

Union Theological Seminary
Title IX and Sexual Misconduct Policy

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I. Introduction and Notice of Non-Discrimination

The Union Theological Seminary (“UTS”) is committed to providing an inclusive and welcoming educational and working environment for all members of the community. Consistent with these values and applicable law, discrimination and harassment, including sex and gender-based discrimination and harassment, will not be tolerated in the UTS community.

UTS does not discriminate on the basis of sex in its education programs and activities and is required by Title IX of the Education Amendments of 1972 (“Title IX”) and its implementing regulations not to discriminate in such a manner, including in admissions and employment. Sexual harassment is a form of sex discrimination. In accordance with UTS policies and all applicable laws, including but not limited to Title IX, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Article 129-B of the New York State Education Law (“Article 129-B”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the New York State Human Rights Law (“NYSHRL”), UTS maintains processes to provide redress and support to individuals who believe they have been subjected to discrimination and harassment on the basis of sex.

Reports of alleged violations of this Policy are subject to resolution under one of two formal grievance processes, Process A or Process B. Process A applies only to Title IX sexual harassment, as defined herein, and is initiated by the filing of a formal complaint. Process B applies to all other sexual misconduct and retaliation, as defined herein, and is initiated by the filing of a complaint. An informal resolution process may also be available to resolve the allegations once a formal complaint or a complaint has been filed. These processes are all discussed in further detail in their respective sections below.

Any questions about the application of Title IX, its implementing regulations, and related issues of sex discrimination under federal, state or local law may be referred to the UTS Title IX Coordinator, the U.S. Department of Education’s Assistant Secretary for Civil Rights, or both, via the following contact information:

Diana Torres-Petrilli
Title IX Coordinator
Chief Human Resources Officer
3041 Broadway at 121st Street
New York, NY 10027
Telephone: (212) 678-8011
Email: dipetrilli@uts.columbia.edu

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Telephone: 1-800-421-3481
Fax: 202-453-6012; TDD: 1-800-877-8339
Email: OCR@ed.gov

UTS has established this Title IX and Sexual Misconduct Policy (the “Policy”) to promptly and equitably address allegations of sexual misconduct including all forms of sex and gender-based discrimination, sex and gender-based harassment, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and any other form of non-consensual sexual activity or retaliation as defined in this Policy. This Policy: (i) defines prohibited conduct; (ii) sets forth available resources and reporting options; (iii) describes UTS’s prompt and equitable formal and informal processes for responding to allegations of prohibited conduct; and (iv) describes prevention and education programs implemented by UTS.

II. Conduct Covered by this Policy

This Policy is effective as of August 14, 2020 and applies to reports, complaints, and formal complaints regarding all forms of sexual misconduct, as defined herein. All forms of sexual misconduct are prohibited

under this Policy. The most current revision of this Policy supersedes all previously issued revisions and inconsistent verbal or written policy statements. UTS reserves the right at any time to change, modify, delete, or add to any of the provisions of this Policy.¹

Any individual can experience sexual misconduct regardless of sex, gender, sexual orientation, gender identity, including transgender status, or gender expression. Discrimination and harassment based on other protected classes, such as race, religion, and disability, are governed by UTS's Anti-Discrimination and Harassment Policy, available [here](#). This Policy supersedes any conflicting information contained in the Anti-Discrimination and Harassment Policy, if applicable, with respect to the definitions or procedures relating to prohibited sexual misconduct or related retaliation. Any questions regarding which policy applies in a specific instance can be directed to UTS's Title IX Coordinator.

III. Jurisdiction and Scope of Policy

This Policy applies to UTS students, UTS employees including faculty and visiting faculty, staff, and administrators ("Employees"), contractors, subcontractors, vendors, or other third-parties; and visitors or guests and other individuals affiliated with UTS by reason of employment or education and within UTS's control (collectively, the "UTS community"). Each member of the UTS community is expected to assist in maintaining a working and learning environment that is free of sex discrimination, sexual harassment, and other sexual misconduct. This Policy applies to the entire UTS community regardless of an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other status protected by law.

The formal grievance processes as outlined in this Policy do *not* apply to reports, complaints, or formal complaints against individuals who are not part of the UTS community. However, individuals are still encouraged to report these incidents to the Title IX Coordinator and UTS will offer counseling and other supportive measures to the extent possible.

This Policy applies to incidents that occur in an education program or activity of UTS, and therefore covers all of the operations of UTS,² such as academics, extracurricular activities, and athletics, and may also include computer and internet networks, digital platforms, and computer hardware or software owned by, operated by, or used in the operations of UTS. This Policy covers conduct that occurs on-campus, in UTS provided housing, and, in certain circumstances, off-campus or during any study abroad program, including but not limited to UTS's international travel seminars. Any online postings or other electronic communication will be in violation of this Policy the same as any other verbal, written, or physical conduct addressed in this Policy. Irrespective of where the conduct took place, UTS will assess all reports, complaints, and formal complaints to determine whether the conduct took place during its education program or activity or has a continuing effect on campus or in an off-campus program or activity. This Policy may be violated even if the Respondent's actions do not constitute a federal or state crime.

IV. Interaction with Other UTS Policies

¹ UTS may, at its discretion, designate a trained and experienced individual(s) to act in the place of the Investigator, Hearing Officer, and/or facilitators in this Policy. If there is such a designation, the Parties involved will be promptly informed.

² For the purposes of 34 CFR §§ 106.30, 106.44, and 106.45, "education program or activity" includes locations, events, or circumstances over which UTS exercised substantial control over both the Respondent and the context in which the sexual misconduct occurs, and any building owned or controlled by a student organization that is officially recognized by UTS.

One incident may involve conduct that violates multiple UTS policies. These situations will be addressed on a case by case basis. UTS reserves the right to determine the most applicable policy or process and to utilize that policy or process. If an individual is charged with policy violations under both the Sexual Misconduct Policy and another policy, the alleged violations may be handled through one hearing process, engaging both the Title IX Coordinator and the other presiding UTS Official or designee. In that event, Hearing Officer(s) trained in the necessary areas for all applicable policies will preside over the hearing. In circumstances where there is a conflict between the procedures and/or processes set forth in other UTS Policies and this Policy, the procedures or process in this Policy govern. Alternatively, a situation that invokes more than one UTS policy may have allegations divided on the basis of which policy was allegedly violated, with each grouping addressed separately using the grievance process in the pertaining policy

V. Title IX Coordinator

Diana Torres-Petrilli, Chief Human Resources Officer, is the Title IX Coordinator at UTS. Her contact information³ is as follows:

Diana Torres-Petrilli
Title IX Coordinator
Chief Human Resources Officer
3041 Broadway at 121st Street
New York, NY 10027
Telephone: (212) 678-8011
Email: dipetrilli@uts.columbia.edu

The Title IX Coordinator's responsibilities include but are not limited to: (1) overseeing the implementation of this Policy and UTS's response to allegations of sexual misconduct and/or retaliation; (2) serving as a resource for individuals who believe they have experienced any act of sexual misconduct or retaliation as defined in this Policy; (3) coordinating UTS's formal grievance processes, UTS's informal resolution process, and the implementation of supportive measures and remedies; (4) identifying potential systemic issues or patterns in the UTS community regarding sexual misconduct; and (5) conducting and supporting training initiatives for the UTS community.

The Title IX Coordinator is also available to answer any questions or address any concerns regarding this Policy. Any necessary accommodations due to a disability for the processes outlined in this Policy can also be discussed with the Title IX Coordinator. The Title IX Coordinator shall not have a conflict of interest or bias. If there is a conflict with the Title IX Coordinator or the complaint involves the Title IX Coordinator, Parties should inform Frederick A. Davie, Executive Vice-President. UTS will respond promptly to any notice or reports of sexual misconduct and strives to maintain privacy while doing so.⁴ A Student's Bill of Rights is also attached as Appendix A.⁵

³ UTS provides the contact information of the Title IX Coordinator to students, faculty, staff, applicants for admission, applicants for employment, and all labor unions or professional organizations holding collective bargaining or professional agreements with UTS.

⁴ Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws or UTS Policy, including informing appropriate UTS officials.

⁵ The rights set forth in the Students' Bill of Rights as well as the rights set forth in Article 129-B apply regardless of whether the conduct occurs on campus, off campus, or while studying abroad. New York Education Law 129-B, Enough is Enough, § 6440(6). To the extent applicable, students maintain these rights during resolution of a complaint under Process A and/or Process B.

Reporting Parties have a right to emergency access to the Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure. These individuals will provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. This individual will also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and will inform the reporting individual of other reporting options.

VI. Applicable Definitions

Actual Knowledge: means notice of sexual harassment or allegations of sexual harassment to UTS's Title IX Coordinator or any official of UTS who has authority to institute corrective measures on behalf of UTS, also known as any Official with Authority, as defined below. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. The mere ability or obligation to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of UTS. This standard is not met when the only Official with Authority with actual knowledge is the Respondent.

Advisor: an individual who may be, but who is not required to be, an attorney, that is selected by a Party or appointed by UTS to aid the Party during the grievance process. Parties are permitted to be accompanied by the Advisor of their choice to any grievance process related meeting or proceeding, but the Advisor is prohibited from participating in the meeting or proceeding. At a Process A hearing, Advisors are permitted to ask the other Party and any witnesses all relevant questions and follow-up questions, including that challenging credibility, on the Party's behalf, as Parties are not permitted to personally conduct cross-examination. If a Party does not select an Advisor and a Process A hearing is required, UTS will appoint an Advisor for that Party for the duration of the hearing and for the purposes of conducting cross-examination.

Affirmative Consent: is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

- When consent is withdrawn or can no longer be given, sexual activity must stop.

Bystander: means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of UTS.

Coercion: means unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, in order to compel the person to engage in sexual activity.

Complaint: a Process B document filed by a Complainant or signed by the Title IX Coordinator alleging sexual misconduct against a Respondent and requesting that UTS investigate the allegation of sexual misconduct. A Complaint initiates the formal Process B grievance process.

Complainant: refers to an individual who is alleged to be the victim of conduct that could constitute sexual misconduct or conduct that could constitute retaliation, as defined herein.

Confidentiality: may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and § 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of UTS employees who may offer confidentiality. Even UTS offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Dating Violence: as defined by VAWA, at 34 U.S.C. § 12291(a)(10), the term “dating violence” means violence committed by a person: who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of the relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

Day: as used in this Policy, day means business day.

Deliberately Indifferent: as defined in 34 C.F.R. § 106.44(a), means a response to sexual harassment is clearly unreasonable in light of the known circumstances. Once UTS has actual knowledge of sexual harassment in its education program or activity against a person in the United States, UTS will respond promptly in a manner that is not deliberately indifferent, as defined herein.

Determination: a written finding by the Hearing Officer(s) containing the required information under 34 CFR § 106.45(b)(7), including a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on Respondent, and whether remedies will be provided by UTS to Complainant.

Disciplinary Sanction: an action, usually punitive, taken by UTS against a Respondent who has completed either the informal resolution process or a formal grievance process and was found responsible for a violation of this Policy.

Domestic Violence: as defined by VAWA, at 34 U.S.C. § 12291(a)(8), the term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly

situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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.

Education program or activity: For purpose of 34 CFR §§ 106.30, 106.44, and 106.45, includes locations, events, or circumstances over which UTS 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 UTS.

Employee: as used in this Policy, the term includes all who are employed by UTS, including but not limited to all categories of faculty, administrators, and staff, and those persons who are under contract or assignment by UTS.

Faculty: as used in this Policy, the term includes all teaching staff at UTS, including tenured and non-tenured teaching staff, and certain senior members of UTS's administration.

Final Determination: means the written determination containing the information required in 34 CFR § 106.45(b)(7), as modified by any appeal by the parties. A determination regarding responsibility becomes final either on the date that UTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

Force: means the use of physical violence and/or imposing on someone physically to engage in sexual activity. Force can also include threats, intimidation, or coercion used to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement that a Party resist the sexual activity, but the use of force to cause someone to engage in sexual activity is prohibited non-consensual contact.

Formal Complaint: means a Process A document filed by a Complainant (meaning a document or electronic submission (such as by electronic mail) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that UTS investigate the allegation of sexual harassment. A Formal Complaint initiates the formal Process A grievance process. 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 UTS.

Formal Grievance Process: means Process A and/or Process B, excluding any informal resolution process that may occur during either grievance process.

Hearing Officer: presides over the hearing conducted during Process A and Process B and issues a determination as defined herein.

Informal Resolution Process: an informal grievance process available under certain circumstances as an alternative to completing a formal grievance process. Should a matter be eligible for informal resolution, Parties are permitted to enter the informal resolution process at any point prior to a determination of responsibility being reached. Both Parties must consent to the informal resolution process. Additional information and restrictions can be found in Section XVIII(d).

Intimidation: implied threats or acts that reasonably cause another to fear for his/her safety or well-being.

Investigator: means the individual(s) appointed by UTS to investigate the allegations of sexual misconduct and/or retaliation. Investigators are also charged with creating an investigative report that fairly summarizes relevant evidence.

Mandated Reporter: means an employee of UTS obligated by this Policy to inform the Title IX Coordinator and UTS Security of any learned information regarding alleged sexual misconduct and/or retaliation in violation of this Policy. UTS does not have actual knowledge of knowledge and/or reports known only by a Mandated Reporter who is not also an Official with Authority.

No-contact order: means a directive prohibiting contact between and among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third-party.

Official with Authority (OWA): means an employee of UTS who has the authority to institute corrective measures on behalf of UTS. The mere ability or obligation to report sexual misconduct or to inform a student about how to report sexual misconduct, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of UTS. Officials with Authority include, but are not limited to, the Executive Vice President, the Vice President and Dean of Academic Affairs, and the Dean of Students.

Parties: refers to all Complainants and Respondents involved in the case. The singular term “Party” refers to any one of these individuals.

Preponderance of Evidence: is the standard to determine responsibility under UTS’s Policy. This means that it is more likely than not that a violation of the Policy occurred.

Privacy: may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws or UTS Policy, including informing appropriate UTS officials.

Process A: means a formal grievance process in accordance with 34 CFR § 106.45 that applies only to conduct that constitutes Title IX sexual harassment, as defined herein. Process A is initiated by the filing of a formal complaint, as defined above.

Process B: means a formal grievance process that applies to all sexual misconduct and related retaliation that does not constitute Title IX sexual harassment. Complaints of sex/gender-based discrimination and harassment that do not involve Title IX sexual harassment are covered by Process B. Process B is initiated by the filing of a complaint, as defined above.

Remedies: actions taken by UTS in favor of a Complainant and/or the UTS community after the Respondent has been found responsible through either the informal resolution process or a formal grievance process. Remedies are designed to restore or preserve equal access to UTS’s education program or activity. Remedies can be the same as supportive measures but need not be non-disciplinary or non-punitive and need not avoid burdening Respondent.

Report: means information brought to the attention of the Title IX Coordinator, whether verbal or written, by any person, and which references sexual misconduct, including sexual harassment, under this Policy. Such a report can be made at any time in person, by mail, by phone, or by electronic mail. A report is not the same as a complaint or formal complaint and will not initiate either Process A or Process B. A party

may bring a report and then subsequently file a complaint or formal complaint.

Reporting Party: refers to the person who made the report of an alleged violation of this Policy to UTS. This may or may not be the same as the Complainant, a witness, or a bystander.

Respondent: refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct or conduct that could constitute retaliation, as defined herein.

Retaliation: Retaliation has various definitions under state and federal laws. See Section VIII.

Sex: encompasses sex, gender, sexual orientation, gender identity, and/or gender expression for purposes of this Policy.

Sexual Activity: includes any “sexual act” or “sexual contact.”

- A “sexual act” means (a) contact between the penis and the vulva or the penis and the anus where penetration occurs, however slight; (b) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (c) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (d) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- “Sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person.

Sexual Assault: as defined in 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (“FBI”).⁶ These offenses⁷ are defined as follows:

- **Sex Offenses⁸:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - **Rape – Completed [SRS Definition]:** 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. This definition includes either gender of victim or offender. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

⁶ The definitions herein are from the most recent Uniform Crime Reporting Program National Incident-Based Reporting System (“NIBRS”) User Manual, dated May 7, 2020, with the exception of Rape, which, in accordance with the Clery Act, is defined pursuant to the FBI’s Uniform Crime Reporting Program Summary Reporting System (“SRS”), dated June 20, 2013. Once SRS is retired, the NIBRS definition of rape shall be used.

⁷ The 2020 NIBRS User Manual also includes as a sex offense “Failure to Register as a Sex Offender,” which is defined as “to fail to register or keep current a registration as required by state and federal laws.”

⁸ Under the NIBRS User Manual dated 2011, available [here](#), this definition was used to describe “Sex Offenses, Forcible.” The following acts were classified as “Sex Offenses, Forcible”: Forcible Rape (Except Statutory Rape), Forcible Sodomy, Sexual Assault with An Object, and Forcible Fondling.

- Rape (except statutory rape) [NIBRS Definition – to be used only when SRS is retired]⁹ the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sodomy: oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- Sexual Assault with an Object: to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia, e.g., a finger, bottle, handgun, stick.
- 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 or physical incapacity.
- Sex Offenses¹⁰: unlawful sexual intercourse
 - Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape: sexual intercourse with a person who is under the statutory age of consent. There is no force or coercion used in Statutory Rape; the act is not an attack.

Sex Discrimination: involves treating someone unfavorably because of that person’s sex. It occurs when, on the basis of actual or perceived sex, gender, sexual orientation, gender identity, including transgender status and/or gender expression, an individual or group is excluded from participation in or denied the benefits of any UTS education program or activity, including admissions and employment.

Sex/Gender-Based Harassment: unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassing conduct does not need to be based on anything sexual or of a sexual nature.

Sexual Exploitation: means abuse or non-consensual use of another person’s sexuality or nudity without consent, for the perpetrator’s own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Specific conduct that constitutes sexual exploitation could, but does not necessarily, constitute Title IX sexual harassment as defined herein. Examples of sexual exploitation include but are not limited to:

- prostituting another individual
- non-consensual observation, photographing or video or audio recording of sexual activity of another individual or of another individual who is in a state of undress, or in a place and time where such person has a reasonable expectation of privacy, without the individual’s consent

⁹ It is anticipated that the FBI will retire SRS on January 1, 2021.

¹⁰Under the NIBRS User Manual dated 2011, available [here](#), the definition of “(except prostitution offenses) unlawful, nonforcible sexual intercourse” was used to describe “Sex Offenses, Nonforcible.” The following acts were classified as “Sex Offenses, Nonforcible”: Incest, Statutory Rape.

- exceeding the boundaries of consent with another individual (such as permitting others to secretly observe you engaging in consensual sex)
- inducing or attempting to induce the incapacitation in another individual for purposes of compromising that individual's ability to give Affirmative Consent to sexual activity
- employment of another individual or achievement related inducements
- knowingly exposing another person to a sexually transmitted infection or virus without the other individual knowledge
- disseminating, streaming or posting sexual activity of any form on social media or any other public forum without permission from the other individual
- non-consensual texting of sexual activity or images of another individual
- distributing intimate sexual information about another individual.

Sex/gender-Based Harassment: unwelcome conduct based on an individual's actual or perceived sex/gender. It includes slurs, taunts, stereotypes, or name-calling as well as gender-motivated physical threats, attacks, or other hateful conduct. It occurs when one person harasses another person for reasons relating to their gender or the gender with which they identify. The harassment conduct, however, does not need to be based on anything of a sexual or of a sexual nature.

Sexual Harassment: has various definitions under state and federal laws. See Section VII.

Sexual Misconduct: is a broad term that encompasses a wide range of prohibited behaviors and a term used to refer to any form of discrimination, including harassment, based on actual or perceived sex, gender, sexual orientation, gender identity, and/or gender expression, sexual harassment, sexual assault, dating violence, domestic violence, stalking, sexual exploitation, and any other form of non-consensual sexual activity or related misconduct prohibited by this Policy, as well as retaliation as defined in this Policy.

Stalking: as defined by 34 U.S.C. § 12291(a)(30), means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

Student: as used specifically in Section IX regarding Consensual Relationships, the term refers to currently enrolled individuals who are taking courses at or pursuing degrees from, UTS. In all other Sections of the Policy, "student" means a person who has gained admission to UTS.

Supportive Measures: means non-disciplinary and non-punitive individualized services provided by UTS, free of charge, to Complainants and Respondents before or after the filing of a complaint (Process B) or formal complaint (Process A), or where no complaint or formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to UTS's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or UTS's educational environment, or deter sexual harassment. Supportive measures can include various forms of services as set forth in Section XV(e).

Title IX Coordinator: means the employee(s) designated and authorized by UTS to coordinate its efforts to comply with its responsibilities under Title IX. As used in this Policy, "Title IX Coordinator" also includes any designee of the Title IX Coordinator.

VII. Sexual Harassment Definitions

Sexual harassment is an unlawful form of discrimination. The term "sexual harassment" has various

definitions under federal and state laws, such as Title IX, Title VII, and NYSHRL, and by various bodies, including the U.S. Department of Education, the U.S. Equal Employment Opportunity Commission (“EEOC”), and New York State. Reports and formal complaints of Title IX sexual harassment are addressed under Process A of this Policy. Reports and complaints regarding conduct that constitutes only Title VII sexual harassment and/or NYSHRL sexual harassment are addressed under Process B of this Policy. Note, however, that conduct can meet more than one of these definitions; if the conduct constitutes Title IX sexual harassment in addition to Title VII sexual harassment and/or NYSHRL sexual harassment, it will be addressed under Process A.

a. Title IX Sexual Harassment

Under Title IX, specifically 34 C.F.R. § 106.30, “sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of UTS conditioning the provision of an aid, benefit, or service of UTS on an individual’s participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to UTS’s education program or activity;¹¹ or
3. “Sexual assault” as defined in 20 U.S.C § 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. § 12291(a)(10), “domestic violence” as defined in 34 U.S.C. § 12291(a)(8), or “stalking” as defined in 34 U.S.C. § 12291(a)(30). Definitions for these terms are also provided in Section VI above.

To fall under Title IX, the sexual harassment must have been in an education program or activity of UTS against a person in the United States. 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 UTS.

b. Title VII Sexual Harassment

It is unlawful to harass a person because of that person’s sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, *or* offensive working environment.

c. NYSHRL Sexual Harassment

Sexual harassment is offensive, is a violation of UTS policies, is unlawful, and may subject UTS to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees

¹¹ Categories 1 and 3 do not require elements of severity, pervasiveness, and/or objective offensiveness. Severity, pervasiveness and objective offensiveness of Category 2 offenses must be evaluated in light of the known circumstances and depend on the facts of each situation, but must be determined from the perspective of a reasonable person standing in the shoes of the Complainant.

of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

This Policy applies to all employees, paid or unpaid interns, and non-employees, such as contractors, subcontractors, vendors, consultants, or anyone providing services in the workplace, and all must follow and uphold this Policy. This Policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

Under the NYSHRL, “sexual harassment” is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment. Harassment need not be severe or pervasive to be unlawful and can be any harassing conduct that consists of more than petty slights or trivial inconveniences. Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, or which interfere with the recipient’s job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment. Any employee who feels harassed should report so that any violation of this Policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this Policy.

Examples of Sexual Harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee’s body or poking another employee’s body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:

- Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
- Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Sexual harassment can occur between any individuals, regardless of their sex or gender. NYSHRL protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or Parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Preventing sexual harassment is everyone's responsibility. UTS cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager, or the Title IX Coordinator. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, or the Title IX Coordinator.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy as Appendix B, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf. Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the Legal Protections section.

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Title IX Coordinator. In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise

knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a timely manner, and will be confidential to the extent possible. An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including Complainants, witnesses and Respondents will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. UTS will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy. NYSHRL sexual harassments claims will be handled as outlined below and in accordance with Process B.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by UTS but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at UTS, employees may also choose to pursue legal remedies with the governmental entities discussed below in Section XII(d). While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney. In addition to those outlined below, employees in certain industries may have additional legal protections.

VIII. Protection from Retaliation

UTS will not tolerate any retaliation for engaging in a protected activity, including filing a complaint or formal complaint, reporting an alleged violation of this Policy, cooperating in an investigation, acting as a witness, or participating in the grievance processes described in this Policy. If an individual believes they have experienced retaliation due to any protected activity described in this Policy, they should report the alleged retaliation to the Title IX Coordinator immediately. Unless the form of retaliation constitutes Title IX sexual harassment, which would be addressed under Process A, all reports alleging retaliation under this Policy or the laws covered by this Policy will be resolved under Process B. Retaliation is subject to disciplinary sanctions, up to and including expulsion/termination.

a. Title IX Retaliation

Under Title IX, "retaliation" means: intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with an individual's right or privilege secured by Title IX or 34 C.F.R. Part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under 34 C.F.R. Part 106. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or the corresponding regulations, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this subsection of the Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under 34 C.F.R. Part 106 does not constitute retaliation under this subsection of the Policy, provided, however, that a determination

regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.

b. Title VII Retaliation

In accordance with Title VII, UTS will not discriminate against any of its employees or applicants for employment because of the employee's or applicant's opposition to any practice made an unlawful employment practice by Title VII, or because the employee or applicant made a charge, testified, assisted, or participated in any investigation, proceeding, or hearing under Title VII.

c. NYSHRL Retaliation

No employee covered by the NYSHRL Policy shall be subject to adverse action because the employee reports an incident of NYSHRL sexual harassment, provides information, or otherwise assists in any investigation of a NYSHRL sexual harassment complaint. UTS will not tolerate such NYSHRL retaliation against anyone who, in good faith, reports or provides information about suspected NYSHRL sexual harassment. Any employee of UTS who retaliates against anyone involved in a NYSHRL sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such NYSHRL retaliation should inform a supervisor, manager, or the Title IX Coordinator. All employees, paid or unpaid interns, or non-employees who believe they have been a target of such NYSHRL retaliation may also seek relief in other available forums, as explained above in the Legal Protections section.

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a NYSHRL sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours). Such retaliation is unlawful under federal, state, and (where applicable) local law. The NYSHRL protects any individual who has engaged in "protected activity." Protected activity occurs when a person has:

- Filed a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- Testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- Opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- Reported that another employee has been sexually harassed; or
- Encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

IX. Policy on Consensual Relationships Between UTS Employees and Students

Consensual relationships between UTS employees, including faculty and staff, and students are particularly perilous when the employee exercises a direct supervisory role over a student with whom she/he is romantically or sexually involved. Moreover, UTS has a relatively small faculty, and its curriculum specifies required courses, typically taught by specified members of its faculty. Further, employees and many students live in the same building (or in an adjacent building), and thus are in close proximity to one another. For these reasons, UTS is especially mindful that employees are in a position to impact a student's

vocational, academic, professional, and personal development; moreover, students are in close proximity to the professional and personal lives of employees.

Therefore, UTS prohibits consensual relationships between UTS employees and students. If, contrary to policy, a consensual relationship exists or develops between an employee and student, individuals (including but not limited to the employee and student) are required to disclose the nature of the relationship to the Title IX Coordinator.

UTS maintains discretion to determine consequences for violating this policy on consensual relationships, which may include but is not limited to termination from employment. Immediately upon the disclosure or discovery that an employee engaged in a consensual relationship with a student, she/he will be prohibited from any direct or indirect supervisory role vis-à-vis the student. Should a charge be made to the Title IX Coordinator that this policy has been or is being violated, UTS will investigate the charge and determine how to address any violation. UTS will then determine whether to initiate processes outlined in this Policy or section VII of the *Faculty Guide* (as relevant). Individuals aware of a potential violation of this policy or who have questions or concerns about the application of this policy should promptly contact the Title IX Coordinator.

X. Sexual Misconduct Education, Training and Prevention

The Title IX Coordinator oversees compliance with prevention, education, and training requirements relating to sexual misconduct and violations of this Policy. The frequency and types of training will be determined each year by the Title IX Coordinator. All students and employees of UTS will be fully informed of this Policy, reporting obligations, the disciplinary procedures, and receive ongoing education in prevention, awareness, and intervention. All individuals involved in the investigation, hearing, appeal, and informal processes will receive training in accordance with federal, state, and local law, including the Clery Act, Article 129-B, and 34 CFR § 106.45.

UTS provides educational and training programs for students, faculty, and staff regarding sexual misconduct. Examples of these programs include:

- Annual mandatory new student orientation;
- Annual mandatory training for all employees;
- Mandatory training for new employees;
- Mandatory training for leaders of student organizations and student-athletes;
- Training for residence staff;
- Information and brochures; and
- Online training programs.

For information about UTS's sexual misconduct prevention, prevention, training and awareness programming please contact the Title IX Coordinator.

XI. Records

For a period of seven (7) years, UTS will maintain records generated in connection with sexual misconduct reports, investigations, hearings, formal grievance processes, informal resolution processes, appeals, including any audio, audiovisual recording, or transcript, as well as any determinations regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant. The Parties will have access to a full and fair record of the hearing in which they were involved and have the right to have all information obtained during the course of the grievance process be

protected from public release until the appeals panel makes a final determination unless otherwise required by law. All materials used to train (in connection with Process A) the Title IX Coordinator and their designees, Investigators, Hearing Officers, and any individual who facilitates informal processes will also be maintained for at least seven (7) years. These materials will be publicly available on the UTS website.

For a period of seven (7) years, UTS will also maintain records of any actions, including supportive measures, that UTS took in response to a report, complaint, or formal complaint of sexual misconduct. In each instance, UTS must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to UTS's education program or activity. If UTS does not provide a Complainant with supportive measures, UTS must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit UTS in the future from providing additional explanations or detailing additional measures taken.

XII. Confidentiality

Individuals who believe they have experienced violations of this Policy are encouraged to meet with someone to receive support, obtain information about their options, and learn about available resources. **Depending on who an individual chooses to speak with, there are limits on the level of confidentiality afforded to the shared information.** Individuals are encouraged to consider the following information when making this decision.

a. Confidential Resources

Reporting individuals have the right to disclose sexual misconduct, and specifically sexual assault, dating violence, domestic violence, and stalking, confidentially both to institution representatives who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals and to obtain services from the state or local government. Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials. Licensed mental health counselors, medical providers, and pastoral counselors are examples of institution employees who may offer confidentiality. Confidential communications include conversations which, pursuant to the law, cannot be disclosed to another person without the speaker's consent, unless the communications involve an imminent threat or danger to the speaker or others.

The Spiritual Director or Interfaith Chaplain at UTS is not required to report identifying information about individuals who believe they have experienced a violation of this Policy to the Title IX Coordinator. Thus, communications with these individuals may be confidential or made anonymously.

UTS students have access to the Columbia Health Service including counseling and psychological services. Please note, however, that the health care professionals at Columbia Health Service are not UTS employees. Health care professionals are not required to report identifying information concerning a possible violation of this Policy to the Title IX Coordinator. For more information, please go to their website at <https://health.columbia.edu/medical-services>.

Disclosing sexual misconduct only to a confidential resource will not give UTS notice of the sexual misconduct, and therefore will not initiate supportive measures, an investigation, a formal grievance process, or informal resolution, and will not result in remedies for the Complainant or disciplinary sanctions for the Respondent.

b. Mandated Reporters

Individuals who believe they have experienced violations of this Policy may also meet with the following UTS employees (“Designated Officials”):

- Chief Human Resources Officer
- Academic Dean, Associate Academic Dean
- Associate Dean for Student Affairs
- Associate Dean for Financial Aid/Admissions
- Director of Housing/Campus Services

Reporting Parties have the right to disclose the incident to UTS representatives who can offer privacy or confidentiality,¹² as appropriate, and can assist in obtaining resources for reporting individuals. **Excluding the confidential resources noted above**, the Designated Officials and all other UTS employees, including but not limited to professors, housing/campus services staff, and student affairs staff including student life assistants, are considered mandated reporters, and are required to report any possible violation of this Policy to the Title IX Coordinator.

A clergy person is not required to report identifying information concerning a possible violation of this Policy *in certain limited circumstances*. These conversations may be kept confidential *only* when he or she is acting as a “pastoral counselor” as part of his or her employment at UTS meaning the clergy person is (1) associated with a religious denomination, (2) is recognized as someone who provides confidential counseling at UTS, and (3) is functioning within the scope of that recognition during the confidential communication, such as when an individual is seeking spiritual or moral guidance or counseling from the clergy person. **Generally, the faculty and administration of UTS, even if they are clergy persons, are not acting in their capacity as pastoral counselors when interacting or communicating with UTS students. Thus, UTS presumes that these individuals are required to report any possible violation of this Policy to the Title IX Coordinator.**

Any mandated reporter, including Designated Officials, must report the claims, even if the individual confiding in them requests that their conversation be kept confidential, and will be required to inform the Title IX Coordinator of any information. Even UTS offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

If the reporting student does not want to file a complaint or formal complaint, to supply a name or other identifying information when reporting a potential violation, and/or to proceed with an investigation, the Title IX Coordinator must weigh the student’s request against UTS’s obligation to provide a non-discriminatory, safe environment for the UTS community. If the allegations pertain to Title IX sexual harassment, the Title IX Coordinator must also determine if not filing a formal complaint would be clearly unreasonable in light of the known circumstances.

¹² Confidentiality may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). Privacy may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws or UTS Policy, including informing appropriate UTS officials.

XIII. Resources for Individuals who Experience Sexual Misconduct

There are a number of on-campus and off-campus resources available to offer assistance after an incident of sexual misconduct. UTS encourages all individuals affected by sexual misconduct to seek immediate assistance. Seeking assistance promptly may be important to ensure physical safety or to obtain medical care, emotional support, or other support; it may also be necessary to preserve evidence, which is important as it can assist UTS and/or law enforcement in responding effectively. Assistance is available twenty-four hours a day, seven days a week. Certain of these resources may have associated fees.

a. Resources for Immediate Assistance

The following resources and reporting options can be utilized independent of or in conjunction with an internal report being made to UTS. If you've been sexually assaulted, it is very important to receive medical care as soon as possible.

- a. The New York City Police Department at 911:** can help with criminal sexual misconduct, including sexual assault, dating violence, stalking and domestic violence. You can also call the Special Victims Division directly at (646) 610-7272.
- b. UTS Security:** (212) 280-1427
- c. Columbia University's Sexual Violence Response & Rape Crisis/Anti-Violence Support Center:** is available to all UTS students. They have trained staff and volunteers available 24 hours a day, seven days a week, to accompany individuals to the emergency room, NYPD, or campus departments. Advocates provide information about reporting options and offer support. Contact Sexual Violence Response (SVR) at (212) 854-HELP (4357) for 24/7/365 support. More information is available at www.health.columbia.edu/svr.
- d. Crime Victims Treatment Center:** (212) 523-4728. More information, www.cvtcnyc.org/.
- e. Mount Sinai St. Luke's Emergency Department:** 1111 Amsterdam Avenue (113th Street). The [Emergency Departments](#) of Mount Sinai St. Luke's, Mount Sinai Roosevelt and the Lenox Hill HealthPlex have a [Sexual Assault Response Team](#) that includes a Sexual Assault Forensic Examiner and a Volunteer Rape Crisis Advocate. You will be offered preventative treatment for STDs and possible HIV exposure, emergency contraception, and a full medical exam. Forensic evidence can also be collected. At Mount Sinai St. Luke's, Mount Sinai Roosevelt, and the Lenox Hill HealthPlex, treatment for sexual assault is provided *free of charge*.
- f. St. Luke's Crime Victims Treatment Center (CVTC):** Advocates and services can be reached by calling (212) 523-4728.
- g.** Reports of criminal sexual misconduct may also be directed to the **NYPD's sex crimes hotline** at (212) 267-RAPE or the **Manhattan District Attorney's hotline** at (212) 335- 9373.

Important: To preserve evidence, do not shower, bathe, brush teeth, change clothing or drink liquids before going to the hospital or the police after experiencing an act of sexual assault or other misconduct.

b. Counseling Resources at Columbia

In addition to **Columbia University's Sexual Violence Response & Rape Crisis/Anti-Violence Support Center**, available at (212) 854-HELP (4357), **Counseling & Psychological Services at Columbia** can be reached at (212) 854-2878. Columbia University's Counseling Center and its staff of therapists are not required to report any conversations involving sexual harassment or assault to the Title IX Coordinator.

c. Off-Campus Resources

The following resources are available free of charge and permit confidential and anonymous disclosure.

- Crime Victims Treatment Center, 411 West 114 Street at (212) 523-4728
- Safe Horizon Sexual Assault 24-hour Hotline at (866) 689-HELP
- National Domestic Violence Hotline at 1-800-656-HOPE (4673)
- National Teen Dating Abuse Helpline at 1-866-331-8453
- Stalking Resource Center at 1-202-467-8700
- NotAlone at <https://www.notalone.gov> (federal VAWA website)
- NY Hotline for reporting sexual assaults on campuses at 1-844-845-7269

d. External Resources

An individual who has experienced harassment may file a report, complaint, and/or formal complaint with UTS, a complaint with an external enforcement agency, or both. Filing a report, complaint, and/or formal complaint internally with UTS does not extend the time to file with an external enforcement agency or in court. One does not need an attorney and there is no cost to file a complaint with an external enforcement agency.

U.S. and New York State Departments of Education

U.S. Department of Education
Office for Civil Rights
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Telephone: 1-800-421-3481
Fax: 202-453-6012; TDD: 1-800-877-8339
Email: OCR@ed.gov

Office for Civil Rights, New York Office
U. S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: (646) 428-3800
Facsimile: (646) 428-3843
[Email: OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)
<https://www2.ed.gov/about/offices/list/ocr/index.html>

New York State Education Department
Office of Higher Education
89 Washington Avenue
Albany, NY 12234
(518) 486-3633
www.nysed.gov

U.S. Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days¹³ from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court. The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining Parties. Federal courts may award

¹³ Note: this is actual days, not business days.

remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov. If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

New York State Division of Human Rights

The Human Rights Law (“HRL”), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (“DHR”) or in New York State Supreme Court.

Complaints with DHR may be filed any time within three years of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court. Complaining internally to UTS does not extend your time to file with DHR or in court. The three years is counted from date of the most recent incident of harassment. You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney’s fees and civil fines. Adoption of this policy does not constitute a conclusive defense to charges of unlawful sexual harassment. Each claim of sexual harassment will be determined in accordance with existing legal standards, with due consideration of the particular facts and circumstances of the claim, including but not limited to the existence of an effective anti-harassment policy and procedure.

DHR’s main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, www.dhr.ny.gov Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR’s regional offices across New York State.

e. Local Protections and the Local Police Department

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. Employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 22 Reade Street, 1st Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml. If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

XIV. Law Enforcement Notification

Complainants may report an incident of sexual misconduct to law enforcement or may choose not to report an incident to law enforcement. The UTS internal grievance processes operate separately from the police and criminal justice system and, should the Complainant file an internal complaint or formal complaint, UTS will investigate alleged violations of this Policy regardless of whether a Complainant chooses to file a report with the police or to pursue criminal charges. Any questions regarding whether a specific incident violated the penal law should be addressed to law enforcement or to the Manhattan District Attorney's Office ("DA").

If a Complainant decides to file a criminal report with law enforcement, UTS will assist the student in contacting the appropriate law enforcement officials. UTS will not wait for the conclusion of a criminal investigation or proceeding to begin its own investigation of the allegations; however, UTS may temporarily delay its proceedings as requested by external municipal entities while law enforcement gathers evidence. This delay should not last longer than 10 days unless law enforcement specifically requests and justifies a longer delay.

The standard of proof required to find a violation of criminal law (beyond a reasonable doubt) is different from the lower standards of proof permitted for colleges and universities; the standard used in this Policy is preponderance of the evidence. Accordingly, the outcome of a criminal investigation does not determine whether sexual misconduct or retaliation has occurred under this Policy.

a. Orders of Protection and Civil Legal Proceedings

A Complainant may wish to seek an order of protection from a court. Individuals who decide to seek an order of protection will receive assistance from UTS to do so, generally with the help of a local agency. After an order of protection is issued, both Parties will receive a copy of the order of protection when it is received by UTS and will have the opportunity to meet with a UTS employee who will explain the terms of the order, including the potential consequences for its violation, and answer questions regarding it, including information from the order about the accused's responsibility to stay away from the protected person(s). UTS will help to contact the New York City Police Department or other local law enforcement if it becomes aware that the order or protection has been violated.

A Complainant and/or reporting individual has the right to receive assistance from appropriate UTS representatives in initiating legal proceedings in family court or civil court.

XV. Filing a Report with UTS

Individuals have the right to make a report of sexual misconduct, including sexual assault, domestic violence, dating violence, and/or stalking, to the Title IX Coordinator, UTS security, local law enforcement and/or state police and also have the right to choose not to report. UTS will take all steps available to protect the individual from retaliation for reporting an incident and will provide assistance and resources to support the individual. At the first instance of disclosure by a reporting individual to a UTS representative, the reporting individual shall be reminded of these rights.

UTS will promptly and equitably respond to all reports of sexual misconduct made to the Title IX Coordinator, as identified above, with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects. Anyone (whether or not they are the person alleged to be the victim of sexual misconduct) may report sexual misconduct, including sexual discrimination and sexual harassment, to the Title IX Coordinator at any time (even during non-business hours) in person, by mail,

by telephone, or by electronic mail, using the following contact information listed in Section V.

Additionally, as explained above, if an individual discusses a potential violation of the Policy with any UTS employee who was not explicitly named as a confidential resource above, the employee is required to relay all information to the Title IX Coordinator.

UTS will keep confidential the identity of sexual misconduct reporters, Complainants, individuals who have been reported to be perpetrators of sexual misconduct, including Respondents, and witnesses, except as permitted by FERPA; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. To the extent possible, information reported to the Title IX Coordinator will be shared only with individuals responsible for handling UTS's response to the report. The Title IX Coordinator will not share information with law enforcement without the Complainant's consent, except when required by law, the information involves suspected abuse of a minor under the age of 18, or the incident poses a safety risk to the UTS community.

Once UTS has actual knowledge of sexual misconduct and/or a report is received, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, discussed below in Section XV(e), consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a complaint or formal complaint, and explain the process for filing a complaint or formal complaint. The Complainant will be given the opportunity to meet with the Title IX Coordinator to discuss these and other topics, such as a Complainant's rights. The Title IX Coordinator can also assist the Complainant in filing the complaint or formal complaint.

Reports shall be investigated in accordance with this Policy. A report alone will not initiate either formal grievance process (Process A or Process B). A Complainant who wishes to pursue formal action by UTS must file either a complaint or formal complaint, depending on which grievance process is appropriate.

If the report is made by someone other than the Complainant, the Title IX Coordinator will reach out to the Complainant and Respondent and offer supportive measures. A reporting individual has the right to disclose, if the accused is an employee of UTS, the incident to UTS's human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority.

A reporting Party has the right to withdraw a report or involvement from the UTS process at any time.

a. Deadline to Report

There is no deadline for filing a report, but individuals are encouraged to file a report as soon as possible after an alleged incident. UTS's ability to fully investigate and complete a formal grievance process in response to a report, including imposing sanctions, may be impeded if there is a substantial delay in reporting the alleged incident. Regardless of any delay in reporting, upon receiving a report of sexual misconduct, the Title IX Coordinator will discuss supportive measures and the process for pursuing formal UTS action with the Complainant; the Complainant's wishes regarding pursuing a formal grievance process will control unless the Complainant does not wish to take formal action and refraining from doing so would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community and, in the case of Title IX sexual harassment, it would be clearly unreasonable not to file a formal complaint. Individuals are encouraged to bring reports forward in a timely manner.

b. Public Awareness and Advocacy Events and Climate Surveys

If a student discloses information regarding a past incident of sexual misconduct at a public awareness or advocacy event, such as a candlelight vigil or protest, such disclosure shall not be deemed notice to UTS of such incident and UTS is not obligated to begin an investigation based on that information. UTS will take steps to ensure that answers to climate surveys remain anonymous and that no individual is identified. Result of the survey will be published on the UTS website provided that no personally identifiable information or information which can reasonably lead a reader to identify an individual shall be shared. Information discovered or produced as a result of the climate survey will not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private Party against UTS, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.

c. Alcohol and Drug Use Amnesty

The health and safety of every student at UTS is of utmost importance. UTS recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. UTS strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to UTS's officials or law enforcement will not be subject to UTS's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

d. False Allegations and Information

Knowingly making false statements or knowingly submitting false information during any part of UTS's internal grievance processes, including filing a report containing false allegations or during the formal grievance process or informal resolution process, is prohibited. An individual who does so, whether a Party or a witness, is violating UTS Policies, and is subject to disciplinary action as outlined in that policy. However, a determination regarding responsibility alone is not sufficient to conclude that the individual made a false statement deliberately and in bad faith. For example, if a Respondent is found not responsible, the Complainant or Reporting Party who made the allegations is not automatically determined to have made allegations that are false or in bad faith based on that outcome alone.

e. Supportive Measures and Emergency Removal

Supportive measures are non-disciplinary, non-punitive individualized services offered, free of charge, by UTS to the Complainant or the Respondent as appropriate and reasonably available. Participating in a formal grievance process, including an investigation, and/or reporting the incident to UTS Security or local law enforcement is not required in order to obtain supportive measures. Supportive measures may be offered before or after the filing of a complaint or formal complaint or when a report is made but no complaint or formal complaint is ever filed. They are designed to restore or preserve equal access to UTS's education program or activity without unreasonably burdening the other Party and include measures designed to protect the safety of all Parties or UTS's educational environment, or deter sexual misconduct. Supportive measures range from services such as counseling to leaves of absence and include but are not limited to:

- Establishing restrictions on contact (no-contact orders) between the Parties;
- Providing counseling or academic support services;
- Modifications of work or class schedules;
- Altering arrangements to work, housing, living, transportation, or other applicable situations including changes in residence hall assignments or office locations;
- Providing course-related adjustments such as extensions of deadlines;
- Providing leaves of absence;
- Providing campus escort services;
- Providing increased security and monitoring of certain areas of the campus;
- Providing academic accommodations or support, such as tutoring; and
- Other similar measures.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. Once UTS has actual knowledge of and/or a report has been filed regarding an incident of sexual misconduct and/or retaliation, the Title IX Coordinator must promptly contact the Complainant to discuss and offer supportive measures. The Title IX Coordinator will ask for the Complainant's wishes regarding supportive measures and consider these wishes when determining which supportive measures to implement. UTS will maintain as confidential any supportive measures provided to the Complainant or Respondent except as necessary to provide such supportive measures.

UTS also has the right to impose certain interim or supportive measures if they are deemed necessary by the Title IX Coordinator. The Title IX Coordinator must consider the objective of ensuring equal access to UTS's education programs and activities to all students. The measures implemented and the procedures for implementing them will differ based on the facts of each case and what measures may be possible or appropriate.

Upon a written request to the Title IX Coordinator, an individual may seek and receive a prompt review, reasonable under the circumstances, of the need for and terms of any interim or supportive measures and accommodations that directly affects them; evidence can be submitted in support of the request. Upon receipt of such a request, Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and to submit evidence relevant to the request if desired.

1.No-Contact Orders

All no-contact orders will be mutual – i.e. neither Party involved will be permitted to contact the other Party -- unless UTS determines, in its discretion and after a fact-specific analysis, that a non-mutual order is appropriate. The Title IX Coordinator will issue any no-contact order in writing, specifying the terms of the no-contact order, including the Parties' responsibilities.

When a no-contact order is issued prior to a determination of responsibility, the Parties will, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and the terms of the no-contact order, including potential modification; the Parties may submit evidence in support of their request. This request shall be made by submitting a written request to the Title IX Coordinator providing the basis for the request; any evidence offered in support of the request should be submitted with the written request. Upon receipt of such a request, the Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and to submit evidence relevant to the request if desired.

Individuals who violate a no contact order issued pursuant to this Policy will be subject to discipline. Sanctions may include, but are not limited to, expulsion or termination from UTS.

2. Emergency Removal

A Respondent may be removed from UTS's education program or activity on an emergency basis, if, after an individualized safety and risk analysis, the Title IX Coordinator determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct that justifies removal. The Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal via written request to the Title IX Coordinator. Upon written request, the Complainant or reporting Party and/or the Respondent will be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification; Parties are permitted to submit evidence in support of the request along with the written request. Upon receipt of such a request, the Title IX Coordinator will inform the other Party of the request and allow the other Party to respond in writing and to submit evidence relevant to the request.

In determining whether an emergency removal, including interim suspension, is appropriate, the Title IX Coordinator will consider, among others, the following factors:

- Whether there have been other sexual misconduct reports or complaints about the same Respondent;
- Whether the incident involves a weapon or violence;
- Whether the Respondent has a history of arrests or disciplinary records;
- Whether the incident represents an escalation in and unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether there is an increased risk that the Respondent will commit additional acts of violence.

UTS is permitted to place a non-student employee respondent on administrative leave during the pendency of Process A. Individuals who fail to comply with an emergency removal order or any other interim measures will be subject to discipline. Sanctions may include, but are not limited to, expulsion or termination from UTS.

f. FERPA

FERPA allows institutions to share information with parents when: (i) there is a health or safety emergency, or (ii) when the student is a dependent on either parent's prior year federal income tax return. Generally, UTS will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual or Complainant.

g. Clery Compliance

UTS will make reports of certain crimes occurring in specific geographic locations that shall be included in UTS's Annual Security Report pursuant to the Clery Act, 20 U.S.C. § 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual, including a Complainant. UTS is obligated to and will issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that are reported to campus security or local police agencies and that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual or Complainant. A reporting individual or Complainant will not be identified in a timely warning.

XVI. Advisor of Choice

The Parties will have an opportunity to have an Advisor present during any stage of either formal grievance process, including the opportunity to be accompanied to any related meeting, interview, or hearing by the Advisor of their choice, who may advise and assist the Parties throughout the process. A Party's Advisor of choice may be, but is not required to be, an attorney. Each Party is permitted one Advisor who must sign an Advisor acknowledgement form, acknowledging UTS's rules.

Throughout out the process, the role of the Advisor is narrow: they may attend and help the Party prepare for all proceedings, such as meetings, interviews, and hearings, that the Party is entitled to attend, but the Parties themselves must ask and answer any questions other than asking cross-examination questions during a Process A hearing; those questions will be asked by an Advisor because Parties are not permitted to personally do so. Except for cross-examination during a hearing in Process A, as described below, Advisors cannot actively participate or speak on behalf of the Parties or act as a proxy for any party. However, as reasonably needed, they may confer privately with the Party during the proceedings. Accommodations, including scheduling of interviews or reviews, generally will not be made for any Advisors if they unduly delay the process, as determined by the Title IX Coordinator. UTS reserves the right to take appropriate action regarding any Advisor who disrupts the process or who does not abide by the restrictions on their participation as determined in the sole discretion of the Title IX Coordinator.

XVII. Presumptions, Standards and Consolidation

a. Presumption and Expectations

There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this grievance process.

UTS expects all members of the UTS community to cooperate with UTS during the various processes outlined in the Policy. This includes responding in a timely manner to requests from the Title IX Coordinator or Investigator and making reasonable adjustments to schedules to participate in meetings, hearings, or other proceedings. Further, individuals are expected to provide information in good faith; as discussed in more detail in Section XV(d), knowingly providing false information or making false allegations is strictly prohibited and is subject to discipline.

b. Standard of Evidence

The standard for decisions under this Policy is a preponderance of the evidence, meaning that it is more likely than not that a violation of this Policy occurred. The burden of proof as well as the burden to gather evidence sufficient to reach a determination regarding responsibility rests on UTS and not the Parties.

c. Consolidation of Complaints

If two or more complaints or formal complaints are reported pertaining to the same or related sets of facts and circumstances, the Title IX Coordinator may determine that the cases should be consolidated and investigated and adjudicated by the same investigator(s), hearing officer, and appeals panel, subject to the limits of applicable law including but not limited to FERPA. UTS may do this as to allegations of Title IX sexual harassment or any other type of sexual misconduct or retaliation claim against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment, sexual misconduct, or retaliation arise out of the same facts or circumstances.

XVIII. Initiating a Formal Grievances Process

A Complainant who wishes to pursue formal action by UTS must file either a complaint or formal complaint, depending on which grievance process is appropriate. The Title IX Coordinator may also sign and file a complaint or formal complaint, even against the Complainant's wishes, if after performing the requisite analysis, they are obligated to do so, as further discussed herein.

A formal grievance process is initiated by the filing of either a complaint (Process B) or a formal complaint (Process A). The filing procedure for both Process A and Process B is the same; the only difference is the name of the formal document that is filed to initiate proceedings. The Title IX Coordinator can aid the Complainant in filing the document.

A complaint or formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in Section V. If a complaint or formal complaint is submitted that does not contain the requisite information and/or signature, the Title IX Coordinator will reach out to the Complainant to explain the deficiencies and instruct the Complainant regarding the process and information needed to properly file a complaint or formal complaint. Once the relevant document has been filed, UTS will begin the formal grievance process.

a. Complainant's Wishes Regarding Formal Action and UTS's Obligations

Prior to conducting an investigation, the Title IX Coordinator will ask the Complainant's wishes regarding initiating a formal grievance process against the Respondent. If the Complainant consents, the process above will be followed. If the Complainant does not wish to pursue a formal grievance process, including an investigation, the Complainant may request that no formal action is taken and that the report remains confidential. Honoring such a request may limit UTS's ability to meaningfully investigate and pursue disciplinary action against a Respondent. However, the Complainant's wishes will be honored unless UTS, via the Title IX Coordinator, determines in good faith that:

- 1) Failure to investigate the allegations would not adequately mitigate a potential risk of harm to the reporting individual or other members of the community; or
- 2) For Title IX sexual harassment only, not filing a formal complaint would be clearly unreasonable in light of the known circumstances.

Factors used to determine whether a Complainant's request for confidentiality can and will be honored include, but are not limited to:

- Whether the Respondent has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior;
- The increased risk that the Respondent will commit additional acts of violence;
- Whether the Respondent used a weapon or force;
- Whether the reporting individual is a minor;
- Whether UTS possess other means to obtain evidence such a security footage; and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

Should the Title IX Coordinator determine that UTS is obligated to take formal action despite the Complainant's wishes, the Title IX Coordinator will sign a complaint or formal complaint and initiate an investigation. The Title IX Coordinator will then inform the reporting Party and/or the Complainant and take action as necessary to protect and assist them.

A Complainant is entitled to supportive measures regardless of whether a formal grievance process, including an investigation, is pursued; however, no disciplinary sanctions or other actions that are not supportive measures may be imposed on a Respondent prior to completion of a formal grievance process and a finding of responsibility.

A Complainant who initially declined to pursue a formal grievance process may later initiate a formal grievance process by filing a complaint or formal complaint. Likewise, a Complainant who began a formal grievance process is under no obligation to continue with that process and may withdraw the complaint or formal complaint at any time. If the Complainant indicates to the Title IX Coordinator in writing that they would like to withdraw the complaint, formal complaint, or any allegations therein, or if the Complainant's lack of participation prevents UTS from gathering evidence sufficient to reach a determination of responsibility regarding the complaint or formal complaint, UTS may, but is not required to, dismiss the allegations, complaint, or formal complaint. Any such dismissal is subject to appeal as outlined in Section XVIII(h). As noted above, however, if the reporting Party withdraws the complaint or formal complaint, requests confidentiality, or does not wish to pursue an investigation, UTS is required to balance that request against its obligation to ensure a safe, non-discriminatory environment for its entire community to determine whether an investigation will still occur.

b. Notice of Allegations

If either the Complainant or the Title IX Coordinator elects to pursue formal action in response to a report and files a complaint or a formal complaint, written notice of the following information will be sent to Parties who are known when such complaint or formal complaint is received by UTS:

- A copy of this Policy, including the Process A and Process B grievance process and any informal resolution process.
- The specific provision(s) of this Policy or laws alleged to have been violated.
- The allegations of conduct potentially constituting sexual misconduct, including Title IX sexual harassment, containing sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting the sexual misconduct, and the date, time, and location of the alleged incident, if known.
- The sanction or sanctions that may be imposed on the Respondent.
- The Respondent is presumed not responsible for the alleged conduct and a determination regarding responsibility is made at the conclusion of the grievance process.
- The Parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- Any provision in UTS's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the formal grievance process.
- UTS's Prohibition against retaliation.

If, during the investigation, UTS decides to investigate allegations about the Complainant or Respondent that are not included in the original notice described above, UTS will provide notice of the additional allegations to the Parties whose identities are known.

c. Timeframe for the Disciplinary Process

Unless there is good cause for temporary delay(s) or limited extension(s), UTS will promptly conclude aspects of the disciplinary process within the following timeframes:

- 1) The formal grievance process, including the investigation, hearing, and finding of responsibility but excluding time spent on an informal resolution or appeal, will be concluded within 60 business days of the complaint or formal complaint being filed.
- 2) Appeals will be concluded within 30 business days of the filing of an appeal.
- 3) Informal Resolutions will be concluded within 30 business days of receiving both Parties' voluntary, written consent to the informal resolution process.

Good cause may include, but is not limited to, absence or unavailability of a Party, Advisor, or witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. In the case of a temporary delay of the grievance process or a limited extension of time frames for good cause, UTS will provide the Complainant and Respondent with written notice of such delay or extension, the reasons for the action, and the expected resolution date.

d. Informal Resolution

Once a complaint or formal complaint has been filed, Complainant(s) and Respondent(s) have the option to attempt to reach a resolution through informal means which do not require a full investigation and hearing. Formal complaints alleging Title IX sexual harassment of a student by an employee *must* be resolved through a formal grievance process and are not eligible for informal resolution. Informal resolution is only available once a complaint or formal complaint has been filed; a report alone is insufficient.

UTS does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of complaints of sexual misconduct or formal complaints of Title IX sexual harassment. Parties are not required to participate in an informal resolution process.

If a complaint or formal complaint is eligible for informal resolution, an informal resolution may begin at any time prior to a determination regarding responsibility being reached if UTS:

- (i) Provides to the Parties a written notice disclosing:
 - a. the allegations;
 - b. the requirements of the informal resolution process including the circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - c. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
- (ii) Obtains the Parties' voluntary, written consent to the informal resolution process.

When an eligible complaint or formal complaint is initially filed, the Title IX Coordinator will ask the Complainant if they would like to seek an informal resolution. If the Complainant agrees, the Title IX Coordinator will then contact the Respondent to request their participation in the informal resolution process (e.g. mediation, restorative justice, arbitration, etc.). If both Parties agree to participate in the informal process, the Title IX Coordinator will send the Parties the notice as outlined above and obtain voluntary, written consent from each prior to proceeding any further.

At any point prior to a determination of responsibility being made, either Party may communicate to the Title IX Coordinator that they wish to pursue an informal resolution. At that point, the Title IX Coordinator will reach out to the other Party or Parties to see if they are interested in an informal resolution. If both

Parties agree, the Title IX Coordinator will follow the notice and written consent provisions outlined above before proceeding any further.

An informal resolution does not necessarily require the Parties to meet together. An informal resolution may involve a UTS employee and/or a third-Party facilitator, to be selected by UTS. No person designated by UTS to facilitate an informal resolution process will have a conflict of interest or bias. If the Parties can reach a mutually satisfactory resolution, which may include an acceptance of responsibility and sanctions by the Respondent, and UTS approves of the resolution, the matter will be considered final without involving a full formal investigation and hearing determination. At that point, the agreed upon sanctions will be promptly implemented.

If the Complainant or Respondent decides at any time during the informal resolution process that they no longer want to participate in an informal resolution, the informal resolution efforts will end. The matter will then proceed to a formal investigation and Hearing Officer(s) determination. There is no appeal option after the Parties reach a resolution through informal means.

e. General Disciplinary Considerations

UTS policies or contracts may require UTS to use additional processes before taking certain employment-related actions with respect to faculty and certain other employees. Where a person covered by such a policy or contract has allegedly engaged in conduct prohibited by this Policy, the investigation and grievance process or resolution process will proceed in accordance with the procedures set forth herein, except that the Hearing Officer(s) will not impose any discipline that would require the use of additional processes. Instead, the Hearing Officer(s) will impose all appropriate discipline that does not require the use of additional processes and then refer the matter, if appropriate, for action under the additional process. UTS's disciplinary action will be considered complete with the Hearing Officer(s)'s imposition of discipline and referral, subject to any appeals. For information, please contact the Title IX Coordinator.

f. Disciplinary Sanctions and Remedies

If the Hearing Officer(s) finds the Respondent responsible for violating this Policy, the Hearing Officer(s) may impose disciplinary sanctions on the Respondent and/or provide remedies to the Complainant. Alternatively, disciplinary sanctions and remedies may be imposed as a result of an informal resolution. Remedies, sanctions, or other actions that are not supportive measures cannot be imposed on the Respondent prior to a finding of responsibility through either the completion of a formal grievance process or informal resolution.

The sanctions imposed will depend, in part, on the severity of the conduct and the number of violations that occurred. Sanctions that may be imposed range from a written warning or probation through expulsion/termination or revocation of a degree. The following is a non-exhaustive list of sanctions that may be imposed:

- A written warning or probation;
- Referral for Counseling, anger management, or substance abuse treatment (typically off-campus private providers);
- Required community service;
- Changes to class schedule;
- Reassignment of housing;
- Removal from housing permanently or for a certain time period;

- Reassignment of campus employment or employment responsibilities;
- Removal from campus employment;
- Suspension;
- Expulsion; and/or
- Revocation of a degree.

Remedies are designed to restore or preserve equal access to UTS's education program or activity and may be disciplinary, punitive, and/or impose a burden on the Respondent. Supportive remedies, which can include the supportive measures discussed in Section XV(e) above, range from services such as counseling to leaves of absence; punitive remedies range from a warning up to and including expulsion/termination or revocation of a degree. UTS must wait to act on the determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that UTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

g. Transcript Notations

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), UTS will make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For a Respondent who withdraws from UTS while such conduct charges are pending, and declines to complete the disciplinary process, it will make a notation on the transcript of such students that they "withdrew with conduct charges pending." A student has the right to appeal such transcript notation to request its removal in the event of a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

h. Appeals

The Respondent and the Complainant may appeal the Hearing Officer(s)'s decision once the written decision has been issued, a dismissal of a complaint (or allegations therein), or a dismissal of a formal complaint (or allegations therein). This appeal must be made in writing within 5 business days after notification of either the Hearing Officer(s)'s decision or the dismissal and sent to the Title IX Coordinator. This appeal must clearly and fully set forth the evidence to support each identified ground of appeal which the appealing Party is asserting.

An appeal may be made for only the following reasons: (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; (3) the Title IX Coordinator, investigator(s), or decision-maker(s) (i.e., the Hearing Officer(s)) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or (4) the sanctions were inappropriate for the Policy violation at issue.

The appeal will be considered by a three-member Appeals Panel consisting of trained employees at UTS, selected based on availability and excluding any member with a conflict of interest or bias. An individual who was involved in the investigation, hearing, or informal resolution process, who made the

determination of responsibility or determination of dismissal, or who is the Title IX Coordinator cannot be part of the Appeals Panel.

If either Party files an appeal, the other Party will be notified in writing and provided with a copy of the appeal. The non-appealing Party will have the opportunity to submit a written response for the Appeals Panel to consider; the written response must be provided to the Appeals Panel within 5 business days from the date of receipt of the copy of the filed appeal.

The Appeals Panel will render a written decision based on the information in the Parties' written statements on appeal and the record of the case. The standard used in an appeal is preponderance of the evidence. The appeals panel has the power to modify the outcome of the disciplinary proceedings or the sanctions imposed by the Hearing Officer(s), if it finds such actions are appropriate.

This decision will be issued within thirty (30) days of filing the appeal. The Complainant, Respondent, and Hearing Officer(s) will be notified of this decision and its rationale, in writing, simultaneously. This decision is final. Both Parties have the right to choose whether to disclose or discuss the outcome of the formal grievance process.

XIX. Process A: Formal Grievance Process for Allegations of Title IX Sexual Harassment

Process A applies only to allegations of Title IX sexual harassment, as defined herein, of which UTS has actual knowledge, and which occur during UTS's education programs or activities against a person in the United States. Process A must be applied when a formal grievance process is initiated for qualifying allegations and is initiated by the filing of a formal complaint. All other violations of this Policy will be resolved under Process B.

a. Formal Complaints

A formal complaint, as defined herein, may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, by telephone, or by electronic mail, using the following contact information listed in Section V. The Title IX Coordinator may also sign a formal complaint if the Complainant does not wish to pursue a formal grievance process but the results of the requisite analysis obligate the Title IX Coordinator to do so. UTS will promptly investigate formal complaints and follow a formal grievance process that complies with 34 C.F.R. § 106.45 before the imposition of any disciplinary sanctions or other actions that are not supportive measures, as defined in 34 C.F.R. § 106.30, against a Respondent.

b. Dismissal of a Formal Complaint

There are certain circumstances where a formal complaint must or may be dismissed from the Process A grievance process. Dismissal of a formal complaint from the Process A grievance process does not preclude action under Process B or another UTS policy.

A dismissal of a formal complaint from the Process A grievance process is mandatory when the conduct alleged in the formal complaint:

- 1) Would not constitute Title IX sexual harassment, even if proved;
- 2) Did not occur in UTS's education program or activity;
- 3) Did not occur against a person in the United States; or
- 4) The Complainant is not participating in or attempting to participate in UTS's education program or activity at the time of filing a formal complaint.

UTS is permitted, but not required, to dismiss a formal complaint from the Process A grievance process 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 at or employed by UTS; or
- 3) Specific circumstances prevent UTS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint and/or any allegations therein are dismissed, the Title IX Coordinator will promptly and simultaneously send written notice of the dismissal and the reason(s) therefore to the Parties. A dismissal may be appealed using the procedure discussed in Section XVIII(h).

c. Informal Resolution Process

Please see section XVIII(d) for information on pursuing an informal resolution.

d. Investigation

UTS must investigate the allegations in a formal complaint. The investigation will be conducted in an impartial, prompt, thorough, fair, timely, and respectful manner. Notice of the commencement of an investigation will be provided in accordance with Section XVIII(b) of this Policy. The Title IX Coordinator will meet with both Parties separately to discuss the investigation and the hearing process and procedures. The Parties are permitted to bring their Advisors to this initial meeting, as well as any other meetings or proceedings relating to the formal grievance process. Parties whose participation is invited or expected at a hearing, investigative interview, or other meeting will be provided written notice of the date, time, location, participants, and purpose of said event at least two days prior to the event.

The Title IX Coordinator will appoint a trained investigator(s) to conduct the investigation (the "Investigator"). A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual(s) assigned as the Investigator(s). No investigator will have a conflict of interest or bias.

The Investigator will gather evidence relating to the alleged violation of this Policy. The Investigator will conduct interviews of the Complainant, Respondent, and, when appropriate, third-Party witnesses. The Investigator will also collect any other available evidence, such as relevant documents. The Complainant and Respondent will be given an equal opportunity to provide evidence to the Investigator, present information in the context of the investigation, recommend fact and expert witnesses, and present other inculpatory or exculpatory evidence.

During the investigation, UTS cannot access, consider, disclose, or otherwise use in the formal grievance process a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless UTS obtains voluntary, written consent from that Party (or, if the Party is not an eligible student, that Party's parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege.

Neither Party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a Party, the Hearing Officer(s) can take that into account in assessing the credibility of the Parties, and the weight of evidence in the case. Both Parties will have an equal opportunity to inspect and review any evidence as part of the investigation that is directly related to the allegations in the formal complaint, including the evidence upon which UTS does not intend to rely on reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a Party or other source. Both Parties have the right to review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

After gathering the relevant evidence, the Investigator will issue an investigative report. Prior to completing the investigative report, each Party and their Advisor, if any, will be sent the evidence subject to inspection and review subject in an electronic format or a hard copy, and will have 10 business days to submit a written

response. The Investigator will consider these responses prior to completing the investigative report. All such evidence subject to the Parties' inspection and review will be available at any hearing; the Parties can refer to such evidence during the hearing, including for purposes of cross examination.

An electronic or hard copy of the investigative report must be sent to each Party and their Advisor, if any, in electronic or hard copy 10 business days prior to the hearing for their review and written response. The Parties and their Advisors, if any, will be provided with the other Party's written response to the investigative report, if any, in electronic format or hard copy prior to the hearing.

e. Hearing Officer(s) Determination

A live hearing is required as part of the formal grievance process. The Hearing Officer(s) will be chosen from a pool of designated and trained faculty and staff at UTS based on availability (and excluding any members with a conflict of interest or bias). Neither the Title IX Coordinator nor the Investigator are permitted to serve as Hearing Officer(s). The Hearing Officer(s) will have received training on relevant topics, including how to proceed with the process in a manner that protects the safety of the Parties and promotes accountability. Where circumstances warrant, the Title IX Coordinator may determine that an individual external to UTS will be assigned as a Hearing Officer.

Once the Hearing Officer(s) receives the investigative report, the Hearing Officer(s) will review it along with any supporting evidence and the Parties' written responses to the final investigative report. The Parties are free to reference the investigative report and any evidence during the hearing. Both Parties also have the right to present available evidence in the case file, or otherwise in the possession or control of UTS, and relevant to the case.

The Title IX Coordinator will provide written notice at least 5 business days before the hearing date to the Parties. The written notice will include, at a minimum:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.);
- The purpose of the hearing; and
- The name and contact information of the Hearing Officer(s). A Party wishing to challenge the participation of a Hearing Officer(s) must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual(s) assigned as Hearing Officer(s) at any time.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, UTS will provide the Parties with written notice explaining the reason for such change. The live hearing may be in person, virtual, or a combination of both, as long as participants can simultaneously see and hear each other. Either Party may request that the live hearing occur with Parties located in separate rooms, in which case UTS will grant that request; the Parties will be in separate rooms with technology enabling the Hearing Officer(s) and Parties to simultaneously see and hear the Party or the witness answering questions.

The Hearing Officer(s) may consider all evidence that the Hearing Officer(s) determines is relevant. The Hearing Officer(s) is responsible for maintaining an orderly, fair, and respectful hearing and will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a Party, witness, or Advisor. During the hearing, Parties may give an opening and closing statement and must speak on their own behalf to give testimony; however, an Advisor

must conduct cross-examinations. At the hearing, each Party's Advisor is permitted to ask the other Party or Parties and any witnesses all relevant questions and follow up questions, including that challenging credibility, as part of cross-examination. Cross-examination must be conducted directly, orally, and in real time by the Advisor; Parties are not permitted to personally conduct cross-examination. Thus, both the Complainant and Respondent must be accompanied by an Advisor for at least this portion of the live hearing, though Advisors are permitted to be present for the entire hearing. If a Party does not have an Advisor present at the hearing, then an Advisor will be appointed by UTS, free of charge, for the duration of the hearing and for the purposes of conducting cross-examination.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer(s) shall determine whether the question is relevant, state a finding verbally for the record, and explain any decision to exclude a question as not relevant. The Hearing Officer(s) may decline to allow any question that is duplicative of information already gathered or asked, irrelevant, or otherwise determined to be unnecessary or inappropriate. Any relevant evidence may be considered by the Hearing Officer(s) in making the decision regarding a finding of responsibility. While Parties are expected to be present for the entirety of the hearing prior to deliberations, witnesses are permitted to attend only as is necessary to answer questions, including on cross-examination, and do not need to be present for the entire hearing.

Both Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. As stated above, medical and psychological records are also excluded unless a Party voluntarily waives that privilege and consents to the records being used. Both Parties also have the right to exclude their own prior sexual history with persons other than the other Party in the judicial or conduct process, subject to the exceptions in 34 CFR § 106.45(6)(i), which states that 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 (1) offered to prove 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.

If a Party or witness does not submit to cross-examination at the live hearing, the Hearing Officer(s) cannot rely on any statement of that Party or witness in reaching a determination regarding responsibility. The Hearing Officer(s) cannot draw an inference regarding the determination of responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. An audio or audiovisual recording of any live hearing will be created and made available to the Parties for inspection and review.

f. Impact Statements

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer(s) while the Hearing Officer(s) is deliberating on appropriate sanctions. The impact statement must be provided to the Title IX Coordinator. Parties will also receive a copy of the submitted impact statements. The Title IX Coordinator will provide the impact statements to the Hearing Officer(s) only once the Hearing Officer(s) is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Officer(s) when reaching a determination of responsibility.

g. Determination of Responsibility

Based on an objective review of the evidence, the Hearing Officer(s) will determine whether the Respondent is responsible for violating this Policy under a "preponderance of the evidence" standard. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations

may not be based on a person's status as a Complainant, Respondent, or witness. The Hearing Officer(s) cannot defer to any conclusions in the investigative report and must make an independent determination of responsibility.

If the Hearing Officer(s) concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Officer(s) shall receive the Respondent's disciplinary record (i.e., any previous disciplinary action or other violation of UTS Policy, including this Policy, for which the Respondent was found responsible), and the Party impact statements to consider, as appropriate, in determining sanctions.

If the Hearing Officer(s) determines that the Respondent committed a violation of this Policy, it will determine the appropriate sanctions. The possible sanctions are described in Section XVIII(f). The Complainant and Respondent will be informed, simultaneously and in writing, of the Hearing Officer(s)'s decision as described below.

The Hearing Officer(s) must issue a written determination within 10 business days of the conclusion of the hearing. The written determination must include:

- 1) Identification of the allegations potentially constituting Title IX sexual harassment;
- 2) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- 3) Findings of fact supporting the determination;
- 4) Conclusions regarding the application of UTS's Policy to the facts;
- 5) As to each allegation, a statement of, and rationale for, the result, including the determination regarding responsibility, any disciplinary sanctions UTS imposes on the Respondent, and whether remedies designed to restore or preserve equal access to UTS's education program or activity will be provided by UTS to the Complainant;
- 6) UTS's procedures and permissible bases for the Complainant and Respondent to appeal; and
- 7) When the determination becomes final.

The written determination will be provided to both Parties simultaneously. UTS must wait to act on the determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that UTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XVIII(h).* The Title IX Coordinator is responsible for effective implementation of any remedies.

XX. Process B: Formal Grievance Process for Allegations of All Other Sexual Misconduct

Process B is a prompt and equitable resolution process which applies to all allegations of sexual misconduct and retaliation, as defined herein, that do not constitute Title IX sexual harassment and therefore do not qualify for Process A, including sex/gender-based discrimination or harassment that does not qualify as Title IX sexual harassment.

a. Complaints

A complaint, as defined herein, may be filed with the Title IX Coordinator at any time (even during non-business hours) in person, by mail, by telephone, or by electronic mail, using the following contact information listed in Section V. The Title IX Coordinator may also sign a complaint if the Complainant does not wish to pursue a formal grievance process but the results of the requisite analysis obligate the Title IX Coordinator to do so.

b. Dismissal

The Title IX Coordinator will conduct an initial review of the complaint and determine if it alleges a violation of this Policy. If the complaint does not describe a potential violation, the complaint will be dismissed. The Complainant and Respondent will be promptly informed, simultaneously and in writing, of this outcome, the reasons for it, and their right to an appeal. Additional information regarding appeals can be found in Section XVIII(h). Dismissal from the Process B grievance process does not preclude action under another provision of UTS's policies.

c. Informal Resolution Process

Please see section XVIII(d) for information on pursuing an informal resolution.

d. Investigation

The investigation of a complaint will be conducted in an impartial, prompt, thorough, fair, timely, and respectful manner.

Notice of the commencement of an investigation will be provided in accordance with Section XVIII(b) of this Policy. The Title IX Coordinator will meet with both Parties separately to discuss the investigation and hearing process and procedures. The Parties are permitted to bring their Advisors to this initial meeting, as well as any other meetings or proceedings relating to the formal grievance process. Parties whose participation is invited or expected at a hearing, investigative interview, or other meeting will be provided written notice of the date, time, location, participants, and purpose of said event at least two days prior to the event.

The Title IX Coordinator will appoint an appropriately trained investigator(s) to conduct the investigation (the "Investigator"). A Party wishing to challenge the selection of the Investigator must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the name and contact information of the Investigator, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual(s) assigned as the Investigator(s). No investigator will have a conflict of interest or bias.

The Investigator will gather evidence relating to the alleged violation of this Policy. The Investigator will conduct interviews of the Complainant, Respondent, and, when appropriate, third-party witnesses. The

Investigator will also collect any other available evidence, such as relevant documents. The Complainant and Respondent will be given an equal opportunity to provide evidence to the Investigator, present information in the context of the investigation, recommend fact and expert witnesses, and present other inculpatory or exculpatory evidence.

UTS cannot access, consider, disclose, or otherwise use in the formal grievance process a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless UTS obtains voluntary, written consent from that Party (or, if the Party is not an eligible student, that Party's parent) to do so. Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege are not permitted in the grievance process unless the person holding such privilege has waived that privilege.

Neither Party is restricted from discussing the allegations or gathering and presenting evidence. If relevant evidence is destroyed by a Party, the Hearing Officer(s) can take that into account in assessing the credibility of the Parties, and the weight of evidence in the case. Both Parties have the right to review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

After gathering the relevant evidence, the investigator will issue an investigative report. An electronic or hard copy of the investigative report must be sent to each Party and their Advisor, if any, 10 business days prior to the hearing for their review and written response regarding the investigation, charges, and the investigator's recommendations. If a Party agrees with the Investigator's recommendations and would like to resolve the complaint pursuant to those recommendations, the Party should indicate in their written submission that they would be willing to initiate the informal resolution process to accept the Investigator's recommendation. If all Parties wish to begin an informal resolution process to accept the recommendations, the case will proceed via the process described in Section XVIII(d). If the informal resolution is successful, the case will be resolved without proceeding to a hearing. If the informal resolution is unsuccessful, then the case will proceed to a hearing. If a Party disagrees with the investigative report or resolution proposed by the investigator and does not wish to enter into an informal resolution to accept the recommended terms, such Party should indicate in their written submission that they would like to proceed to a hearing.

e. Hearing Officer(s) Determination

The Hearing Officer(s) will be chosen from a pool of designated and trained faculty and staff at UTS based on availability (and excluding any members with a conflict of interest or bias). Neither the Title IX Coordinator nor the Investigator are permitted to serve as the Hearing Officer(s). The Hearing Officer(s) will have received training on relevant topics, including how to proceed with the process in a manner that protects the safety of the Parties and promotes accountability. Where circumstances warrant, the Title IX Coordinator may determine that an individual external to UTS will be assigned as Hearing Officer(s).

Once the Hearing Officer(s) receives the investigative report, the Hearing Officer(s) will review it along with any supporting evidence and the Parties' written responses to the final investigative report. The Parties are free to reference the investigative report and any evidence during the hearing. Both Parties also have the right to present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the case.

The Title IX Coordinator will provide written notice at least 5 business days before the hearing date to the Parties. The written notice will include, at a minimum:

- The date, time, and place of the hearing;
- The participants in the hearing (including but not limited to the Parties, witnesses, etc.);
- The purpose of the hearing; and
- The name and contact information of the Hearing Officer(s). A Party wishing to challenge the participation of a Hearing Officer(s) must notify the Title IX Coordinator, in writing, within 3 business days of receipt of the notice of hearing, stating the specific reason(s) for the Party's objection. The Title IX Coordinator will determine whether the challenge has merit, and reserves discretion to make changes to the individual assigned as Hearing Officer(s) at any time.

The hearing will take place on the date and time specified in the notice of hearing. If circumstances arise that require a change in the hearing date or time, UTS will provide the Parties with written notice explaining the reason for such change.

Parties may give an opening and closing statement and must speak on their own behalf to give testimony. When the Complainant and Respondent address the Hearing Officer(s), they may bring their respective Advisors if they so choose. Neither the Parties nor their Advisors will be permitted to question or cross-examine the Parties or other witnesses at any time during this hearing under Process B. The Hearing Officer(s) will ask all questions at the hearing. Any relevant evidence may be considered by the Hearing Officer(s) in making their decision regarding a finding of responsibility. Parties are generally expected to be present for the entirety of the hearing prior to deliberations, though they may choose whether or not to be present for the testimony of the other Party; witnesses are permitted to attend only as is necessary to answer questions, including on cross-examination, and do not need to be present for the entire hearing.

The Hearing Officer(s) has sole discretion to determine whether to call additional witnesses; it is not required that every Party or witness who participated in the investigation also provide live testimony at the hearing. Both Parties have the right to exclude their own mental health diagnosis and/or treatment from admittance in the hearing. As stated above, medical and psychological records are also excluded unless a Party voluntarily waives that privilege and consents to the records being used. Both Parties also have the right to exclude their own prior sexual history with persons other than the other Party in the formal grievance process.

An audio or audiovisual recording of any hearing will be created and made available to the Parties for inspection and review.

f. Impact Statements

The Parties will be offered an opportunity to provide impact statements to the Hearing Officer(s) while they are deliberating on appropriate sanctions. The impact statement may be up to five (5) pages single spaced. The impact statement must be provided to the Title IX Coordinator. Parties will also receive a copy of submitted impact statements. The Title IX Coordinator will provide the impact statements to the Hearing Officer(s) only once the Hearing Officer(s) is deliberating on appropriate sanctions. Impact Statements cannot and will not be considered by the Hearing Officer(s) when reaching a determination of responsibility.

g. Determination of Responsibility

Based on an objective review of the evidence, the Hearing Officer(s) will determine whether the Respondent is responsible for violating this Policy. In reaching this decision, all relevant evidence must be objectively evaluated, and credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness. The Hearing Officer(s) cannot defer to any conclusions in the

investigative report and must make an independent determination of responsibility.

If the Hearing Officer(s) concludes that the Respondent is responsible for a violation of this Policy, then the Hearing Officer(s) shall receive the Respondent's disciplinary record (i.e., any previous disciplinary action or other violation of UTS Policy, including this Policy, for which the Respondent was found responsible), and the Party impact statements to consider, as appropriate, in determining sanctions.

If the Hearing Officer(s) determines that the Respondent committed a violation of this Policy, the Hearing Officer(s) will determine the appropriate sanctions. The possible sanctions are described in Section XVIII(f). The Complainant and Respondent will be informed, simultaneously and in writing, of the Hearing Officer(s)'s decision, including any disciplinary sanctions imposed and the rationale for the decision and disciplinary sanctions. This notification will comply with the requirements of the Federal Education Right to Privacy Act (FERPA).

The Hearing Officer(s) must issue a written determination regarding responsibility within 10 business days of the conclusion of the hearing. The written determination must include:

- 1) Identification of the allegations potentially constituting Title IX sexual harassment
- 2) Findings of fact supporting the determination;
- 3) Conclusions regarding the application of UTS's Policy to the facts;
- 4) As to each allegation, a statement of, and rationale for, the result, including the determination regarding responsibility, any disciplinary sanctions UTS imposes on the Respondent, and whether remedies designed to restore or preserve equal access to UTS's education program or activity will be provided by UTS to the Complainant;
- 5) UTS's procedures and permissible bases for the Complainant and Respondent to appeal; and
- 6) When the determination becomes final.

The written determination will be provided to both Parties simultaneously. UTS must wait to act on the determination regarding responsibility, including implementing disciplinary sanctions or remedies, until the determination becomes final. The determination regarding responsibility becomes final either on the date that UTS provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. *For the appeal process, please see Section XVIII(h).* The Title IX Coordinator is responsible for effective implementation of any remedies.

APPENDIX A – STUDENTS’ BILL OF RIGHTS

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an Advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

(adopted from New York Education Law Article 129-B, Enough is Enough, § 6443)

APPENDIX B - EMPLOYEE AND COVERED NON-EMPLOYEE COMPLAINT FORM FOR REPORTING SEXUAL HARASSMENT

Union Theological Seminary (UTS)

New York State Labor Law requires all employers to adopt a sexual harassment prevention policy that includes a complaint form to report alleged incidents of sexual harassment.

If you believe that you have been subjected to sexual harassment, you are encouraged to complete this form and submit it to the Title IX Coordinator at the contact information below. The form may be submitted in person, via mail, or via email.

Diana Torres-Petrilli
Title IX Coordinator
Chief Human Resources Officer
3041 Broadway at 121st Street
New York, NY 10027
Telephone: (212) 678-8011
Email: dipetrilli@uts.columbia.edu

You will not be retaliated against for filing a complaint.

If you are more comfortable reporting verbally or in another manner, your employer should complete this form, provide you with a copy and follow its sexual harassment prevention policy by investigating the claims as outlined at the end of this form.

For additional resources, visit: ny.gov/programs/combating-sexual-harassment-workplace

COMPLAINANT INFORMATION

Name:

Work Address:

Work Phone:

Job Title:

Email:

Select Preferred Communication Method: Email Phone In person

SUPERVISORY INFORMATION

Immediate Supervisor's Name:

Title:

Work Phone:

Work Address:

COMPLAINT INFORMATION

1. Your complaint of Sexual Harassment is made about:

Name:

Title:

Work Address:

Work Phone:

Relationship to you: Supervisor Subordinate Co-Worker Other

2. Please describe what happened and how it is affecting you and your work. Please use additional sheets of paper if necessary and attach any relevant documents or evidence.

3. Date(s) sexual harassment occurred:

Is the sexual harassment continuing? Yes No

4. Please list the name and contact information of any witnesses or individuals who may have information related to your complaint:

The last question is optional, but may help the investigation.

5. Have you previously complained or provided information (verbal or written) about related incidents? If yes, when and to whom did you complain or provide information?

If you have retained legal counsel and would like us to work with them, please provide their contact information.

Signature: _____ Date: _____