotional Well-Being (Behavioral Health Services)—CONFIDENTIAL**

- University of the Incarnate Word Behavioral Health Services  
Located at the Administration Building, 4th floor, Suite 438  
(210) 832-5656  
<https://my.uiw.edu/counseling/index.html>

**3. University of the Incarnate Word Mission and Ministry—CONFIDENTIAL**

- University Mission and Ministry  
Located at the Administration Building, 1st Floor, Room 147  
(210) 829-3128  
<https://my.uiw.edu/ministry/index.html>

## **5.2 Reporting Options**

Any or all these options can be used simultaneously by complainants and respondents to address sexual misconduct, regardless of whether a disciplinary and/or criminal claim is pursued.

### **5.2.1 Title IX Coordinator. - Internal Reporting Option**

For contact information, please visit <https://my.uiw.edu/titleix/>.

It should be noted that the Title IX Coordinator, Mandatory Reporters, and Responsible Employees at the University of the Incarnate Word are not required to report information about violations of this policy by students learned through public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence.

### **5.3 Complaint and Adjudication Process**

Complaints under this policy against students and employees can be addressed under the Sexual Misconduct Adjudication Process (SMAP). A copy of the SMAP can be found at <https://my.uiw.edu/titleix/>. Investigators will make every effort to try and conduct investigations during school breaks or between school years unless doing so would sacrifice witness availability or otherwise compromise the process. The University of the Incarnate Word will make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

### **5.4 Anonymous Complaints**

The Title IX Coordinator will accept anonymous reports from students and non-UIW affiliated members of the community. However, anonymous complainants should understand that while the University of the Incarnate Word will do its best to address anonymous complaints and reports, it may be limited in its ability to investigate and otherwise respond to or address them.

### **5.5 Requests to Remain Anonymous**

If a complainant requests that their name not be revealed to the respondent or asks that the University not investigate or seek action against the respondent, the Title IX Coordinator, in consultation with other administrators, will consider a number of factors in determining whether the University can honor that request. If the University determines that it can honor this request, the University's ability to respond fully to the incident, including pursuing disciplinary action against the alleged respondent may be limited. However, the University may be able to take steps to limit the effects of sexual misconduct and prevent sexual misconduct such as providing increased monitoring, supervision or security at a location where sexual misconduct occurred.

In some limited instances, a respondent may be spoken to without the complainant being identified. In other cases, issues of privacy must be balanced against the University of the Incarnate Word's need to investigate and take appropriate action. Although the University affirms the right of the complainant to decide whether they wish to be involved in any process to address sexual misconduct, individuals should understand that if the conduct at issue poses a threat to campus safety (which includes, but is not limited to, the involvement of further violence, the complainant's status as a minor, the use of weapons or potential repeat offenders), the University of the Incarnate Word will take action regardless of whether the complainant wishes to proceed with their individual complaint. Under these circumstances and whenever possible, the University will inform the complainant of its need to move forward prior to commencing an investigation of its intent to disclose the identity of the complainant. A complainant may receive interim measures, support and safety services regardless of the level of participation or engagement with applicable procedures or guidelines.

Once a formal complaint has been filed with the Office of Title IX, then the complainant's identity cannot be kept anonymous from the respondent and shall be disclosed to respondent in a manner consistent with appropriate federal guidelines.

## **5.6 Confidentiality**

In some instances, the Respondent can be spoken to without the Complainant being identified and without filing or moving forward with a formal complaint. In these instances, the privacy and confidentiality of the individual raising a concern will be protected to the extent possible. In other cases, issues of confidentiality must be balanced against the University's need to investigate and to take appropriate action for the safety of the community.

## **5.7 Resources/Interim Measures**

The University of the Incarnate Word will provide support services or “interim measures” for students and employees with sexual misconduct concerns, as appropriate. These support services or interim measures are available to individuals even if they choose not to file or pursue a disciplinary complaint or if the status of a respondent to the University is unclear. Various available and appropriate interim measures include but are not limited to: health and counseling services, no-contact orders, no trespass orders, schedule and housing changes, academic supports or adjustments, and information about financial aid issues. These support services and interim measures will be available to them at any time, including through an investigative process and after the conclusion of the adjudication process. Interim measures will be implemented in a manner that will minimize the burden on both parties fairly and equitably.

The Associate Provost of Academic Support Services or other designee are responsible for ensuring the implementation of support services and interim measures.

## **5.8 Focus on Sexual Misconduct in Disciplinary Matters**

Under Texas law, a postsecondary educational institution may not take any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

## **5.9 Cooperation with Law Enforcement**

The University of the Incarnate Word may conduct its own investigation and adjudication of a disciplinary complaint regardless of whether the alleged sexual misconduct is also being pursued through the criminal justice system. The Office of Title IX will comply with law enforcement requests for cooperation. Parties to complaint processes should understand that any and all documents provided to the Office of Title IX—including complaints, responses and witness statements, investigative reports, documents provided by the parties, and other evidence examined as part of an investigation such as video, photographs, etc.—may be subject to disclosure by subpoena or court order at any time.

## 5.10 Online Reporting

To make a report online, please visit [www.uiw.edu/titleix](http://www.uiw.edu/titleix), click on the “Report an Incident” button. Any member of the University of the Incarnate Word community can file a report or complaint of sexual misconduct online. Online reporting provides individuals the option to report anonymously if they choose. However, anonymous complainants should understand that while the University of the Incarnate Word will do its best to address anonymous complaints and reports, it may be limited in its ability to investigate and otherwise respond to or address them.

## 5.11 Community Resources—External Support Options

Outside of the University of the Incarnate Word, there are many local organizations that provide support services, educational programs, and other resources for complainants. While these groups are not affiliated with the University of the Incarnate Word, they are included here as they can provide valuable support for members of our community.

- **San Antonio Rape Crisis Center**  
(210) 349-7273 (24-hour crisis hotline)  
<http://rapecrisis.com/>
  
- **Family Violence Prevention Services, Inc.**  
(210) 733-8810 (24-hour hotline)  
<http://www.fvps.org/>
  
- **The National Domestic Violence Hotline**  
1.800.799.7233  
<http://www.thehotline.org/>
  
- **Rape, Abuse & Incest National Network (RAINN)**  
1.800.656.4673  
<https://rainn.org/>

## 5.12 Administrative Agency Resources—External Reporting Options

- **Equal Employment Opportunity Commission (EEOC)**  
San Antonio Field Office  
Legacy Oaks, Building A  
5410 Fredericksburg Road, Suite 200  
San Antonio, TX 78229  
1.800.669.4000
  
- **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

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html>

A complaint to the EEOC and OCR must be filed within 180 calendar days of the date of the alleged discrimination, unless the time for filing is extended by the EEOC or OCR for good cause shown under certain circumstances or other statutory exemption.

### **5.13 Transcript Notation**

The notation “Disciplinary Charges Pending” will be placed on a student’s transcript at the start of a Title IX investigation. This notation may be removed or changed as appropriate following the final resolution of a disciplinary complaint. If a student withdraws from the University while a disciplinary complaint is pending, a permanent notation will be placed on a student’s transcript stating, “Student Withdrew with Disciplinary Charges Pending.” A student who leaves while a disciplinary complaint is pending is not eligible to be issued a transcript by the University until a final decision is made. Additionally, a student who leaves while a disciplinary complaint is pending is not eligible to return to the University. A student cannot receive a degree while there is a pending, unresolved disciplinary complaint against them.

Refusal or failure by a student to meet and cooperate with the Title IX department regarding this matter or to sign the Non-Retaliation Acknowledgment, as determined by the Title IX Coordinator may result in either (1) an automatic suspension from the University, and/or (2) the adjudication of the disciplinary complaint without input from the student.

On request by another college or University, the University of Incarnate Word shall provide to the requesting college or University information relating to a decision by the University that a student enrolled at the University violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

## **SECTION 6: TITLE IX INVESTIGATION PROCESS**

### **6.1 Title IX Jurisdiction**

In order to proceed with a Title IX Investigation, a formal complaint must be filed, and the following criteria must be met:

1. The incident constitutes “sexual harassment” within the definitions outlined in the definitions section, and
2. The school must have “actual knowledge” of an allegation of the incident of sexual harassment, and
3. The conduct must have occurred within the school’s own “education program or activity”, and
4. The alleged harassment must occur “in the United States.”

If any of the above criteria is not met, then the Office of Title IX must dismiss a formal complaint.

The Title IX Coordinator shall review all reports received and determine if the Title IX jurisdictional requirements have been met to investigate a complaint. Should the incident not meet the Title IX requirements, it may still violate other University policies and will be sent to the proper department to investigate that complaint.

### **6.2 Respondent’s Presumption of Innocence**

The Respondent shall be presumed innocent until proven responsible.

### **6.3 Preponderance of Evidence Standard**

The University of the Incarnate Word has elected to use the preponderance of the evidence standard of proof in all Title IX investigations.

The standard is met when the evidence indicates that it is more likely than not that the alleged conduct has occurred.

In a Title IX formal investigation, the hearing officer shall return a decision in favor of the complainant if it is shown that a specific allegation of sexual misconduct was more likely than not to have occurred. If this burden is not met, then a decision in favor of respondent shall be rendered.

### **6.4 Formal Complaint**

A written or electronic document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.

Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.



The University may at its discretion consolidate formal complaints involving multiple parties where the allegations arise out of the same incident or set of facts and circumstances.

If the investigation is consolidated, then each party will be considered an individual and does not become a group or organization.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail.

### **6.5 Dismissal or Withdrawal of a Formal Complaint**

The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

1. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
2. The respondent is no longer enrolled or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a decision as to the formal complaint or allegations therein.

Upon a dismissal whether required or permitted by law, the Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

### **6.6 Automatic Dismissal of a Complaint**

A complaint will be automatically dismissed if at any point during the evaluation of the complaint or during investigation process the complaint does not meet the jurisdictional requirements to investigate.

### **6.7 Formal Resolution Process**

When a formal investigation and resolution take place, the following steps shall occur:

1. A formal complaint shall be submitted with the signature of the complainant or the Title IX Coordinator.
2. Both parties shall be notified in writing of the nature of the complaint and their rights and responsibilities.
3. Each party will receive a Title IX advisor at their requests to explain the investigation process and procedures to them and advise them during the informal process.
4. Each party may also have a single support person of their choosing that may sit in on their interview, this support person may not also be a witness, and may not speak during the interview.
5. During the investigation process the parties will be given details of the process of the investigation and opportunity to access and review all evidence collected.
6. Both parties shall be given an opportunity to respond to the investigator's report before it becomes final.
7. Once a final investigative report is complete, that report along with all other evidence, statements, etc. that are relevant to the case shall be made available to the parties and will be available for a hearing.

8. A hearing will be set and opportunity for cross-examination shall be available.
9. A hearing will take place and parties may be cross examined by the advisors. Neither respondent or complainant may cross-examine another party during a hearing.
10. A hearing officer will be assigned to the individual case. The hearing officer will not be the Title IX Coordinator.
11. The hearing officer will render a decision based on all evidence, statement's, investigator's reports, etc. that are submitted during the hearing.
12. The hearing officer shall render a decision on the evidence, etc. that is heard.
13. Both parties will be given the decision at the same time and either party may appeal the decision that has been rendered.
14. For more detailed information on the formal procedures please see this policy and the Sexual Misconduct Adjudication Process (SMAP).

### **6.8 Gathering, Presenting and Obtaining Evidence**

The burden of proof and gathering of evidence is the responsibility of the University and shall be conducted by the person who is investigating the formal complaint, this may include UIW's Title IX Coordinator, the Title IX Investigator, or the Title IX Deputy Coordinators, etc.

Both parties (with their advisors) have the right to gather, provide, and present relevant evidence during the investigation process. Additionally, both parties have the right to inspect and review any evidence that is gathered and presented by either party. All evidence shall be provided to each party at least 10 days prior to any formal hearings.

The evidence shall be provided in electronic format or hard copy. Should the University be unable to copy or digitize a piece of evidence (i.e. physical evidence), then a photo of that evidence will be taken and provided to each party.

### **6.9 Medical Records**

Medical and similar privileged records are not available unless the party (or legal guardian) gives written consent.

### **6.10 Investigator's Report**

The Investigator will send a preliminary report to the parties and their advisor's, if any. The parties must be allowed 10 days to respond in writing to the evidence, and the Investigator must consider the written response prior to completing the final report.

### **6.11 Response to Investigator's Report**

The parties shall be given at least 10 days to file a written response regarding the investigation evidence and the investigator shall consider those responses prior to completion of the final investigative report.

## **6.12 The Final Investigator's Report**

The final investigator's report along with all evidence collected must be furnished to both parties at least 10 days prior to any formal live hearing. This report shall be provided in either electronic or hard copy format.

## **6.13 Inspection of Evidence**

All parties and their advisors will be given equal access to inspect and review all evidence gathered during the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely in reaching a decision and incriminating as well as exonerative evidence, regardless of source.

## **6.14 Copies of Evidence**

The University will have a copy of all evidence at the hearing with each party having equal access to refer to the evidence or use it in cross examination.

## **6.15 Altering Evidence**

Neither party may alter any evidence. Permission must be granted by the Title IX Coordinator if either party wishes to enhance, zoom, make a poster size copy, or alter any evidence at least five (5) business days prior to a live hearing.

All requests for altering or emphasizing must be done in writing and signed by the party and their advisor. All requests must be reasonable. Should the Title IX coordinator deem the request unreasonable then the request shall be denied. The Title IX Coordinator shall respond to requests made two (2) business days from the time that the request is received.

## **6.16 Live Hearing Process**

Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Either party may request that a hearing be held with the parties in separate rooms with technology enabling the parties and the decision-maker(s) to see and hear witnesses.

The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

## **6.17 Cross-Examination**

At the hearing, each party shall be given the opportunity for relevant questions and cross-examination to be conducted by the party's advisor. Questioning may be done of the other party and any witnesses and may include challenging credibility.

All questioning, including cross-examination, at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by the complainant or respondent personally.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that party or witness in reaching a decision regarding responsibility.

However, the hearing officer may utilize other witnesses, evidence, etc. that was subject to cross examination in their deliberation.

Additionally, the hearing officer cannot draw an inference 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.

### **6.18 Sexual History Rule**

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove

1. that someone other than the respondent committed the conduct alleged by the complainant, or
2. if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

The Hearing Officer shall review all questions during cross-examination to determine if they are relevant before a party being questioned may be asked about sexual history.

### **6.19 Advisor**

Both parties are entitled to have an advisor of their choosing with them throughout the Title IX process. This advisor may or may not be a legal advisor (i.e. an attorney).

Should either party not be able to find an advisor then UIW shall provide without fee or charge to either party, an advisor of the University's choice, who may be, but is not required to be an attorney.

This advisor shall be utilized to conduct cross-examination on behalf of that party and give advice to that party regarding the proceedings of a Title IX investigation,

### **6.20 Hearing Officer**

A hearing officer shall be comprised of a single individual of the University that shall be trained on the hearing process and shall maintain a level of professionalism and confidentiality of the proceedings before them.

## **6.21 Relevance**

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 or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

## **6.22 Decisions Rendered**

After the hearing officer has deliberated and reviewed all evidence presented during the live hearing, they shall render a decision of either:

1. Responsible: Finding that it is more likely than not that the respondent committed the act that they have been accused of, or
2. Not Responsible: Finding that the preponderance of evidence burden has not been met and there is not enough evidence to render that it is more likely than not that the respondent committed the act of which they have been accused.

## **6.23 Decision Notice**

Following the hearing the decision-maker must issue a written decision notice to the parties at the same time which must include:

1. Identification of the allegations that potentially constitute sexual harassment;
2. A description of the procedural steps taken after receiving the formal complaint through the final decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the decision;
4. Conclusions and application of this policy to the facts;
5. A statement and rationale for the result of each allegation including: a decision regarding responsibility, any disciplinary sanctions the University will impose on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
6. The University's policy and permissible grounds for the complainant and respondent to appeal.

## **6.24 Opting Out for a Formal Investigation**

Either party may ask to opt-out of the formal investigation. However, for an informal investigation to take place, both parties must agree to opt-out of the formal investigation. If at any point during an informal investigation either party does not wish to proceed with the informal process, then the process will automatically revert to a formal investigation.

The University will not offer or facilitate informal resolution process to resolve allegations that an employee sexually harassed a student. This specific type of incident must go through a formal process.

## **6.25 Appeals**

The University will offer both parties the option to appeal a decision regarding responsibility and/or dismissal of a formal complaint or any allegations therein, for the following reasons:

### **6.25.1 Procedural Error**

Procedural irregularity that occurred during the investigation that may have affected the outcome of the matter.

### **6.25.2 New Evidence**

New evidence that was not reasonably available at the time the decision regarding responsibility or dismissal was made

### **6.25.3 Conflict of Interest**

The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter.

Either party has 5 business days from the date that a decision was rendered by the hearing officer to file an appeal. The appeal must be in writing and delivered to the Title IX Coordinator no later than the 5<sup>th</sup> business day by 5:00 p.m. Central Time.

## **6.26 Decision Becomes Final**

The decision in a case becomes final:

1. If an appeal was not filed, on the expiration date set for filing; or,
2. If an appeal was filed and denied, on the date the University provides the parties with the written decision of an appeal.

## **6.27 Sanctions**

No party will be found in violation of the Sexual Misconduct Policy without information showing that it is more likely than not that a policy violation occurred, and any sanctions will be proportionate to the severity of the violation.

### **6.27.1 Sanctions for Students**

1. Transcript Notation
2. Counseling
3. Remedial Training
4. Non-Academic Probation
5. Non-Academic Suspension
6. Removal from Educational program or Activity
7. Dismissal from the University Degree Program
8. Campus Housing Probation
9. Expulsion from Campus Housing

10. Other Campus Housing Sanctions
11. Other Student Conduct Sanctions

### **6.27.2 Sanctions for Employees**

1. Employment File Notation
2. Administrative Suspension
3. Removal from Educational program or Activity
4. Suspension of duties
5. Remedial training
6. Employment probation
7. Termination of employment
8. Other Employee Handbook Sanctions

### **6.27.3 Sanctions for Faculty**

1. Employment File Notation
2. Administrative Suspension
3. Removal from Educational program or Activity
4. Suspension of duties
5. Remedial Training
6. Employment probation
7. Termination of employment
8. Other Faculty Handbook Sanctions

## **6.28 Hearing Officer Recommendation**

If a hearing officer makes the determination that the respondent has been found responsible for a violation of the Sexual Misconduct Policy, then the Hearing officer will continue with a sanction recommendation.

That sanction recommendation will be made after the decision notice has been given to all parties. The Respondent has the right to review the recommendation of the hearing officer prior to it being submitted to the controlling party that will decide if the sanction recommendation is suitable for the violation.

## **6.29 Sanction Decision Confirmation**

Once a Hearing officer submits a sanction recommendation for the respondent then the sanctions shall be turned over to the sanctioning body. For students the person(s) who will have final decision-making authority over proper sanctions will be:

1. Dean of Campus Life
2. Director of Student Advocacy and Accountability

For employees the person(s) who will have final decision-making authority over proper sanctions will be:

1. Director of Human Resources

2. Associate Vice President of Human Resources

For faculty the person(s) who will have final decision-making authority over proper sanctions will be:

1. Provost
2. Vice Provost

Sanctioning shall be conducted subject to other policies and procedures of the University of the Incarnate Word. Sanctioning shall not be carried out by the Title IX office, but by the corresponding decision-making authority for the sanctions. The Title IX office shall obtain the records of official sanctions from the governing authority and maintain that record with the Title IX records.

### **6.30 Maintaining and Retaining Records**

The University shall maintain records of every Title IX sexual harassment investigation and decisions of responsibility, including informal resolutions. The University shall keep records of responses to every allegation of sexual harassment even if no formal complaint was filed, and any response, including supportive measures offered and implemented. The University shall document the facts upon which it was determined that they were “not deliberately indifferent” to the allegations of sexual harassment.

Additionally, the University shall maintain all materials used to train Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution process and post such materials on the school’s website.

Complaint records shall be retained for 7 years from the date that the complaint was made. Investigation records shall be kept 7 years from the date that the case decision is final. Records of materials used to train Title IX coordinators, investigators, decision-makers, and any other persons shall also be kept 7 years from the implementation date of the training.

### **6.31 Informal Investigation Process**

If both parties choose to opt out of a formal investigation process, the informal investigation process shall take place.

1. The parties must opt out in writing.
2. The informal process will still consist of an investigatory stage in which the Title IX investigator assigned to the complaint will gather evidence, investigate all parties and witnesses, etc. that is the same as the formal process.
3. Each party will receive an internal Title IX advisor at their requests to explain the investigation process and procedures to them and advise them during the informal process.
4. Each party may also have a single support person of their choosing that may sit in on their interview, this support person may not also be a witness, and may not speak during the interview.
5. The parties shall be given at least 10 days to file a written response regarding the investigation evidence and the investigator will consider those responses prior to completion of the investigative report.



6. Once a final investigative report is complete, that report along with all other evidence, statements, etc. that is relevant to the case shall be turned over to the hearing officer assigned to the case. The hearing officer will not be the Title IX Coordinator.
7. The informal process will not include a hearing or cross examination of witnesses.
8. The hearing officer will render a decision based on all evidence, statements, investigator's report that is submitted.
9. For more detailed information on the informal process please see the Sexual Misconduct Adjudication Process (SMAP).

### **6.32 Informal Resolution Process**

If the complainant does not wish to file a formal complaint but wishes to discuss a possible resolution of reported incident, then the parties may agree to discuss and resolve the informal complaint with an informal resolution through informal agreement or mediation.

The Informal Resolution process shall take place outside of a formal complaint. This resolution process shall not inhibit the right of the complainant to file a formal complaint if a resolution cannot be made between the parties.

### **6.33 Non-Retaliation Policy**

#### **6.33.1 Non-Retaliation When Filing a Complaint**

Any member of the University of the Incarnate Word community has the right to file a good faith complaint of sexual misconduct without fear of retaliation. It is a violation of state law and University policy to retaliate against an individual who in good faith, files a complaint of sexual misconduct or for cooperating in a sexual misconduct investigation, a disciplinary process, or a judicial proceeding relating to a report made by the person.

Retaliation against anyone who reports an incident of sexual misconduct in good faith or who in any way cooperates in an inquiry or investigation of sexual misconduct is strictly prohibited.

Disciplinary action may be taken against a person(s) who reports and/or perpetuates an incident in bad faith reported even if they cooperate with an investigation, disciplinary process, or a judicial proceeding relating to the allegation that the person perpetuated the incident. Any such disciplinary action is not considered retaliation.

#### **6.33.2 Non-Retaliation During an Investigation**

UIW or any person shall not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.

Charges against an individual for code of conduct violations that do not involve sexual misconduct or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sexual misconduct or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

UIW shall keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

Complaints alleging retaliation may be filed at <https://my.uiw.edu/student-advocacy-and-accountability/report-an-incident.html>.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation; provided, however, that a decision regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

#### **6.34 Effective Date of Policy:**

Under Federal Guidelines implemented and released in June 2020, this policy shall become effective August 14, 2020. Any Complaints filed before August 14, 2020 shall follow the Sexual Misconduct Policy which revised in December 2019.

## **APPENDIX A**

### **Clery Act/Selected Federal Crime Definitions**

1. Sex Offenses, Forcible: Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.
2. Sex Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as stated in the FBI's Uniform Crime Reporting program.
3. Rape: 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 consent of the victim. Attempts or assaults to commit rape are also included; however, statutory rape and incest are excluded.
4. 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.
5. Sex Offenses, Non-forcible: Unlawful, non-forcible sexual intercourse.
6. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
7. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.
8. Domestic Violence: (i) A felony or misdemeanor crime of violence committed—(A) By a current or former spouse or intimate partner of the victim; (B) By a person with whom the victim shares a child in common; (C) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (D) By 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 (E) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
9. 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. (i) 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 the interaction between the persons involved in the relationship. (ii) For purposes of this definition—(A) dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence.

10. Stalking: (i) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A) Fear for the person's safety or the safety of others; or (B) Suffer substantial emotional distress. (ii) For the purposes of this definition—(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.

### **Selected Texas Penal Code Definitions**

#### **Texas Penal Code § 1.07**

**Reasonable Belief:** A belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

#### **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.

**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 informally married to each other under Chapter 2, Family Code.

**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.