SECTION: General Administration **NUMBER: 01.D.08**

AREA: Legal Affairs

SUBJECT: Sexual Misconduct Policy (Interim 2)

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1. PURPOSE

1.1. The University of Houston System and its component institutions ("University") are committed to maintaining and strengthening an educational, working and living environment where students, faculty, staff and visitors are free from sex discrimination of any kind. Sexual Misconduct (as defined in this policy), a form of sex discrimination, is antithetical to the standards and ideals of the University. The University will take appropriate action in an effort to eliminate Sexual Misconduct from happening, prevent its recurrence and address its effects.

1.2. The University aims to eradicate Sexual Misconduct through education, training, clear policies and serious consequences for violations of its policies. The University will conduct educational programs, including ongoing prevention and awareness campaigns, designed to promote awareness and prevent Sexual Misconduct. This Sexual Misconduct Policy ("Policy") defines and describes prohibited sexual conduct and establishes a procedural mechanism for processing complaints of Sexual Misconduct. (Please see the University's Discrimination and Harassment Policy, SAM 01.D.07, to find the procedural recourse for responding to unlawful discrimination and harassment incidents that do not constitute Sexual Misconduct.)

1.3. Consistent with its commitment to addressing sex discrimination and harassment, the University complies with Title IX of the Education Amendments of 1972 ("Title IX"), which prohibits discrimination on the basis of sex in education programs or activities, and Title VII of the Civil Rights Act of 1964 ("Title VII"), which prohibits sex discrimination in employment. Sexual Misconduct, as defined in this Policy, constitutes a form of sex discrimination prohibited by Title IX and Title VII.

1.4. All members of the University are expected to adhere to this policy, to cooperate with the procedures for responding to complaints and to report conduct or behavior that they believe to be in violation of this Policy (See Sections 8 and 9 for reporting procedures). The University will take seriously allegations of Sexual Misconduct by conducting an investigation, and the University will work to ensure that all persons are given appropriate support and fair treatment.

1.5. This Policy provides the exclusive mechanism for handling the non-criminal investigation of any alleged Sexual Misconduct, the determination of whether this Policy was violated, and the appeal of Equal Opportunity Services' (EOS') finding as to violation/no violation of this Policy. The proceedings under this Policy shall provide a prompt, fair, and impartial investigation and resolution.

2. GENERAL DEFINITIONS

2.1. Complainant – A party or entity (in the case of the University) who makes a complaint of Sexual Misconduct under Section 11 of this Policy.

2.2. Respondent – A party who has been accused of committing an act of Sexual Misconduct by a Complainant.

2.3. Sexual Activity – Intercourse, however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact). Sexual activity also includes any intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch the Complainant or themselves with or on any of these body parts; and any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

2.4. Student – Any person who has been accepted for admission or who is currently or was previously enrolled in the University pursuing undergraduate, graduate or professional studies, whether full-time or part-time, and a person who is registered for a future semester.

2.5. Title IX Coordinator – The person who has been designated on each component institution campus to coordinate efforts to comply with and implement this Policy. The Title IX Coordinator is responsible for conducting the administrative investigation of reports of Sexual Misconduct and is available to discuss options, provide support, explain University policies and procedures and provide education on relevant issues. The Title IX Coordinator may designate one or more Assistant Title IX Coordinators. The Title IX Coordinators for each component institution campus are:

- University of Houston System/University of Houston
  Assistant VC/VP for Equal Opportunity Services or Richard Anthony Baker, M.P.A., Ph.D., J.D., Equal Opportunity Services
  (713) 743-8835; rabaker4@uh.edu

- University of Houston – Downtown
  Assistant VP for Employment, Training, Campus Relations and Affirmative Action Officer or Douglas J. teDuits, Ed D, SPHR, Employment Services and Operations
  (713) 222-5366; TeDuitsD@uhd.edu

- University of Houston – Clear Lake
  Executive Director, Human Resources and Affirmative Action or Katherine Justice, Human Resources and Affirmative Action
  (281) 283-2164; Justice@uhcl.edu

- University of Houston – Victoria
  Director, Human Resources/Affirmative Action or Laura Smith, Human Resources/Affirmative Action
  (361) 570-4800; SmithL@uhv.edu

2.6. University-Affiliated Activity – Any activity on or off campus that is initiated, aided, authorized or supervised by the University or by an officially-recognized organization of the University.

2.7 University Premises – Buildings or grounds owned, leased, operated, controlled or supervised by the University.

3. DEFINITION OF SEXUAL MISCONDUCT

"Sexual Misconduct" is a broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes sexual assault, sexual exploitation, sexual intimidation, sexual harassment, domestic violence, dating violence and stalking as further described in Section 6. Sexual Misconduct can be committed by men or women, strangers or acquaintances, and can occur between people of the same or opposite sex. This Policy applies regardless of the complainant's or the respondent's sex, sexual orientation, gender identity or gender expression. An attempt to engage in conduct that constitutes Sexual Misconduct under this Policy may be treated itself as an act of Sexual Misconduct.

4. JURISDICTION

The University has jurisdiction over, and will respond to, allegations of Sexual Misconduct occurring on the University's premises, at University Affiliated Activities, and/or where both the alleged perpetrator and victim are a student, faculty, or staff. A Sexual Misconduct complaint rising to the level of a potential criminal violation may be considered separately under this Policy and in the criminal justice system. Proceedings under this Policy will not be dismissed or delayed because criminal prosecution is pending, charges have been dismissed, or the charges have been reduced. Proceedings may also continue if a party is no longer employed with or a student of the University.

Additionally, the University has the discretion to investigate conduct off University premises pursuant to Section 14.3.

5. CONSENT

5.1. For purposes of this Policy, consent is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to ensure that s/he has the consent of the other to engage in each instance of sexual activity. (The definition of consent for the crime of sexual assault in Texas can be found at http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm#22.011.)

5.2. Consent is active, not passive, and cannot be inferred from the absence of a "no." Therefore, silence or lack of protest or resistance, without actions demonstrating permission, cannot be assumed to show consent. Although consent does not need to be verbal, verbal communication is the most reliable form of asking for and gauging the receipt of consent, and individuals are thus urged to seek consent in verbal form for each instance of sexual activity. The existence of a dating relationship or a previous sexual relationship between the persons involved does not provide the basis for an assumption of consent to future sexual activity.

5.3. Consent must be present throughout the sexual activity, and consent to some form of sexual activity cannot be automatically taken as consent to any other sexual activity. Importantly, at any time, a participant can communicate that s/he no longer consents to continuing the sexual activity. If there is confusion as to whether an individual has consented or continues to consent to sexual activity, it is essential that the participants stop the sexual activity until the confusion is clearly resolved.

5.4. In determining whether a person gave consent, various factors are relevant. However, there is no consent when physical force or violence is used or threatened, where a person is unconscious or otherwise unable to resist, where the person is unaware that a sexual assault is occurring, or where the person does not have the legal capacity to consent. Further, a person may be unable to consent when the person is mentally or physically incapacitated due to the influence of drugs, alcohol, or medication and as a result is rendered temporarily incapable of understanding, appraising or controlling his or her conduct. A person's incapacity to understand, appraise or control her or his conduct may be analyzed based on surrounding factors including, but not limited to, hallucinations, seizures, vomiting, slurred speech, disorientation, incoordination and other relevant factors.

6. FORMS OF SEXUAL MISCONDUCT

6.1. Sexual Assault

For purposes of this Policy, sexual assault is any form of ***non-consensual*** sexual activity. Sexual assault represents a continuum of conduct from forcible rape to non-physical forms of pressure that compel individuals to engage in sexual activity against their will. (The definition of sexual assault in Texas can be found at http://www.statutes.legis.state.tx.us/Docs/PE/htm/PE.22.htm#22.011.)

Examples of sexual assault under this Policy include, but are not limited to, the following non-consensual sexual activity:

a) Sexual intercourse (vaginal or anal);

b) Oral sex;

c) Rape or attempted rape;

d) Penetration of an orifice (anal, vaginal, oral) with the penis, finger or other object;

e) Unwanted touching of a sexual nature;

f) Use of coercion, manipulation or force to make someone else engage in sexual touching, including breasts, chest and buttocks;

g) Engaging in sexual activity with a person who is unable to provide consent; or

h) Knowingly transmitting a sexually-transmitted disease to another.

6.2. Sexual Exploitation

Sexual exploitation occurs when a party takes ***non-consensual*** or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other Sexual Misconduct offenses. Examples can include, but are not limited to, the following behaviors:

a) Prostituting another;

b) Non-consensual electronically recording, photographing or transmitting intimate or sexual utterances, sounds or images without the knowledge and consent of all parties involved;

c) Voyeurism (spying on others who are in intimate or sexual situations);

d) Going beyond the boundaries of consent (such as letting friends hide in the closet to watch another friend having consensual sex); or

e) Distributing intimate or sexual information about another person without that person's consent.

6.3. Sexual Intimidation

Sexual intimidation involves:

a) Threatening another with a non-consensual sex act;

b) Stalking or cyber-stalking; or

c) Engaging in indecent exposure.

6.4. Sexual Harassment

Sexual harassment is a form of sex discrimination that includes verbal, written or physical behavior of a sexual nature, directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, when that behavior is unwelcome, severe or pervasive, and where it meets either of the following criteria:

a) Submission or consent to the behavior is believed to carry consequences for the individual's education, employment, on-campus living environment or participation in a University-affiliated activity. Examples of this type of sexual harassment include, but is not limited to:

   1) Pressuring another to engage in sexual behavior for some educational or employment benefit; or

   2) Making a real or perceived threat that rejecting sexual behavior will result in a negative tangible employment or academic consequence.

b) The behavior has the purpose or effect of substantially interfering with another's work or educational performance by creating an intimidating or hostile environment for employment, education, on-campus living or participation in a University-affiliated activity. Examples of this type of sexual harassment can include, but is not limited to:

   1) Persistent unwelcome efforts to develop a romantic or sexual relationship;

   2) Unwelcome commentary about an individual's body or sexual activities;

   3) Unwanted sexual attention;

   4) Repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present; or

   5) Gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting even if not objected to by those present.

6.5. Domestic (Family) Violence

For purposes of this Policy, domestic (family) 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 State of Texas, 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 State of Texas.

6.6. Dating Violence

For purposes of this Policy, dating violence is violence committed by a person:

a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

b) 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 relationship

iii. The frequency of interaction between the persons involved in the relationship

6.7. Stalking

For purposes of this Policy, stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to

a) Fear for his or her safety or the safety of others; or

b) Suffer substantial emotional distress.

7. USE OF ALCOHOL OR OTHER DRUGS

Alcohol or other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and effectively given. The perspective of a reasonable person will be the basis for determining whether one knew or should have known about the impact of the use of alcohol or drugs on another's ability to give consent. Being intoxicated or high is never an excuse for engaging in Sexual Misconduct.

8. RISK REDUCTION STRATEGIES

Acts of Sexual Misconduct not only devastate their victims, but also the campus communities where they occur. For these reasons, the University of Houston System shall engage in risk reduction strategies emphasizing the collective responsibility of the

campus community to reduce the risk of Sexual Misconduct throughout the system. As a part of that effort, every new student and employee shall attend a prevention and education program about Sexual Misconduct. The program will incorporate risk reduction strategies and include bystander intervention training which enables community members to take a role in preventing and interrupting incidents of Sexual Misconduct. The program will also provide resources, including information regarding this sexual misconduct policy.

Common sense, situational awareness and trusting your instincts will reduce your risk of being subjected to sexually misconduct.

Risk reduction strategies include, but are not limited to, the following:

A. If you consume alcohol, do so in moderation;

B. Do not leave your beverage unattended or accept a drink from an open container;

C. When you are with someone, communicate clearly to ensure he or she knows your limits from the beginning (both verbal and nonverbal (body language) communication can be used to ensure the message is understood);

D. If you go on a date with someone you do not know very well, tell a close friend what your plans are;

E. You have the right to say "No" even if you first say “Yes” and then change your mind, have had sex with this partner before, have been kissing or "making out" or are wearing what is perceived to be “provocative” clothing;

F. Always have extra money to get home and have a plan for someone you can call if you need help;

G. if you feel uncomfortable, scared or pressured, act quickly to end the situation by saying "Stop it" and leave or call for help;

H. when you go to a party, go with a group of friends, arrive together, watch out for each other and leave together;

I. be aware of your surroundings at all times;

J. do not allow yourself to be isolated with a person you do not know or trust;

K. travel with a friend or in a group;

L. walk only in lighted areas after dark;

M. keep the doors to homes and cars locked;

N. know where a phone is located.

Bystander Intervention

One of the most effective methods of preventing sexual assault is bystander intervention, which encourages people to identify situations that might lead to Sexual Misconduct and then safely intervene to prevent misconduct from occurring.

Recognizing when to intervene. Some people might be concerned that they are being encouraged to place themselves in jeopardy to stop crimes in progress. This is not the case. There are many situations and events that occur prior to Sexual Misconduct that are appropriate for intervention. Bystander intervention encourages people to watch for those behaviors and situations that appear to be inappropriate, coercive and harassing.

Responsibility to intervene. The University deems that it is every person's responsibility to take safe and reasonable actions to prevent Sexual Misconduct.

Ways to intervene.

A. Making up an excuse to get a person out of a potentially dangerous situation;

B. Letting an individual know that his or her actions may lead to serious consequences;

C. Not leaving a person's side who may be in trouble despite the efforts of someone else to get him/her alone or away from you;

D. Using a group of friends to remind someone behaving inappropriately that his or her behavior should be respectful;

E. Taking steps to curb someone's use of alcohol before problems occur;

F. Calling the authorities when the situation warrants.

Understanding how to safely implement the choice. Safety is paramount in bystander intervention. Usually, intervening in a group is safer than intervening individually. Also, choosing a method of intervention that de-escalates the situation is safer than attempting a confrontation. However, there is no single rule that can account for every situation. Please use good judgment and always put safety first.

9. ANONYMOUS AND CONFIDENTIAL REPORTING

9.1. When considering reporting options, victims should be aware that certain University personnel can maintain strict confidentiality, while others have mandatory reporting and response obligations. University personnel who receive a report of Sexual Misconduct may be required to share the information with appropriate administrative authorities for investigation and follow up. The University will protect the confidentiality of an alleged victim by refusing to disclose the alleged victim's information to anyone outside the University to the maximum extent permitted by law. As for confidentiality of information within the University, the University must balance a victim's request for confidentiality with its responsibility to provide a safe and non-discriminatory environment for the University community. Where the University cannot take disciplinary action against an alleged discriminator or harasser because of a complainant's insistence of confidentiality, the University will pursue other steps to limit the effects of the alleged Sexual Misconduct and attempt to prevent its recurrence.

9.2. Each component institution has on-campus personnel who can maintain strict confidentiality. Campus crisis counselors can assist in a crisis situation and provide information about options including medical assistance, psychological counseling, victim advocacy resources, legal resources, University disciplinary action, and criminal prosecution. The crisis counselors can provide safe and confidential support, explain common reactions to crises, and discuss coping methods that may assist immediately following the assault and later. Talking about concerns may help the victim sort through feelings and decide what to do. Victims need not reveal their names if calling for information. Crisis counselors will not reveal the victim's identity to anyone without the victim's permission except under very limited exceptions (e.g., if an immediate threat to the victim or others is present, or if the victim is a minor). To obtain contact information for victim advocacy groups as well as counseling, health, mental health, legal assistance, and other services available to victims, please contact the appropriate Title IX Coordinator listed in Section 2.5.

9.3. In addition, a victim (or any individual who has information about an incident of alleged Sexual Misconduct) may submit a report through a secure web-based reporting system called MySafeCampus, which allows the option of anonymity. The web address for MySafeCampus is http://www.mysafecampus.com. However, the reporter should know that, during the course of an investigation, his or her identity may be discovered. If that occurs, the reporter will receive the same confidentiality safeguards offered to those who make a formal report under this Policy.

10. FORMAL REPORTING

10.1. Although the victim of Sexual Misconduct may decline to report the incident, the University supports, encourages and will assist anyone who believes they have been the victim of Sexual Misconduct to report the incident to the reporting source of their choice, which can include, but is not limited to, any entity or individual listed in Section 2.5 above and/or in subsections A through E of this Section 10. Prompt reporting may preserve options that delayed reporting does not, including the preservation of physical evidence (which may be necessary to the proof of Sexual Misconduct or in obtaining an order of protection), the support of crisis counseling, and immediate police response. Regardless, whenever a student, faculty, staff or visitor alerts the University that she or he has been the victim of Sexual Misconduct, she or he will be provided a copy of or link to this Policy, which fully explains her or his rights and options.

10.2. Formal reporting as described in this section cannot provide complete anonymity, but the only persons who will be provided information relating to the report are those persons that need to know, unless additional disclosure is required by law. The University will make all reasonable efforts to maintain the confidentiality and privacy of parties involved in Sexual Misconduct investigations. Breaches of confidentiality or privacy committed by anyone involved in any investigation of

alleged Sexual Misconduct, including the complainant, the accused, witnesses or the investigators, may be considered a separate violation of this Policy and may result in disciplinary sanctions.

10.3. When an incident of Sexual Misconduct is formally reported, the University will consider interim accommodations to protect the alleged victim while the incident is investigated and adjudicated through this Policy. The Title IX Coordinator and other appropriate University administrators will work together to identify alternative arrangements that will preserve the rights of both the alleged victim and the accused, as well as provide a safe overall educational or working environment until (and perhaps after) the report is investigated and any appropriate action is taken. A lawfully issued no contact, restraining order, or order of protection, will be adhered to by the University to the fullest extent permitted by law and while still maintaining a safe and non-discriminator environment at the University. Interim accommodations may include changing academic, living, transportation or working situations. Failure to adhere to the parameters of any interim accommodation may be considered a separate violation of this Policy and may result in disciplinary sanctions. In addition, the University will honor any order of protection, no contact order, restraining order or similar lawful order issued by any criminal, civil or tribal court.

10.4. As mentioned above, an individual may report an incident of Sexual Misconduct by various means, including reporting to appropriate local law enforcement agencies. Any University person receiving a report of Sexual Misconduct must promptly contact the Title IX Coordinator to discuss the report. In addition, there are specific University offices and individuals prepared to respond to incidents of Sexual Misconduct:

A. **University Police.** Reporting to the police helps protect others from future victimization, apprehend the alleged assailant and maintain future options regarding criminal prosecution, University disciplinary action and/or civil action against the alleged wrongdoer. When the victim reports the incident, a police officer will take a statement from the victim regarding what happened. A victim can request that his or her identity be kept confidential. Remember, reporting an incident is separate from choosing to prosecute. When a police report is filed, the victim is not obligated to continue with criminal proceedings or University disciplinary action.

A victim of Sexual Misconduct can make a report to their component institution's Police Department as noted below:

- University of Houston Main Campus Police Department
  http://www.uh.edu/police
  713-743-3333

- University of Houston - Clear Lake Police Department
  http://www.uhcl.edu/police
  281-283-2273
- University of Houston - Downtown Police Department
  http://www.uhd.edu/campus/pd/
  713-221-8911
- UH - Victoria Campus
  http://www.uhv.edu/handbook/campussafety.aspx
  361-570-4245
- UH System at Cinco Ranch
  Security officers are assigned to UHS at Cinco Ranch. Should anyone need assistance concerning an escort, safety or security matter, contact the security officer on duty by calling 832-842-2877. If the security officer is not available during an EMERGENCY situation, dial 911.
- UH at Sugar Land
  Security officer are assigned to UH at Sugar Land. Should anyone need assistance concerning an escort, safety or security matter, contact the police officer or security officer on duty by calling 281-275-3302. If the security officer is not available during an EMERGENCY situation, dial 911.

B. **Title IX Coordinator.** Any incident of Sexual Misconduct can be brought to the attention of the Title IX Coordinator (See Section 2.5 for the contact information for each Title IX Coordinator). The Title IX Coordinator will promptly inform the University of Houston System's Office of Equal Opportunity Services (EOS) and EOS will begin its review process in consultation with the Title IX Coordinator. Although the University strongly encourages reporting Sexual Misconduct to the police, a victim may request administrative action by EOS with or without the filing of a police report. The administrative review process for Sexual Misconduct complaints utilizes a team approach, with EOS serving as fact finder/investigator and the appropriate University administrator consulting on and implementing the proposed sanctions, if any.

C. **Campus Security Authority.** A complaint of Sexual Misconduct can be brought to a Campus Security Authority (CSA), who is a person that has significant responsibility for students and campus activities. The CSA will promptly inform the Title IX Coordinator and/or EOS of the complaint, and EOS will begin its review process.

D. **Dean of Students Office**. A complaint of Sexual Misconduct involving a student can be brought to the Dean of Students Office, or its equivalent. The Dean of Students Office (or its equivalent) will promptly inform the Title IX Coordinator and/or EOS of the complaint and EOS will begin its review process.

E. **Human Resources**. A complaint of Sexual Misconduct involving a staff person can be brought to the Human Resources Department. The Human Resources Department will promptly inform the Title IX Coordinator and/or EOS of the complaint, and EOS will begin its review process.

11. RETALIATION

The University takes reports of Sexual Misconduct very seriously and will not tolerate retaliation against those who make such reports or participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of Sexual Misconduct, or otherwise participating under this Policy. Any actual or threatened retaliation, or any act of intimidation to prevent or otherwise obstruct the reporting of Sexual Misconduct or the participation in proceedings relating to Sexual Misconduct, may be considered a separate violation of this Policy and may result in disciplinary sanctions. Any person who believes that they have been subjected to retaliation should immediately report this concern to their Title IX Coordinator.

12. SEXUAL MISCONDUCT COMPLAINT PROCEDURES

12.1. **Step One: Filing a Complaint**

If the victim wishes to pursue a Sexual Misconduct complaint, s/he will be asked to complete a Formal Complaint Questionnaire with their Title IX Coordinator, who will forward the Complaint Questionnaire to EOS. The University does not limit the timeframe for filing a complaint of Sexual Misconduct. Complaints can be submitted at any time following an incident, although the University's ability to take any action may be limited because of the passage of time. Once a complaint is filed, if the Complainant decides that s/he wants to withdraw the complaint, the University's investigation may still proceed.

12.2. **Step Two: Consideration of Interim Accommodations**

Although interim accommodations may have already been considered and made, EOS will consider interim accommodations at this step to protect the Complainant while the incident is investigated and adjudicated through this Policy. EOS and other appropriate University administrators will work together to identify alternative arrangements that will preserve the rights of both the complainant and the accused, as well as provide a safe overall educational or working environment until (and perhaps after) the complaint is investigated and adjudicated. Interim

accommodations may include changing academic, living, transportation or working situations. Failure to adhere to the parameters of any interim measure may be considered a separate violation of this Policy and may result in disciplinary sanctions.

12.3. **Step Three: EOS Investigation**

EOS will begin an investigation upon its receipt of a complaint or other notice of alleged Sexual Misconduct. EOS will attempt to interview the Complainant, the Respondent and any witnesses, as appropriate. EOS will also gather and review any information it deems pertinent, as well as any information submitted by the Complainant, the Respondent and/or any witnesses. The EOS investigators will receive training at least annually on the issues related to Sexual Misconduct, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

12.4. **Step Four: Response to a Complaint**

Within five business days after receiving a complaint, EOS will contact the Respondent to obtain the Respondent's response. The response is due to EOS within 10 business days from the Respondent's receipt of the Complaint. The response should address and respond to the specific allegations made in the Complaint and can include any other rebuttal information. Failure to respond may be considered a separate violation of this Policy and may result in disciplinary action.

12.5. **Step Five: EOS Finding**

EOS will issue a finding as soon as practicable and make every effort to issue its finding within 60 business days from its receipt of the complaint. The finding will be determined by a preponderance of the evidence; that is, whether it is more likely than not that the Respondent violated this Policy. If EOS determines that this Policy was violated, EOS will recommend appropriate university action in an effort to eliminate Sexual Misconduct from happening, prevent its recurrence and address its effects. Even if EOS determines that this Policy was not violated, EOS may recommend that the Respondent undertake educational initiatives and/or trainings. EOS will simultaneously notify the Complainant and the Respondent in writing of the outcome of its finding and any appeal rights under this Policy, to the extent permissible by law. EOS will notify the appropriate university administrator of any recommended university action.

12.6. **Step Six: Sanctions**

12.6.1. If EOS finds a violation of this Policy against a faculty member, EOS will recommend appropriate university action, and any sanction imposed on the faculty member will be determined by and implemented by the

appropriate administrator after consultation with EOS and consistent with the component institution's faculty handbook/manual.

12.6.2. If EOS finds a violation of this Policy against a non-faculty university employee, EOS will recommend appropriate university action, and any sanction imposed on the employee will be determined by and implemented by the appropriate administrator after consultation with EOS and consistent with the component institution's policies and procedures related to employee discipline.

12.6.3. If EOS finds a violation of this Policy against a student, EOS will recommend appropriate university action, and any sanction imposed on the student will be determined by and imposed by the Dean of Student's Office or its equivalent after consultation with EOS and consistent with the component institution's policies and procedures related to student conduct/discipline.

12.6.4 The sanctions for committing an act of Sexual Misconduct will be commensurate to the offense and may include discipline up to and including probation, suspension, expulsion and/or termination of employment.

13.7. **Step Seven: Appeal**

13.7.1. If the Complainant or the Respondent is dissatisfied with EOS' finding, the party can appeal to the component institution's appellate board ("Board"). Members of the Board will receive training at least annually on the issues related to Sexual Misconduct, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

An appeal must be filed with the Title IX Coordinator within 10 business days of receiving EOS' finding. Absent extenuating circumstances, the Title IX Coordinator will schedule a hearing to be held within 30 business days from the filing of the appeal. Written requests for rescheduling the hearing will be considered by the Board's chairperson in consultation with the Title IX Coordinator. No later than five business days prior to the hearing, all materials that will be used at the hearing must be submitted to the Title IX Coordinator, who will forward the materials to the Board's chairperson and will simultaneously provide to the other party. The materials must include the names of any witnesses intended to be called during the hearing (along with a brief summary concerning the subject matter of the witness' expected testimony), and the name of any advisor to be in attendance at the hearing (and whether that advisor is an attorney). No witness, document/tangible evidence, or advisor will be permitted at the hearing unless such information was timely submitted.

13.7.2. Appeals/Grievances relating to sanctions assessed by the appropriate administrators are not considered under this Policy. Therefore, if the Complainant or the Respondent is dissatisfied with any sanction determined by the appropriate administrator under Sections 11.6.1 through 11.6.3 above, he/she may appeal the sanction as follows: any challenge to the sanction against a faculty member must be addressed through the component institution's faculty handbook/manual; any challenge to the sanction against an employee must be addressed through the component institution's policies and procedures related to employee grievances; any challenge to the sanction against a student must be addressed through the appeal process in the component institution's student code of conduct or its equivalent.

13.8. **Step Eight: Designation of Hearing Panel**

The hearing will be conducted by a Hearing Panel ("Panel"), which is charged with upholding or rejecting EOS' finding based on the preponderance of the evidence. The Board's chairperson is responsible for selecting the Panel members from available Board members. The Panel will be comprised of three board members. The Board's chairperson will select the Panel's chairperson. The appellant and the appellee shall be notified of the Panel's composition. Within five business days of such notification, the appellant and the appellee shall have an opportunity to challenge in writing any Panel member for cause. The Board's chairperson, in consultation with the Title IX Coordinator, will consider any challenge and replace the Panel member if appropriate.

13.9. **Step Nine: Hearing**

11.9.1. The general course of the hearing procedure will be as follows, subject to the discretion of the Panel chairperson:

a) The Panel chairperson will convene the hearing, introduce the individuals, give a brief description of the process and invite questions about the process and allow the appellant and appellee the opportunity to present a brief opening statement;

b) The appellant shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel;

c) The appellee shall present his or her evidence (including calling and questioning his or her own witnesses) to the Panel; and

d) An investigative summary will be presented to the Panel by EOS.

13.9.2. The Panel chairperson and/or Panel may question any individual at any time during the hearing.

13.9.3. The Panel chairperson may impose reasonable time limits on any stage of the hearing. The Panel chairperson may also determine the relevance of, and place restrictions on, any witness or information presented.

13.9.4. The appellant and the appellee may question their own witness and the EOS representative but not the opposing party's witnesses. However, the appellant and appellee may request that the Panel chairperson ask questions of the other witnesses. Both parties may request that the Panel Chair ask questions of the other witnesses by submitting proposed questions to the Panel chairperson in writing either prior to, or during, the hearing. The Panel chairperson may determine which questions are relevant, and the Panel chairperson has the discretion to revise a question or to decline asking the question.

13.9.5. An audio recording of the hearing will be kept for the use of the Panel and for any appeal.

13.9.6. In cases where an appellant or an appellee refuses to participate in the hearing, the Panel will convene and make a decision based on the evidence and testimony available to the Panel. Any party who declines to participate in a hearing waives any additional right to appeal.

13.9.7. Because the hearing process is an internal University process and not a formal courtroom process in which rules of evidence and courtroom procedures apply, this procedure is intended to reduce the adversarial nature of the hearing and will be conducted accordingly. The appellant and the appellee may bring an advisor. Advisors may attend the hearing and sit with their respective advisee during the hearing, communicate quietly orally and/or in writing with their respective advisee during the hearing and may respond to a direct question from the Panel. However, an advisor will not be permitted to speak on behalf of the advisee, make an oral presentation, including an opening or closing argument, or to question witnesses, the EOS representative, or the Panel during the hearing.

13.9.8. Alternative testimony options will be available if determined by the Title IX Coordinator or the Panel to be necessary, such as placing a privacy screen in the hearing room, or allowing an alleged victim to testify from another room via closed circuit. Although such options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the Respondent.

13.10. **Step Ten: Panel Decision**

After the hearing has concluded, the Panel will deliberate in private. The Panel will uphold or reject EOS' finding based on the preponderance of the evidence. The Panel's decision will be by majority vote. The Panel will communicate its

decision in writing to the Title IX Coordinator within three business days of the hearing. The Title IX Coordinator will then provide a copy of the decision to the appellant, the appellee, and EOS.

13.11. **Step Eleven: Final Appeal to Appropriate Administrator**

If the Panel upholds EOS' finding, the appellant may appeal the Panel's decision to the appropriate administrator. Conversely, if the Panel rejects EOS' finding, the appellee and/or EOS may appeal the Panel's decision to the appropriate administrator. Any appeal must be filed in writing within 10 business days of the Panel's decision. The administrator will render a decision within 10 business days from the date that the appeal is filed.

14. SPECIAL PROVISIONS

14.1. **Violations**. Any act that falls within the definition of Sexual Misconduct constitutes a violation of this Policy.

14.2. **University as Complainant**. The University reserves the right to initiate a complaint, to serve as a Complainant, or to initiate proceedings under this Policy without a formal complaint by the victim of Sexual Misconduct.

14.3. **Off campus conduct**. If an individual believes he or she has been subject to Sexual Misconduct off University premises at a non-University affiliated activity, the individual may file a complaint under this Policy. When a faculty, staff, or student is alleged to have engaged in Sexual Misconduct off University premises, the University reserves the right to investigate and adjudicate under this Policy.

14.4. **Immunity for Victims**. The University encourages the reporting of Sexual Misconduct. Sometimes victims and/or witnesses are hesitant to report because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of the University to report incidents of Sexual Misconduct. To encourage reporting, the University follows a policy of offering victims and witnesses of Sexual Misconduct amnesty from being charged with alcohol or drug-related University policy violations if they had been using drugs or alcohol at or near the time of the Sexual Misconduct incident.

14.5. **Notification of Outcomes**. The Title IX Coordinator and/or EOS will simultaneously notify the Complainant and the Respondent (or appellant and appellee) in writing of the outcome of any disciplinary proceeding, the procedures to appeal the results of the disciplinary proceeding, any change to the results that occurs prior to the time that such results become final and when such results become final. The disclosure of the outcome of the disciplinary proceeding shall include only the name of the accused, the violation alleged, and whether any institutional rules or code sections were violated, essential findings supporting

such result, and any sanction imposed including description of disciplinary action, date of imposition of such action, and the duration of such action.

15. REVIEW AND RESPONSIBILITY

Responsible Party: Vice Chancellor for Legal Affairs and General Counsel

Review: Every three years on or before August 31

16. APPROVAL

Approved: Dona Cornell
Vice Chancellor for Legal Affairs and General Counsel

Renu Khator
Chancellor

Date: August 7, 2013

REVISION LOG

Revision Number	Approval Date	Description of Changes
Interim	11/29/2012	Initial version (submitted as Interim)
Interim 2	08/07/2013	Added information to Section 1.2 on educational programs. Added Campus SaVE Act statement to Section 1.5. Revised Section 2.4 definition for "Student." Added additional parameters of Sexual Misconduct to Section 3. Revised Section 4 to be consistent with the Dear Colleague Letter. The web site definition for consent was added to Section 5.1, and the web site definition for sexual assault was added to Section 6.1. Sections 6.5 through 6.7 were added with information from the Campus SaVE Act. Added Section 8, Risk Reduction Strategies, including documentation on bystander intervention from the Campus SaVe Act. Information on confidentiality and services available to victims was added to Section 9 from the Campus SaVE Act. Added "Order of Protection" phrase to Section 10 from the Campus SaVE Act. Documentation on EOS investigator training was added to Section 12.3. Added Section 12.6.4. Added information on Board training to Section 13.7. A brief opening statement for hearings was added to Section 13.9.1.a. Added documentation on reporting offenses off campus to Section 14.3. Added information to Section 14.5 on notification of outcomes from the Violence Against Women Reauthorization Act of 2013 and the Campus SaVE Act