

**UNIVERSITY OF ST. THOMAS
APPEAL OFFICER TRAINING
FOR TITLE IX APPEAL PROCESS**

1. Why Training?

Training is required by the Response and Resolution Procedures of the Sexual Misconduct Policy (Appendix A, Section G.5.). It helps ensure that the Appeal Officer and Appeal Board (if appointed) understand their respective roles and responsibilities within the appeal process, as well as have an understanding of the university's Sexual Misconduct Policy and obligations under Title IX.

2. Title IX

Title IX states that "no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Sexual harassment and other forms of sexual misconduct, including sexual violence, are included within the definition of sex discrimination.

If the university knows or reasonably should know about sex discrimination, it must take immediate action to eliminate the discrimination, prevent its recurrence, and address its effects. The university's duty to respond is separate from any criminal proceedings that may be initiated by law enforcement. Any investigation must be prompt, adequate, reliable and impartial.

Title IX requires a fair and equitable grievance procedure. The university satisfies this obligation by utilizing the preponderance of the evidence (more likely than not) standard; requiring training of all individuals involved in the process as factfinders or decisionmakers; providing equal opportunities for both parties to the proceeding to provide evidence, receive access to evidence, suggest witnesses, receive resources and support, and receive a notice of outcome provided to both parties at the same time.

The Sexual Misconduct Policy provides the opportunity for both parties to appeal the outcome of the formal process on prescribed grounds. The appeal process also is expected to be fair and equitable to both parties. The appealing party must submit a written statement explaining its appeal, and the non-appealing party has the right to submit a written statement responding to the appeal.

3. Not a Legal Proceeding; Role of Attorneys

The processes under the Sexual Misconduct Policy are not legal proceedings and are not subject to legal rules of evidence or other legal procedures that would apply to litigation. The parties may, if they wish, seek legal advice from an attorney with respect to their written submissions and participation in the process, but attorneys for the parties are not permitted to represent the parties or actively participate in any meetings related to the process.

The Appeal Officer and Appeal Board (if appointed) may seek legal advice from designated St. Thomas legal counsel at any point during the hearing process but are not required to do so. The role of legal counsel is to advise the Officer or Board about the appeal process, applicable law and regulation, and the legal aspects and implications of the Officer's or Board's work; it is not to influence or advise the Officer or Board towards a particular outcome. It is in the parties' best interests if the Officer and Board reach their conclusion independently. At the same time, it is important that the Officer and Board understand the scope of any applicable laws and regulations and seek to reach a conclusion that accurately reflects applicable law.

4. Litigation and Indemnification

Matters related to an appeal may from time to time become the subject of litigation. It is unlikely that an Appeal Officer or Appeal Board members would be named as defendants in a lawsuit. However, if you were named, St. Thomas generally is required by state law and our bylaws to defend and indemnify our employees

against any claims or losses incurred by employees in the performance of their duties to St. Thomas, so long as the employee acted in good faith, received no improper personal benefit and believed the conduct was in the best interests of St. Thomas. This means that if you serve as an Appeal Officer or on an Appeal Board and diligently perform your responsibilities, St. Thomas generally will represent and, if necessary, defend you if there are any claims.

If litigation is commenced relating to a matter considered by an Appeal Officer or Appeal Board, the Officer or Board may be requested or required to provide information in response to inquiries by St. Thomas or as a result of a subpoena, court order or other compulsory legal process seeking information. The university's confidentiality requirements regarding the process are unlikely to be a basis for resisting requests for information that arise due to a legal proceeding. St. Thomas may provide you with legal representation if you are the subject of a deposition in connection with a legal proceeding or if St. Thomas otherwise deems it appropriate.

5. Sexual Misconduct Policy

The Sexual Misconduct Policy applies to all members of the community and applies to conduct that occurs both on and off campus. The policy applies regardless of whether the conduct involves members of the same or different sexes. The policy covers six areas of prohibited conduct: sexual harassment, stalking, sexual assault, dating violence, domestic violence and sexual exploitation. It identifies certain definitions for Title IX-based sexual misconduct, which is discussed in more detail below.

6. Sexual Misconduct Response and Resolution Procedures

Reports or complaints received by members of the university community who are required reporters under the Sexual Misconduct Policy are expected to be reported promptly to the Title IX Coordinator. The Title IX Coordinator or a Response Manager designated under the policy will meet with the Reporting Party to discuss support resources and options for moving forward under the policy and related procedures. Before or after this meeting, the Title IX Coordinator or Response Manager will make a determination of whether the report is one of Title IX-based sexual misconduct, or non-Title IX-based sexual misconduct. This distinction is based on federal law and helps determine which processes apply. In the case of a non-Title IX-based sexual misconduct matter involving one or more students, the Title IX Coordinator or Response Manager will further make a decision, generally in consultation with the dean of students, whether a student found responsible for the violation could potentially be suspended or expelled. This information helps determine which version of the formal process is applicable in those cases. The Reporting Party may request the university to follow either the formal process or an alternative resolution process. The Reporting Party always retains the ability to pursue criminal or civil remedies outside the university, which is not in the university's discretion or control.

The designated Response Manager will consider appropriate supportive measures (such as no-contact directives or temporary removal from a residence hall while the process proceeds) and ultimately make the determination whether to follow the alternative resolution process or formal process. The formal process is generally followed if requested by the Reporting Party. The same is true for the alternative resolution process unless the Response Manager believes the formal process is necessary given the nature of the allegations or other circumstances. The Reporting Party always retains the ability to determine whether or not they will participate in a University process.

The alternative resolution process may or may not include involvement by the Responding Party, depending on the circumstances, and may or may not involve sanctions, depending on the circumstances. Sanctions, up to and including suspension, generally are possible only if the Responding Party is given the opportunity to review and respond to the report and voluntarily accepts responsibility for a policy violation/violations. If the alternative resolution process is pursued, either party (if the Responding Party is involved and accepts

responsibility and sanctions) or the University can end that process and initiate the formal process at any time, including for three days following a notice of outcome under the alternative resolution process.

The formal process is initiated with a signed complaint from the Reporting Party or Title IX Coordinator. An investigator is assigned by St. Thomas, a written notice of investigation is provided to each party, and the investigator undertakes an investigation. The investigator interviews parties and witnesses, reviews evidence, and writes a preliminary report that both parties can generally view and respond to. The investigator and Title IX Coordinator will determine whether to proceed to the final stage or whether the investigator needs to conduct additional factfinding. In matters of non-Title IX-based sexual misconduct for which suspension or expulsion are not potential sanctions, the investigator will ultimately prepare a final factfinding report with a **determination** regarding responsibility based on the preponderance of evidence standard, and include the rationale for the investigator's determination. In matters of Title IX-based sexual misconduct or non-Title IX-based sexual misconduct for which suspension or expulsion are potential sanctions, the investigator will prepare a final factfinding report with a **recommendation** regarding responsibility based on the preponderance of evidence standard, and include the rationale for the investigator's recommendation. That information, along with all information gathered in the course of the investigation, will be shared with a hearing panel, and the process will conclude with a live hearing. The purpose of the live hearing is for the hearing panel to have the opportunity to hear directly from the parties and witnesses prior to making an independent determination of responsibility based on the preponderance of evidence standard.

If there is a finding of responsibility, the Response Manager will work with the appropriate university administrator to determine appropriate sanctions. Sanctions depend on the nature of the violation, as well as specific facts and circumstances. Sanctions may include, without limitation, conduct probation, suspension or expulsion.

7. **Appeal Process**

Either party has 5 working days following receipt of the notice of outcome to appeal on one of the four grounds listed in Section 8 below. The four grounds listed in Section 8 are the only available grounds for appeal. Disagreement with the outcome for reasons outside the grounds for appeal do not justify an appeal or a changed outcome. Additionally, an appeal is not an opportunity to present evidence that was previously known or reasonably available to the appealing party but that the appealing party did not provide to the factfinder(s) during the investigation.

The non-appealing party has the opportunity to view the appeal and provide written comments. The appeal officer is appointed by the Title IX Coordinator.

The Appeal Officer, in their discretion, may choose to appoint an Appeal Board of five trained employees to consider the appeal and make a recommendation to the Appeal Officer. The Appeal Officer is not required to appoint an Appeal Board. Regardless of whether an Appeal Board is appointed, the Appeal Officer is responsible for making a determination whether the grounds for appeal have been satisfied. The Appeal Officer will seriously consider the recommendation of the Appeal Board (if appointed) but is not required to follow the Appeal Board recommendation.

The Appeal Officer is expected to review the final factfinding report, hearing panel determination (if any), the notices of outcome, the appeal, the response(s) from the non-appealing party/parties, and consider any previously undiscovered evidence (if discovery of new evidence is a ground for appeal). It is not the role of the Appeal Officer to rehear the matter, but only to determine whether it is more likely than not that the designated grounds for appeal have been satisfied. The Reporting Party and the Responding Party should be given equal opportunities related to the appeal.

8. **Appeal Officer Responsibilities**

- a. Promptly contacting the Title IX Coordinator if you believe you have a conflict of interest or if there could be a perception that your personal interests could influence your decision-making in the appeal.

- b. Preparing for the appeal by attending training and any related meetings.
- c. Determining whether to appoint an Appeal Board, and, if so, doing so promptly and thoughtfully.
- d. If not appointing an Appeal Board, thoughtfully reviewing the appeal, any response submitted by the other party, the notices of outcome, and the final factfinding report, as well as considering any previously undiscovered evidence (if a ground for appeal).
- e. Making a considered determination as to whether it is necessary to meet with the parties, investigator, or others.
- f. Ensuring that the process is fair to both parties and asking questions of the Title IX Coordinator and/or legal counsel if there are questions regarding the process and/or legal considerations.
- g. Considering whether it is more likely than not that the designated grounds for appeal (as identified by the appealing party) have been satisfied. The possible grounds for appeal are:
 - 1. a procedural irregularity occurred that affected the outcome of the process, including but not limited to that the decision was not supported by a preponderance of the evidence or was arbitrary and capricious;
 - 2. the decision violated academic freedom;
 - 3. there has been discovery of new evidence by the appealing party that was not reasonably available at the time of the determination regarding responsibility that could affect the outcome of the matter;
 - 4. The Title IX Coordinator, Investigator(s), or hearing panel had a general or specific conflict of interest or bias against the Complainant or Respondent that affected the outcome.
- h. Timely issuing a written decision stating the Appeal Officer's findings and the final disposition of the appeal within fifteen (15) working days following the submission deadline for a written request for appeal unless an extension is necessary and communicated.
- i. Maintaining required records and confidentiality throughout the process and following completion of the process. These confidentiality obligations do not expire.
- j. Understanding and abiding by non-retaliation provisions of the Sexual Misconduct Policy.

9. Scope of Review

The Appeal Officer should only consider grounds for appeal that are permitted under the Sexual Misconduct Policy and the Response and Resolution Procedures (which are listed in Section 8 above). If the appealing party appeals on a ground that is not one of the four listed in the policy, that portion of the appeal should not be considered. The Appeal Officer should only review evidence on those issues that are appealed.

The Appeal Officer may, but is not required, to meet with the parties, factfinder, or request additional information to the extent the Appeal Officer determines the information is reasonably necessary to consider the appeal.

10. Confidentiality

The Appeal Officer is expected to maintain the confidentiality of information related to Reports and Complaints and the response and resolution process consistent with all applicable St. Thomas policies. The Appeal Officer may communicate such information only to individuals who have a legitimate need to know

the information in connection with their work responsibilities or their role in the response and resolution process.

11. Recordkeeping

Upon completion of the hearing process, the Appeal Officer will submit a copy of their written letter that was submitted to the parties to the Title IX Coordinator.

12. Protection Against Retaliation

St. Thomas, and federal and state law, prohibit retaliation against individuals for raising concerns about or making reports of sexual misconduct in good faith. No student, faculty or staff will be reprimanded or retaliated against for notifying St. Thomas about potential incidents of sexual misconduct in good faith or for participating, in good faith, in a factfinding investigation related to reports of sexual misconduct. Retaliatory actions include, but are not limited to, threats or actual violence against the person or that person's property, adverse educational or employment consequences, ridicule, intimidation, bullying or ostracism.

St. Thomas will take steps to prevent retaliation and will take strong responsive action if retaliation occurs. Any conduct by a Covered Person that constitutes retaliation or reprisal is subject to disciplinary action, up to and including dismissal, expulsion and prohibition from campus or other St. Thomas activities. Concerns regarding retaliation will be addressed in accordance with applicable St. Thomas policies and procedures addressing retaliation.

St. Thomas may impose sanctions if it determines that an individual knowingly initiated in bad faith a claim of sexual misconduct, knowingly provided false information, or intentionally misled a St. Thomas representative during an investigation of sexual misconduct allegations or a related complaint.

13. Questions?