

# Sexual Misconduct Policy

Policy number: 109  
Policy owner: Title IX Coordinator

Date of initial publication: June 10, 2014  
Date of latest revision: August 14, 2020

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## SECTION I. PURPOSE

The University of St. Thomas mission and convictions embody the University's commitment to promote and protect the personal dignity and well-being of every member of the St. Thomas community. Sexual harassment, sexual assault and other forms of sexual misconduct violate that commitment and are not tolerated in our community. Moreover, they constitute unlawful sex discrimination. All forms of sexual misconduct are prohibited by St. Thomas.

The St. Thomas mission and convictions also embody the University's strong commitment to academic freedom, rigorous thinking and the free and full pursuit of knowledge and truth by every member of the St. Thomas community. The prohibition on sexual misconduct is critical to and consistent with these commitments. St. Thomas cannot achieve its educational objectives in an environment in which sexual harassment or other forms of sexual misconduct are tolerated.

This policy defines the forms of sexual misconduct prohibited by St. Thomas, describes reporting options, and identifies the procedures St. Thomas will use to resolve reports of sexual misconduct. This policy reflects the University's commitment to: (1) fostering an environment where sexual misconduct is not tolerated, (2) informing all members of our community about our policy, procedures, and resources, (3) supporting members of the community who experience sexual misconduct and informing them about our policy, procedures, and resources and (4) resolving reports of sexual misconduct in a prompt, impartial and equitable manner.

## SECTION II. SCOPE AND APPLICABILITY

This policy applies to all St. Thomas students, employees (faculty, staff and student workers), members of the Board of Trustees, contractors, volunteers, visitors, licensees and participants in any St. Thomas study abroad or other travel program (collectively "Covered Persons").

This policy governs conduct by or against a Covered Person, both on and off the St. Thomas campus.

## SECTION III. DEFINITIONS

When used in this policy, the following terms have the following meanings:

- a. ***Sexual misconduct*** includes sexual harassment, sexual assault (including actual or attempted non-consensual sexual contact and actual or attempted non-consensual sexual penetration), sexual exploitation, dating violence, domestic violence, and stalking. Each is defined in Section IV of this policy.
- b. ***Title IX-based sexual misconduct*** is sexual misconduct as defined under federal Title IX regulations and is described in more detail in Section IV.B of this policy.
- c. ***Non-Title IX-based sexual misconduct*** is any misconduct described in Section IV of this policy that is not Title IX-based sexual misconduct. Non-Title IX-based sexual misconduct is further described in Section IV.A of this policy.
- d. ***Confidential Resources*** are individuals who provide confidential assistance and support to individuals who have experienced or otherwise are involved in sexual misconduct situations. Confidential Resources are not required to notify the Title IX Coordinator or law enforcement about sexual misconduct so long as the allegations do not involve the physical or sexual abuse of a child or vulnerable adult or an imminent threat to the life of any person. In accordance with applicable law, limited categories of individuals may serve as Confidential Resources. Confidential Resources are available both on and off campus. The Confidential Resources available on the St. Thomas campus are:

- counselors in St. Thomas Counseling and Psychological Services;
- health care providers at St. Thomas Health Services; and
- clergy, or other ministers of any religion (e.g. campus chaplains), in the following limited circumstances:
  - A member of the clergy or minister who learns of sexual misconduct through confession to such clergy member or minister, if disclosure is enjoined by the rules and practice of the religious body to which the member of the clergy or minister belongs.
  - A member of the clergy or minister who does not have significant responsibility for student or campus activities other than pastoral counseling and who learns of sexual misconduct in the course of providing confidential pastoral counseling of a professional character, including religious or spiritual advice, aid or comfort. Clergy and other ministers are not Confidential Resources if they are not acting in the professional capacity of a pastoral counselor.

For more information on Confidential Resources, see Part V.B.1.a. Talking to a Confidential Resource.

- e. A **Covered Person** is a St. Thomas student, employee (faculty, staff or student worker), member of the Board of Trustees, contractor, volunteer, visitor, licensee and/or participant in any St. Thomas study abroad or other travel program.
- f. A **Reporting Party** is an individual who experiences conduct that they believe is or that may be sexual misconduct prohibited by this policy.
- g. A **Third-Party Reporter** is an individual, other than a Reporting Party, who notifies an Official with Authority that a friend, a student, a co-worker or another Covered Person experienced conduct that the individual believes is or ~~that~~ may be sexual misconduct prohibited by this policy.
- h. An **Official with Authority** is a University official with the authority to institute corrective measures on behalf of St. Thomas related to sexual misconduct. St. Thomas positions that are considered to be Officials with Authority are identified below. If an individual reports sexual misconduct to one of these Officials with Authority, St. Thomas will be deemed to have knowledge of the report and must take particular steps in accordance with applicable law and this policy.
  - i. Title IX Coordinator
  - ii. Human Resources Business Partner
  - iii. Dean of Students
  - iv. Associate and Assistant Deans within the Dean of Students Office
  - v. Public Safety supervisors and officers
  - vi. President
  - vii. Executive Vice President and Provost
  - viii. Vice Provost for Academic Affairs
  - ix. Associate Vice Provosts
  - x. Vice Presidents
  - xi. Associate Vice Presidents
  - xii. Deans of each St. Thomas school or college
  - xiii. Associate and Assistant Deans of each St. Thomas school or college

- xiv. Rector/Vice President of The Saint Paul Seminary School of Divinity
- xv. Department chairs and directors of departments, programs, centers, offices and institutes
- xvi. Community Directors and Hall Directors in student residence halls

All Officials with Authority must promptly report any information regarding a potential report of sexual misconduct to the University's Title IX Coordinator.

- i. A **Responding Party** is an individual who is reported to have engaged in conduct that the reporter believes is or may be sexual misconduct prohibited by this policy.

#### **SECTION IV. SEXUAL MISCONDUCT PROHIBITED**

The University of St. Thomas is committed to providing a campus environment free of sex- and gender-based discrimination and harassment. Consistent with this commitment, St. Thomas prohibits sexual misconduct and will promptly address any reports of sexual misconduct by or against a Covered Person. Use of alcohol or other drugs does not excuse behavior that violates this policy.

Other forms of sex- and gender-based discrimination are addressed by separate University policies, including but not limited to the [Equal Opportunity Statement and Notice of Nondiscrimination](#). In addition, St. Thomas maintains a separate [Consenting Relationships Policy](#) applicable to students, faculty and staff that, depending on the circumstances, prohibits or strongly discourages romantic, intimate or sexual relationships involving persons of unequal power, even when consent is present. Covered Persons are expected to comply with all applicable policies.

This policy addresses two categories of sexual misconduct: Title IX-based sexual misconduct that is defined by federal regulations, and non-Title IX-based sexual misconduct, which covers a broader range of prohibited conduct than is covered by federal regulations. Because of these distinctions, there are some differences in how each category of misconduct is handled by St. Thomas, as described in this Section.

#### **A. Behavior that Constitutes Non-Title IX-Based Sexual Misconduct**

##### **1. Sexual Harassment**

Sexual harassment is conduct that has all of the following elements:

- The conduct is unwelcome.
- The conduct is based on gender, sex or sexual orientation.
- The conduct unreasonably interferes with, denies or limits someone's ability to participate in or benefit from St. Thomas employment, education programs and/or activities.

Sexual harassment includes both verbal and/or physical conduct. Sexual harassment can be between people of the same gender or between people of different genders. Whether conduct constitutes sexual harassment under this policy will be determined based on the facts and circumstances. A single incident of conduct may constitute harassment depending on the facts and circumstances. In many cases, however, a finding of harassment will require a pattern of unwelcome conduct.

Examples of sexual harassment may include, but are not limited to:

- Punishing a refusal to comply with a sexual request.

- Offering a benefit (such as a grade, promotion or athletic participation) in exchange for sexual favors or other verbal or physical conduct of a sexual nature.
- Repeatedly subjecting a person to unwelcome sexual attention or sexual advances, whether on-line, in person or in any other way.
- Pervasive, inappropriate displays of sexually explicit or sexually graphic content in a workplace or educational environment.
- A pattern of bullying based on gender, sex or sexual orientation.
- Persistent and offensive sexually oriented or sex- or gender-based jokes and comments.
- Other severe or pervasive conduct that creates a hostile work or educational environment.

Other types of sexual misconduct defined in this policy also may be considered sexual harassment under applicable laws.

### ***Clarification Regarding the Academic Environment***

The prohibition of sexual harassment does not circumscribe a faculty member's freedom as part of the faculty member's teaching to select, assign or discuss materials or topics that are legitimately related to the subject being taught. In the classroom and other forums, St. Thomas actively encourages and seeks to facilitate the free expression, challenge and debate of diverse and deeply held beliefs and opinions. Students who have concerns regarding a comment or discussion in class are encouraged to speak directly to the faculty member, the department chair, or the dean of the school or college about the concern.

In situations where there are perceived or potential conflicts between (a) the limitations on conduct and communications implied by the definition of sexual harassment contained in this policy and (b) the principles of academic freedom, St. Thomas will use as a working definition of academic freedom the "1940 Statement of Principles and Interpretive Comments" and the "1970 Interpretive Comments" on academic freedom by the American Association of University Professors ("AAUP Principles and Comments"). When addressing complaints against faculty members, the existence of such a perceived or potential conflict and the appropriate application of the AAUP Principles and Comments will be considered in consultation with the dean of the respective school or college (or, if the dean has a conflict of interest, the provost or provost's designee).

## **2. Sexual Assault**

Sexual assault refers to non-consensual sexual contact or non-consensual sexual penetration, as defined below. Incest and statutory rape are considered forms of sexual assault.

### **a. Sexual Assault: Non-Consensual Sexual Contact**

Non-consensual sexual contact is any intentional touching, however slight, by any person upon the breasts, buttock, groin, genital area or inner thigh (collectively "intimate parts") of any other person, or of such other person's clothing covering these areas, with or by any body part or any object, seminal fluid or sperm with sexual or aggressive intent that occurs in one or more of the following ways:

- by force or coercion,
- without the consent of the other person, and/or
- when the person knows or reasonably should know that the other person is incapacitated, regardless of the reason for incapacitation.

Non-consensual sexual contact also includes causing or inducing a person, without consent, to similarly touch or fondle the intimate parts of oneself or someone else. Activity that constitutes nonconsensual sexual contact under this policy also may constitute criminal sexual misconduct under Minnesota law. *See Minnesota Statutes Section 609.341 et seq.*

**b. Sexual Assault: Non-Consensual Sexual Penetration**

Non-consensual sexual penetration is any anal or vaginal penetration, however slight, by any object or body part (e.g. penis, tongue, finger) and/or any mouth to genital contact that occurs in one or more of the following ways:

- by force or coercion,
- without the consent of the other person, and/or
- when the person knows or reasonably should know that the other person is incapacitated, regardless of the reason for incapacitation.

Activity that constitutes non-consensual sexual penetration under this policy may also constitute criminal sexual misconduct under Minnesota law. *See Minnesota Statutes Section 609.341 et seq.*

**c. Consent**

Consent is clear conduct or words that indicate a person freely agrees to engage in a sexual act at the time of the act, subject to the following:

- In order to give consent, one must be of legal age.
- Consent must be knowing and voluntary.
- Silence or failing to resist a sexual act does not constitute consent. Lack of a negative response does not constitute consent. Consent is a freely given “yes” (through words or conduct), not the absence of “no.”
- A current or previous relationship does not imply consent to a sexual act.
- A person who is asleep or unconscious cannot consent to a sexual act.
- Consent may not be obtained through threats or coercion.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity. A person who would like to initiate a new form of sexual activity is responsible for obtaining consent for that form of sexual activity.
- Consent, once given, may be withdrawn at any time. Withdrawal of consent must be clearly communicated through words or conduct. When consent is withdrawn, the sexual activity must stop.
- Consent is not effective if a person knows, or reasonably should know, that the other person is incapacitated, regardless of the reason for incapacitation. (See Incapacitation below).

Although consent does not need to be verbal, verbal communication is the most reliable way to ask for and determine whether consent has been given. The University’s definition of consent is an affirmative consent standard.

**d. Incapacitation**

Incapacitation is the inability to understand the facts, nature or extent of the sexual situation. Stated another way, a person is incapacitated if the person cannot understand the "who, what, when, where, why or how" of the sexual situation. Incapacitation may result from a mental or physical



disability or injury, the voluntary or involuntary use of alcohol or other drugs, or other causes. In addition, a person is incapacitated for purposes of this policy if the person is "mentally impaired" as defined by Minnesota law. Under Minnesota law, a person is "mentally impaired" if, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, the person lacks the judgment to give reasoned consent to sexual contact or sexual penetration. See Minnesota Statutes Section 609.341.

Alcohol and other drug use may cause incapacitation. Incapacitation does not describe the mere fact of consuming alcohol or using other drugs. Rather, it describes one of several levels along a continuum of effects of alcohol or other drug use. Specifically, incapacitation describes a level of effect of alcohol or other drug use that is more severe than impairment, being under the influence, drunkenness or intoxication generally, and that is less severe than alcohol poisoning or overdose, which may lead to coma or death.

Whether and how quickly a person moves from a state of general impairment, drunkenness or intoxication to a state of incapacitation due to alcohol or other drug use varies from person to person, based on a number of factors. These factors may include, without limitation, the rate, timing and amount of alcohol consumption or other drug use, the person's physical size, genetics, whether the person consumed food prior to or while consuming/using the alcohol or other drug, whether the person consumed non-alcoholic beverages along with the alcohol, and whether a person is taking medication.

Under this policy, the determination of whether a person is incapacitated for purposes of determining responsibility for sexual misconduct, will be based on all the facts and circumstances. Due to the differing factors and combinations of factors that may cause a person to become incapacitated, the determination of whether a person is incapacitated should not be based solely on the number of drinks or drugs a person consumes.

For purposes of determining alcohol- or drug-related incapacitation under this policy, it is irrelevant whether the alcohol or other drug use was voluntary or involuntary. In addition, as noted earlier in this section, use of alcohol or other drugs does not excuse behavior that violates this policy.

#### Warning Signs That a Person May be Incapacitated or May be Approaching Incapacitation

Common signs that should alert a reasonable person that another person *may* be incapacitated or approaching incapacitation due to alcohol or other drug use may include, without limitation:

- Impaired control over physical movements and/or loss of coordination (for example, stumbling, swaying, loss of balance, shaky equilibrium, or difficulty walking or standing);
- Significant confusion regarding circumstances or surroundings (for example, lack of awareness of where one is, how one got there, or who one is with);
- Impaired ability to effectively communicate for any reason (for example, slurred speech, difficulty finding words);
- Repeating the same story or statement multiple times without apparent awareness of the repetition;
- Inability to dress/undress without assistance;
- Inability to perform physical or cognitive tasks without assistance;
- Bloodshot, glassy or unfocused eyes;
- Vomiting; or

- Inability to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

This is not an exhaustive list. Exhibiting one or more of the behaviors listed above does not necessarily demonstrate that a person is incapacitated for purposes of finding a policy violation. Determinations of incapacitation are made based on all the facts and circumstances.

#### **e. Coercion**

Coercion is conduct, including intimidation and express or implied threats of physical, emotional or other harm, that is employed to compel someone to engage in sexual activity. Coercion may be physical or verbal. Consent may not be obtained through coercion.

Examples of coercion may include, but are not limited to:

- bullying behavior related to sexual activity or sexual behavior;
- causing the deliberate intoxication or impairment by drugs or alcohol or other drugs of another person for the purpose of engaging in sexual activity;
- conditioning an academic benefit or employment advantage on submission to sexual activity;
- threatening to harm oneself if another does not engage in sexual activity; and
- threatening to disclose sensitive information if the other party does not engage in sexual activity.

In assessing whether coercion was used, the frequency, duration and intensity of the pressure applied will be taken into consideration. Unwelcome pressure for sexual activity that does not rise to the level of coercion may meet the definition of sexual harassment.

#### **f. Force**

Force means the infliction, attempted infliction or threatened infliction of bodily harm or the act or threat of any other crime, violent activity or wrongdoing. Force may include the use of physical violence, threats, or intimidation (implied threats). Examples of force include but are not limited to:

- punching, slapping, kicking or pushing;
- restraining another person;
- strangulation;
- brandishing or using any weapon;
- threats to harm a person physically; and
- blocking or preventing access to an exit.

### **3. Sexual Exploitation**

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for the person’s own advantage or benefit or to benefit or advantage anyone else and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation may include, but are not limited to:

- Unauthorized sharing or distribution of digital, video, audio, electronic, visual or other similar image or recording of nudity or sexual activity.

- Non-consensual photographing or recording of nudity or sexual activity, whether in digital, video, audio, electronic or other form.
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex).
- Voyeurism (the act of intentionally observing, spying on or listening to one or more person(s) involved in sexual contact or in any state of undress without their consent).
- Exposing one's genitals or inducing another to expose the person's genitals in nonconsensual circumstances.
- Knowingly transmitting a sexually transmitted disease or sexually transmitted infection to another person.
- Possession of child pornography. (Possession of child pornography must be reported immediately in accordance with the University of St. Thomas Policy on Reporting Suspected Child Abuse.)
- Prostituting another person.

#### **4. Dating Violence**

Dating violence is violence or threats of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined based on consideration of the following factors:

- the length of the relationship;
- the type of relationship; and
- the frequency of interaction between the persons involved in the relationship.

Dating violence encompasses a broad range of behaviors. Examples of dating violence may include, but are not limited to:

- Physical harm, bodily injury or assault, including sexual assault.
- Destruction or vandalism of personal property.
- Threats of violence towards the victim, other individuals or animals.

For purposes of this policy, dating violence also includes a pattern of behavior used to coerce, dominate or isolate one's current or former partner in an intimate or romantic relationship. The existence of such a pattern will be determined based on all the facts and circumstances. Examples of behaviors that may be part of such a pattern include, but are not limited to:

- Emotional or psychological abuse.
- Preventing a partner from seeing family or friends.
- Pressuring a partner to quit job or activities.
- Attempts to sabotage a partner's housing, job, education, or club or other organizational involvement.
- Transferring into a partner's class or activities to monitor their behavior.
- Economic coercion or excessive monitoring of a partner's spending.
- Denying a partner's use of or access to owned or shared assets.

## **5. Domestic Violence**

Domestic violence is a felony or misdemeanor crime of violence committed by:

- the victim's current or former spouse or intimate partner;
- a person with whom the victim shares a child;
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- a person similarly situated to a spouse under domestic or family violence law; or
- anyone else against a victim who is protected under applicable domestic or family violence laws.

Domestic violence is prohibited by Minnesota law. *See Minnesota Statutes Section 518B.01 et seq.*

Examples of conduct that constitutes dating violence may constitute domestic violence when it occurs between spouses or persons similarly situated or protected under Minnesota's domestic violence laws. *See Minnesota Statutes Section 518B.01 et seq.*

## **6. Stalking**

Stalking is a course or pattern of two or more acts of unwelcome and unwanted conduct directed towards a specific person that would cause a reasonable person under the circumstances to feel frightened, threatened, oppressed or intimidated or to suffer substantial emotional distress. Stalking is prohibited by Minnesota law. *See Minnesota Statutes Section 609.749.*

Stalking behavior may include, but is not limited to:

- Unwanted and repeated communications by phone, mail, text message, email and/or other electronic communications, including social media.
- Repeatedly leaving or sending the victim unwanted items, presents or flowers.
- Following or lying in wait for the victim at places such as home, school, work or recreational facilities.
- Making direct or indirect threats to harm the victim or the victim's children, relatives, friends or pets.
- Damaging or threatening to damage the victim's property.
- Posting or spreading false or private information about the victim on the internet, in a public place, or by word of mouth.
- Unreasonably obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, or contacting the victim's friends, family, work or neighbors.

### **B. Behavior that Constitutes a Title IX-Based Sexual Misconduct**

Title IX is a federal law that prohibits certain kinds of discrimination based on sex. Federal regulations require universities to address Title IX-based sexual misconduct in particular ways that do not apply to non-Title IX-based sexual misconduct prohibited by St. Thomas. Specifically, federal regulations require St. Thomas to utilize live hearings to adjudicate Title IX-based sexual misconduct under certain circumstances. To provide the greatest degree of clarity and equity to community members, St. Thomas follows the same process for Title IX-based and non-Title IX-based sexual misconduct, except that St. Thomas does not utilize live hearings to adjudicate reports

of non-Title IX-based sexual misconduct unless the process could result in a student's suspension or expulsion. Title IX-based sexual misconduct includes the misconduct defined below:

1. **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - An employee of St. Thomas conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (sometimes referred to as "quid pro quo" harassment);
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
2. **Sexual assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Relevant elements of the definition include the following:

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, without the consent of the victim. This 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. This definition includes assaults or attempts to commit rape. Victims and offenders may be individuals of any gender.
3. **Dating violence** means 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. They type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
4. **Domestic violence** includes 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, 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.
5. **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - a. fear for their safety or the safety of others; or
  - b. suffer substantial emotional distress.

## **SECTION V. REPORTING OR RAISING CONCERNS ABOUT SEXUAL MISCONDUCT**

St. Thomas is committed to investigating, resolving and preventing sexual misconduct. St. Thomas strongly encourages individuals who may have experienced sexual misconduct to tell someone about their experience as soon as possible. As described below, St. Thomas expects faculty, staff and members of the Board of Trustees to notify the Title IX Coordinator when they become aware of conduct that they believe is or reasonably may be sexual misconduct by or against a Covered Person. This ensures that parties will receive timely and appropriate support and information. It also enables St. Thomas to fulfill its commitment to prevent and address sexual misconduct and to comply with applicable law. There are multiple reporting options as further described in Section V.C below.

### **A. Emergency Reporting**

#### **1. On-Campus Emergencies**

In St. Paul and Minneapolis, dial (651) 962-5555 (or 2-5555 from any campus telephone) to reach St. Thomas Public Safety, who will direct emergency resources to your campus location.

On the Rome campus, dial 113 from the nearest telephone.

#### **2. Off-Campus Emergencies**

In Minnesota or elsewhere in the United States, dial 911 from the nearest off-campus telephone.

On the Rome campus, dial 113 from the nearest telephone. In other study abroad programs, contact the program director or local police.

### **B. Reporting Options for Individuals Who Have Personally Experienced Sexual Misconduct**

#### **1. Where to Make a Report**

##### **a. Talking to a Confidential Resource**

Individuals who have personally experienced sexual misconduct and wish to keep details of the incident completely confidential or are uncertain whether they wish to pursue the St. Thomas response and resolution procedures described in Section VI of this policy, are urged to contact a Confidential Resource as soon as possible following the incident. Section VII of this policy contains contact information for on-campus and off-campus Confidential Resources.

If you are unsure of someone's duties and ability to maintain confidentiality about a situation, ask the individual before revealing confidential information.

##### **b. Reporting to Law Enforcement**

Reporting Parties have the right to report to law enforcement all misconduct that may violate criminal laws, and St. Thomas strongly urges Reporting Parties to make such reports. If a Reporting Party who has experienced potentially criminal sexual misconduct, including sexual assault, dating violence, stalking or domestic violence, wishes to notify law enforcement authorities or file criminal charges, St. Thomas will assist the Reporting Party to do so promptly upon the Reporting Party's request. St. Thomas also recognizes a Reporting Party's right to decline to make a police report.

Upon request by the police or the Reporting Party, St. Thomas Public Safety will provide reasonable assistance to the Reporting Party and police in obtaining, securing and maintaining evidence in connection with sexual misconduct allegations. At the request of the Reporting Party, St. Thomas

will share data related to the reported incident with police conducting a criminal investigation to the extent permitted by student data privacy laws.

**c. Reporting to St. Thomas**

Reports of an incident or allegation of sexual misconduct by or against a Covered Person may be made to St. Thomas by contacting the Title IX Coordinator or another Official with Authority. If an Official with Authority other than the Title IX Coordinator receives a report, the Official with

Authority is required to promptly report that information to the Title IX Coordinator. The Title IX Coordinator will assess the report in order to determine processes that may apply and in order to coordinate resources and processes regarding the report on behalf of St. Thomas. Reports may be made directly using the contact information in Section VII or on-line through the [Title IX website](#). The St. Thomas response and resolution procedures described in Section VI of this policy will be initiated when an Official with Authority becomes aware of an incident or allegation of sexual misconduct involving a Covered Person.

**d. Anonymous Reporting Option**

Any individual may make an anonymous report of sexual misconduct to St. Thomas and may do so without disclosing the reporter's name or the names of the parties to the incident, and without requesting any action. Individuals considering anonymous reporting should be aware that under Minnesota law, St. Thomas is not obligated to investigate a report made anonymously, and anonymous reporting often hinders the University's ability to investigate and respond to the incident, depending on the extent of information provided to St. Thomas. Anonymous reports often contain insufficient information to follow up with the parties involved, resulting in insufficient evidence to complete a thorough investigation. Accordingly, St. Thomas strongly urges individuals to report directly to the Title IX Coordinator.

Anonymous reports may be made by submitting the designated form on the University's [Title IX website](#). Anonymous reports do not fulfill the reporting obligations of faculty, staff, or members of the Board of Trustees, as set forth in Section V.C.1.

Anonymous reports are received by the Title IX Coordinator, who will determine appropriate next steps, including whether there is sufficient information to conduct an investigation, individual or community remedies as appropriate, and compliance with the University's obligations under the Clery Act.

**2. When to Make a Report**

St. Thomas encourages Reporting Parties to make a report of sexual misconduct as soon as possible to receive information regarding and assistance accessing support resources and processes available for addressing the report.

Reporting Parties are encouraged to notify St. Thomas of an incident regardless of whether the Reporting Party knows the identity of the Responding Party and regardless of whether the Reporting Party wants to proceed with a University response process. If the Reporting Party does not know the identity of one or more Responding Party at the time of the incident or notice to St. Thomas and later learns the Responding Party's identity, the Reporting Party should notify St. Thomas of the Responding Party's identity as soon as possible.

If a report is made more than one (1) calendar year after an incident, the University's ability to respond using the resolution procedures in **Appendix A** may be limited because as time passes, evidence and witnesses may become unavailable and Responding Parties may leave St. Thomas, making it difficult for St. Thomas to respond in an effective and equitable manner. Incidents

reported after the passage of more than one year will be addressed at the discretion of St. Thomas based on the availability of witnesses and other evidence and the University's interest in providing a safe, non-discriminatory learning and working environment. Information and support resources will be offered to a Reporting Party regardless of when the report is made.

### **3. Considerations When Making a Report**

#### **a. Confidentiality**

Reporting Parties may discuss incidents of sexual misconduct in complete confidence with a Confidential Resource. Other St. Thomas faculty and staff, other than student workers, who become aware of incidents or allegations of sexual misconduct by or against a Covered Person are expected to contact the Title IX Coordinator promptly after becoming aware of the information. If the Reporting Party requests confidentiality, in most cases the employee may withhold the name and other identifying details regarding the Reporting Party or report when contacting the Title IX Coordinator.

St. Thomas understands and seeks to honor confidentiality requests to the extent it can do so while still fulfilling the University's commitments and obligations relating to reports of sexual misconduct. If a Reporting Party requests confidentiality or does not want St. Thomas to investigate or respond to the incident or allegation, St. Thomas will weigh the request against the seriousness of the alleged misconduct and the University's commitment to address and prevent recurrence of sexual misconduct. This determination will be made by the Title IX Coordinator or designee. The determination may not be made by other Covered Persons.

If St. Thomas determines it has an obligation to investigate and address the incident or allegations, St. Thomas will maintain confidentiality to the extent reasonably possible consistent with a prompt, equitable and impartial investigation and response and resolution, and consistent with applicable laws and St. Thomas policies. In addition, St. Thomas will consider and take steps to address safety concerns. In all cases, the individuals responsible for investigating, responding to, and adjudicating incidents or allegations of sexual misconduct are permitted to share information about the incident or allegation, investigation and response within and outside St. Thomas only on a "need to know" basis. However, complete confidentiality generally will not be possible due to the University's legal obligation to respond. If a Reporting Party is not sure if they wish to initiate the University response process, they may choose not to initiate a process that could lead to a formal investigation. However, the Title IX Coordinator has discretion and responsibility to determine whether a formal investigation is required based on all available information, and the Title IX Coordinator may determine it is necessary to proceed even if the Reporting Party is not ready to do so. A Reporting Party who wants to maintain absolute confidentiality is encouraged to contact and discuss the information with a Confidential Resource prior to contacting the Title IX Coordinator.

#### **b. Support Resources**

St. Thomas and outside organizations offer numerous resources to support individuals who have experienced sexual misconduct. This includes sexual assault advocacy services, which are available through outside organizations. In addition, victims of criminal conduct have rights under the [Crime Victims Bill of Rights](#) contained in Chapter 611A of the Minnesota Statutes, including but not limited to the right to assistance from the Crime Victims Reparations Board and the commissioner of public safety. Links to additional information about these rights, and contact information for these support resources, is contained in Section VII of this policy.



**c. Amnesty**

St. Thomas strongly urges reporting of sexual misconduct and seeks to remove any barriers to making a report or participating in an investigation. A student who reports sexual misconduct in good faith, either as a Reporting Party, as a Third-Party Reporter or as a witness in a fact-finding investigation, will not be subject to disciplinary action under student conduct policies for their own personal consumption of alcohol or other drugs in connection with the reported incident.

**C. Reporting by St. Thomas Faculty, Staff and Other Covered Persons**

**1. Required Reporting by St. Thomas Faculty, Staff and Trustees**

St. Thomas strives to be a community free from sexual misconduct. To help St. Thomas meet this goal, all St. Thomas faculty and staff (but not student workers), regardless of whether they are Officials with Authority, and all members of the St. Thomas Board of Trustees, are expected to notify the Title IX Coordinator promptly after becoming aware of an incident or allegation of sexual misconduct involving a Covered Person, unless they meet one of the exemptions in the next paragraph. This report may be made online but may not be made anonymously. The report helps ensure that St. Thomas responds appropriately and fulfills its obligations relating to any incident. Required reporting also enables the Title IX Coordinator to track trends within the community and provide appropriate consultation regarding resources, support, and other questions involving the University's policy and procedures for addressing reports of sexual misconduct. In most cases, any employee or Board member who is not an Official with Authority may withhold the Reporting Party's name and/or other identifying details when contacting the Title IX Coordinator consistent with a request from the Reporting Party.

St. Thomas faculty and staff who learn of sexual misconduct while serving as a Confidential Resource are not required to notify the Title IX Coordinator. In addition, faculty or staff members or Board of Trustee members who have a professional license requiring confidentiality of communications with a patient or client (e.g., a law license, psychology license or social work license) are not required to notify the Title IX Coordinator about information that their professional license requires them to keep confidential.

**2. Reporting by Other Covered Persons Encouraged**

St. Thomas encourages, but does not require, all other persons who become aware of an incident or allegation of sexual misconduct to promptly report the incident or allegation to the Title IX Coordinator. Before deciding whether to report, St. Thomas encourages such persons to review the confidentiality, amnesty and protection from retaliation provisions set forth in Section V.B.3 of this policy.

**D. Clarification Regarding Public Awareness Events and Campus Surveys**

St. Thomas supports public awareness events that further campus-wide education and prevention efforts. An individual's comments about an incident or allegations of sexual misconduct at these events will not be considered a report to St. Thomas for the purpose of triggering the response and resolution procedure or a required report by faculty, staff or a member of the Board of Trustees to the Title IX Coordinator.

In addition, St. Thomas may, from time to time, conduct surveys to gauge attitudes about sexual misconduct and awareness of campus resources. These voluntary surveys will contribute to the University's understanding of the campus climate and student safety at St. Thomas. The disclosure of incidents of sexual misconduct in responses to survey questions will not be considered a report to St. Thomas for the purpose of triggering an investigation of a particular incident or a required report by faculty, staff or a member of the Board of Trustees to the Title IX Coordinator.

## **SECTION VI. OBLIGATIONS OF ST THOMAS COMMUNITY FOLLOWING REPORT**

### **A. Response and Resolution Procedures**

When the Title IX Coordinator becomes aware of an incident or allegation of sexual misconduct, the Title IX Coordinator will take steps to initiate the response and resolution procedures described in [Appendix A](#) to this policy.

The Title IX Coordinator is responsible for ensuring the uniform and consistent application of this policy and the related procedures and for ensuring incidents and allegations of sexual misconduct by or against a Covered Person are addressed in a timely and appropriate manner. St. Thomas recognizes that each case is unique and reserves the flexibility, at the discretion of the Title IX Coordinator or designee, to authorize departures from the response and resolution procedures as warranted by the circumstances and consistent with state and federal laws and regulations. In addition, the Title IX Coordinator and the officials designated in [Appendix A](#) to manage the response and resolution procedures have authority, alone or together, to take reasonable steps to protect the St. Thomas community or any individual member of the St. Thomas community from sexual misconduct, regardless whether such steps are explicitly contemplated in this policy or the related procedures.

In cases involving domestic violence, dating violence, sexual assault and stalking and in other cases involving safety concerns, the safety of the Reporting Party and the community is of primary importance. St. Thomas will consult with the Reporting Party and with other resources to determine, under the particular circumstances, how to conduct the response and resolution procedures in a way that protects the safety of the Reporting Party and the community while promoting accountability for prohibited misconduct. Both during and after the process, if requested by the Reporting Party or at the University's initiative, St. Thomas will assist in shielding the Reporting Party from unwanted contact with the Responding Party, in cooperation with appropriate law enforcement, consistent with Minnesota law.

### **B. Required Reporting by St. Thomas**

Under the Clery Act, St. Thomas has a duty to track and publish information about certain types of sexual misconduct and to report certain information in the University's annual [Campus Security Report](#). Personally identifiable information is kept confidential and will not be published.

Under Minnesota law, St. Thomas has a duty to track and publish certain information about sexual assault and to report certain related statistics on its website and to the Minnesota Office of Higher Education. Personally identifiable information and other data collected by St. Thomas for purposes of complying with this reporting requirement is kept confidential, will not be published except in accordance with Minnesota law, and otherwise is available only to St. Thomas employees whose work assignments reasonably require access.

St. Thomas also is required to issue timely warnings for reports of incidents it becomes aware of that pose a serious and continuing threat to members of the campus community. St. Thomas does not disclose personally identifiable information of Reporting Parties in such warnings, while making every effort to provide enough information for community members to make decisions to help ensure their safety.

### **C. Treatment with Dignity**

Under no circumstances may St. Thomas employees suggest that a Reporting Party is at fault for the sexual misconduct they report or that the Reporting Party should have acted in a different manner to avoid being a victim of sexual misconduct. Moreover, consistent with the University's convictions, all members of the St. Thomas community are expected to treat Reporting Parties, Responding

Parties and other parties involved in a sexual misconduct matter with dignity, while also supporting the impartial pursuit of truth and upholding the community's expectation that individuals will be held accountable for personal conduct that is determined to violate this policy.

#### **D. No 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 or refusing to participate in a factfinding investigation or hearing 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.

### **SECTION VII. RESOURCES AND CONTACT INFORMATION**

#### **A. Emergency Contacts**

24-Hour Emergency On Campus – St. Paul and Minneapolis: (651) 962-5555

24-Hour Emergency Off Campus – St. Paul and Minneapolis: 911

24-Hour Emergency – Rome: General Emergency: 113 and Police: 112

#### **B. Contact Information for Making Reports to St. Thomas**

Contact information for the Title IX Coordinator and selected Officials with Authority is provided below. Individuals who are not required to notify the Title IX Coordinator are still encouraged to contact the Title IX Coordinator, who has ultimate responsibility for coordinating the University's response to reports. Selected other Officials with Authority are listed here as helpful points of contact for students, faculty or staff who are required or wish to report.

##### **Title IX Coordinator**

Julie Thornton  
Room 247, Anderson Student Center or  
Room 213, Aquinas Hall  
2115 Summit Ave  
Saint Paul, MN 55105  
(651) 962-6886  
[Title-IX@stthomas.edu](mailto:Title-IX@stthomas.edu)

##### **Dean of Students Office**

Room 241, Anderson Student Center  
(651) 962-6050

[Dean of Students Website](#)

**Human Resources Business Partners**

Room 217, Aquinas Hall  
(651) 962-6510

[Human Resources Website](#)

**Department of Public Safety**

St. Paul: Morrison Hall, 1<sup>st</sup> Floor  
Minneapolis: School of Law, 1<sup>st</sup> Floor  
(651) 962-5100

[Public Safety Website](#)

Online Reports: [St. Thomas Title IX Website](#)

**C. On-Campus Confidential Resources**

**Counseling and Psychological Services**

Center for Well-Being  
33 South Finn Street  
(651) 962-6750

[Counseling and Psychological Services Website](#)

**Health Services**

Center for Well-Being  
33 South Finn Street  
(651) 962-6750

[Health Services Website](#)

**D. Other Campus Support Services and Resources**

[Sexual Assault Response Information](#)

[University of St. Thomas Office for Campus Ministry](#)

[University of St. Thomas Employee Assistance Program](#)

Students seeking accommodations for a disability in connection with the response and resolution procedures may contact [Disability Resources](#).

**E. Off-Campus Resources**

Services offered by off-campus resources are not controlled by St. Thomas and may change without notice to St. Thomas. Individuals are encouraged to contact resources directly for more information about provided services.

**Police**

St. Paul or Minneapolis: 911  
Rome: 112

**Sexual Assault Nurse Examiners (SANE) available at area hospitals (Confidential Resources)**

[Regions Hospital](#) (Confidential Resource)  
640 Jackson St., St. Paul, Minnesota 55101

(651) 254-3584

[United Hospital Emergency Room](#) (Confidential Resource)

333 North Smith Avenue  
St. Paul, Minnesota 55102  
(651) 241-8755 (direct connection to the Emergency Room)

[Hennepin County Medical Center Emergency Room](#) (Confidential Resource)

701 Park Avenue  
Minneapolis, Minnesota 55415  
Sexual Assault Resource Service: (612) 873-5832

### **Outside the United States:**

[Pathways to Safety International](#) (Confidential Resource)

[crisis@pathwaystosafety.org](mailto:crisis@pathwaystosafety.org)

### **Sexual Assault & Sexual Harassment**

[RAINN \(Rape, Assault, and Incest National Network\)](#) (Confidential Resource)

Available anywhere in the United States  
1 (800) 656-6673  
24-hour hotline; free and confidential

[Online Chat available on RAINN's website](#)

[SOS: Sexual Violence Services of Ramsey County](#) (Confidential Resource) St.

Paul, Minnesota  
(651) 266-1000  
24-hour hotline; free and confidential

[Sexual Violence Center- SVC](#) (Confidential Resource)

Minneapolis, Minnesota  
(612) 871-5111  
24-hour hotline; free and confidential

### **Dating Violence, Domestic Violence & Stalking**

[Domestic Abuse Intervention Project](#) (Confidential Resource)

St. Paul, Minnesota  
(651) 645-2824  
24-hour crisis line; free and confidential

[Day One Services](#) (Confidential Resource)

1 (866) 223-1111  
Crisis support, information on shelters, safety planning, and orders for protection

### **Cultural & Community Specific Support Services**

[OutFront Minnesota](#)

24-hour anti-violence crisis support line for LGBTQ victims  
1-800-800-0350, option 3

[Casa de Esperanza](#)

St. Paul, Minnesota

(651) 772-1611 24-Hour Bilingual (English and Spanish) helpline

There are many other culturally specific support services in Minnesota. Please contact the [Title IX Office](#) for additional resources.

**F. Crime Victim Services and Legal Information**

[Minnesota Crime Victims Bill of Rights](#)

Under Minnesota law, crime victims, including victims of dating and domestic violence, stalking and sexual assault, have a number of rights, including the right to assistance from the Crime Victims Reparation Board and the commissioner of public safety. The [Crime Victims Bill of Rights](#) is available online. The Minnesota Department of Public Safety provides an on-line list of [Minnesota Resources for Crime Victims](#).

[Bridges to Safety](#)

Ramsey County Service Center for victims of dating & domestic violence

(651) 266-9901

Provides legal advocacy, legal consultation and assistance filing orders for protection

[Domestic Abuse Service Center](#) (for victims of domestic violence and dating violence)

[Hennepin County Government Center](#)

Rm. #A-0650 (lower level)

300 S. 6th Street

Minneapolis, MN 55487

(612) 348-5073

[Minnesota Office of Justice, Crime Victims Programs](#)

Monday - Friday, 8:00 AM – 4:30 PM

(651) 201-7300 or 888-622-8799, ext. 1 for financial help

(800) 247-0390, ext. 3 for information and referral

(651) 205-4827 TTY

[Ramsey County Victim/Witness Services](#)

Ramsey County Attorney's Office

(651) 266-3222

[Hennepin County Victim Services](#)

Hennepin County Attorney's Office

(612) 348-4003

[Law Help MN](#)

Legal information on a variety of sexual assault issues

[Volunteer Lawyers Network](#)

(612) 752-6655

[Minnesota State Bar Association Find a Lawyer Directory](#)

[U.S. Embassy in Rome](#)

Telephone: 06 46741

**U.S. Department of Education, Office for Civil Rights (OCR)**

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012 TDD#: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

<http://www.ed.gov/ocr>

**G. Resources at Other Institutions**

If students who have experienced sexual misconduct transfer to another institution, the University's Title IX Coordinator can assist them in obtaining information about available resources for sexual misconduct victims at that institution. Students who would like such assistance should contact the Title IX Coordinator.

# Appendix A to Sexual Misconduct Policy

## Response and Resolution Procedures

Date of initial publication: June 10, 2014  
Date of latest revision: November 9, 2021

St. Thomas is committed to the prompt, impartial and equitable resolution of reports of sexual misconduct that may violate University policy. This document explains the internal procedures St. Thomas generally follows to investigate and adjudicate such reports. These provisions are intended to be flexible so as to allow St. Thomas to fulfill its educational mission and maintain a safe, nondiscriminatory learning and working environment. The Title IX Coordinator or designee has discretion to authorize departures from these provisions when warranted by the circumstances. These procedures are not intended to replicate or replace the process followed by law enforcement or the courts in connection with alleged violations of criminal law.

As described in the Sexual Misconduct Policy (“policy”), federal regulations require St. Thomas to follow certain processes when responding to Title IX-based sexual misconduct, which includes some but not all of the sexual misconduct prohibited by St. Thomas. St. Thomas has determined that it can provide the greatest degree of clarity and equity to community members by generally using the same procedures to respond to both Title IX-based and non-Title IX-based sexual misconduct, except that St. Thomas does not use live hearings to adjudicate reports of non-Title IX-based misconduct that could not result in suspension or expulsion.

### SECTION I. DEFINITIONS

The definitions used in the policy also apply to these procedures, along with the additional definitions set forth in these procedures.

- a. **Actual knowledge** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or an Official with Authority, which includes, but is not limited to, a report of sexual harassment. This standard is not met when the only Official with Authority who has actual knowledge is the Responding Party. Notice to a faculty or staff member who is not an Official with Authority is not sufficient to meet this standard. Only notice to the Title IX Coordinator or another Official with Authority is sufficient to meet this standard.
- b. **Education program or activity** includes locations, events, or circumstances where St. Thomas exercises substantial control over the Responding Party and the context in which the sexual harassment occurred. This generally includes all buildings and physical spaces owned and/or operated by St. Thomas and all off-campus St. Thomas-sponsored events.
- c. **Supportive measures** are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available without fee or charge to the Reporting Party or Responding Party before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed. These measures are designed to (1) restore or preserve equal access to the University’s education programs or activities without unreasonably burdening the other party, (2) protect the safety of all parties or the University’s educational environment, or (3) deter sexual harassment.



- d. A **Report** is an informal oral or written statement by a Reporting Party or by a Third-Party Reporter that alleges sexual misconduct by or against a Covered Person. A Report may be resolved through provision of supportive measures to the Reporting Party, or through the Alternative Resolution Process or the Formal Process.
- e. A **Formal Complaint** is a formal written statement, signed and submitted by a Reporting Party or signed by the Title IX Coordinator, alleging Title IX-based sexual harassment (as defined under Section IV.B. of the policy) against a Responding Party and requesting that St. Thomas investigate the allegation of sexual harassment or otherwise address it through an alternative resolution process. Formal Complaint forms are available on the University's Title IX website or in the Title IX Coordinator's office. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by email, by using the contact information listed for the Title IX Coordinator. A Complaint must be submitted in order to initiate the Formal Process. In order for a Formal Complaint to be actionable, the Reporting Party must be participating or attempting to participate in a St. Thomas education program or activity at the time the Formal Complaint is submitted by the Reporting Party or signed by the Title IX Coordinator.
- f. The **Response Manager** is the designated St. Thomas employee responsible for timely coordinating the University's response to a Report or Formal Complaint, managing the response and resolution process in accordance with the policy and these procedures, and determining interim measures. The Response Manager also is available to answer questions the parties may have about the policy or these procedures. The Response Manager is the Title IX Coordinator or a designee of the Title IX Coordinator.
- g. A **Support Person** is any person a party chooses to accompany them to meetings or proceedings with St. Thomas officials related to a Report or Formal Complaint of sexual misconduct.
- h. A **Hearing Advisor** is a party's advisor of choice who attends the hearing at the invitation of the party and conducts cross-examination on behalf of the party at the live hearing portion of the formal process. This individual may or may not have served as the party's Support Person at previous meetings. If a party does not have an advisor present at the live hearing to serve as Hearing Advisor, St. Thomas will select and provide a University-appointed Hearing Advisor to conduct cross-examination on behalf of that party. St. Thomas will not charge a party a fee for a Hearing Advisor selected and provided by the University.
- i. The **Formal Process** is the response and resolution process described in Section V below.
- j. The **Alternative Resolution Process** is the response and resolution process described in Section VI below and is an alternative to the Formal Process.
- k. **Investigator(s)** are internal or external individuals assigned by the Response Manager under the Formal Process. The role of the Investigator(s) is to conduct a prompt and impartial investigation of a Formal Complaint and to provide a recommendation or determination, depending on the process, regarding whether the Responding Party is responsible for a policy violation.
- l. **Preponderance of the Evidence** is the standard used by St. Thomas to determine whether a Responding Party is responsible for a policy violation. The Preponderance of the Evidence standard also is referred to as a "more likely than not" standard. The standard requires an appointed hearing panel to consider the relevance and reliability of all the evidence, facts and circumstances known to the hearing panel and to determine whether it is more likely than not that the Responding Party is responsible or not responsible for a policy violation. The Investigator(s) will also utilize the Preponderance of Evidence standard to make their recommendation regarding responsibility to the hearing panel and when making determinations of responsibility in cases that are not referred to a hearing panel.

## **SECTION II. SCOPE AND APPLICATION**

These procedures will be initiated when an Official with Authority has actual knowledge of a Report or Formal Complaint of sexual misconduct:

- where the Reporting Party and the Responding Party are both Covered Persons; or
- where the Responding Party but not the Reporting Party is a Covered Person and the alleged incident occurred on the St. Thomas campus or in connection with a St. Thomas education program or activity.

In other situations where a Reporting Party or Responding Party is a Covered Person, the Title IX Coordinator may determine, in the Title IX Coordinator's discretion, whether these procedures or another process is the best way to address the Report or Complaint.

If the Title IX Coordinator is notified of allegations of sexual misconduct that, even if true, would not rise to the level of a policy violation, these procedures do not apply, and the Title IX Coordinator will handle the matter in the Title IX Coordinator's discretion, consistent with any other applicable St. Thomas policies and procedures.

## **SECTION III. CONFIDENTIALITY**

Reporting Parties and Responding Parties have the right to speak or otherwise share information about Reports and Formal Complaints by or against them and the related response and resolution process. However, both parties must ensure that their communications are consistent with the nonretaliation provision of the policy, other applicable St. Thomas policies including but not limited to student conduct policies, and any agreements between the parties or with St. Thomas. Other individuals involved in the response and resolution process, including witnesses, Support Persons, St. Thomas employees and other Covered Persons who are not parties, are expected to maintain the confidentiality of information related to Reports and Formal Complaints and the response and resolution process consistent with all applicable St. Thomas policies. St. Thomas employees 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.

## **SECTION IV. INITIATION OF RESPONSE AND RESOLUTION PROCESS**

### **A. Notice to the Title IX Coordinator and Response Manager**

The Official with Authority (if not the Title IX Coordinator) must notify and share the Report or Formal Complaint with the Title IX Coordinator promptly upon receipt of the Report or Formal Complaint. The Title IX Coordinator will serve as the Response Manager for the Report or Formal Complaint or will appoint a trained designee to serve as the Response Manager and will share the Report or Formal Complaint with the Response Manager. Potential conflicts of interest that are known to St. Thomas and the ability of an individual to timely and adequately manage the procedures for a particular matter will be considered in designating a Response Manager.

### **B. Initial Meeting with the Reporting Party**

Promptly following receipt of a Report or a Formal Complaint, the Response Manager or a designee of the Response Manager will offer to meet with the Reporting Party. During any such meeting, the Response Manager will do the following:

1. Share with the Reporting Party an oral or written summary of the Reporting Party's description of the incident based on the information then known to the Response Manager

to confirm the summary is accurate from the Reporting Party's perspective. Gather information from the Reporting Party as necessary to reasonably advise or support the Reporting Party with respect to the response and resolution process and seek to determine, if possible, whether or not the reported information is a report of Title IX-based sexual misconduct, non-Title IX-based sexual misconduct, or neither. Such determination may or may not be possible in this initial meeting. Offer the Reporting Party the opportunity to review the University's record of the Reporting Party's description of the incident, at this or a subsequent meeting.

2. Inform the Reporting Party about available resources and supportive measures to support the Reporting Party. In particular, the Response Manager or designee will provide information about:
  - resources on seeking medical treatment and information on preserving forensic and other evidence;
  - the Reporting Party's right to contact law enforcement and pursue criminal and/or civil remedies outside St. Thomas and available assistance from St. Thomas in making a report to law enforcement;
  - immediate support and assistance available through on- and off-campus resources, including contact information for campus and local advocacy, counseling, health, mental health and legal assistance services;
  - the availability of supportive measures from St. Thomas regardless of whether the Reporting Party chooses to file a Formal Complaint or otherwise participate in the University's response and resolution process; and
  - information about the opportunity to seek a harassment restraining order or order for protection from a Minnesota court in appropriate circumstances.
  
3. Review the policy and these procedures and available resources with the Reporting Party, specifically noting:
  - The difference between Title IX-based sexual misconduct and non-Title IX-based sexual misconduct, and the impact of that determination on process options;
  - the Reporting Party's options to pursue the Formal Process or the Alternative Resolution Process, or neither, regardless of whether the Reporting Party made a report to law enforcement;
  - the process for filing a Formal Complaint;
  - the confidentiality provisions of the policy;
  - in student cases, the University's general practice regarding parental notification, noting that parents and guardians are generally not notified about the investigation without student consent and encouraging students to inform their parents/guardians about the investigation;
  - that participation in the response and resolution process is voluntary and noting the potential consequences of non-participation;
  - the timing and deadlines for taking action under the policy;
  - the prohibition on retaliation for good faith reporting of sexual misconduct allegations and for participating in the response and resolution process; and

- the ability of St. Thomas to put in place supportive measures to protect the safety of all parties and the educational environment, or to deter sexual harassment
4. Discuss whether the Reporting Party has concerns about any potential conflicts of interest or bias that could affect the process.
  5. Invite and address the Reporting Party's questions about the policy and the response and resolution procedures.
  6. Ask the Reporting Party how the Reporting Party wishes to proceed, both regarding the process and regarding supportive measures. Notify the Reporting Party that if the Reporting Party chooses not to pursue the Alternative Resolution Process or Formal Process, St. Thomas will consider whether to take action independently, and that if the Reporting Party chooses to pursue the Alternative Resolution Process, St. Thomas will assess whether to initiate the Formal Process independently based on the facts and circumstances known to St. Thomas.
  7. Discuss any anticipated follow-up the Reporting Party might expect from St. Thomas.

### **C. Initial Assessment and Action to Protect the Community**

After receiving a Report or Formal Complaint, the Response Manager will make an initial assessment of the reported information, including the nature and circumstances of the Report or Formal Complaint. The Response Manager may consult with other St. Thomas officials as appropriate and may seek to gather additional information to assess possible supportive measures and next steps.

#### **1. Supportive Measures Determined by St. Thomas**

The Response Manager, in consultation with appropriate administrators and informed by the wishes of the Reporting Party, will consider whether and which supportive measures are reasonably necessary or appropriate to restore or preserve equal access without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader St. Thomas community, or deter sexual harassment. If the Response Manager and appropriate administrators determine that certain supportive measures are reasonably necessary and appropriate, they are authorized to take or direct such action. Examples of supportive measures include, without limitation:

- Offering counseling services;
- Allowing for deadline extensions or other course-related adjustments;
- Establishing a mutual "no contact" directive prohibiting the Responding Party and Reporting Party from communicating with each other.
- Prohibiting a Responding Party from physically entering or being on St. Thomas property.
- Prohibiting a Responding Party from participating in St. Thomas-sponsored events.
- Changing a Reporting Party's or Responding Party's on-campus residence or prohibiting a Responding Party from residing in a St. Thomas residence.
- Changing a Reporting Party's or Responding Party's student or employee status, in consultation with appropriate administrator(s).

- Changing a Reporting Party's or Responding Party's work or class schedule, in consultation with appropriate administrator(s).
- Issuing a timely warning of any reported incident that presents a serious or continuing threat or danger to the community.
- Providing information about orders for protection and harassment restraining orders in appropriate cases.
- Notifying and consulting with appropriate St. Thomas administrators, faculty and staff members as warranted under the circumstances.

Supportive measures will be determined on a case-by-case basis, and may also include community-based measures, such as increased security or monitoring of certain areas of campus or training provided to particular community groups. Either party is free to raise concerns regarding supportive measures with the Response Manager. The Response Manager may modify or initiate new or different supportive measures at any point during the response and resolution process based on the Response Manager's determination of how best to protect the parties and the broader St. Thomas community.

If the Response Manager is not immediately available and the Title IX Coordinator, Dean of Students, or Chief Human Resources Officer determines that immediate action is reasonably necessary and appropriate, the Title IX Coordinator, Dean of Students and/or Chief Human Resources Officer is authorized to take or direct such action.

## **2. Supportive Measures During and After the Process**

In addition to any supportive measures initiated by St. Thomas during the resolution process, the Reporting Party may request reasonable supportive measures to help shield the Reporting Party from unwanted on-campus contact with the Responding Party during and after the response and resolution process, even in cases where there was insufficient evidence to establish responsibility of the Responding Party for violating the policy. Such reasonable supportive measures may include a mutual no-contact order from St. Thomas or assistance to the Reporting Party in transferring to alternative classes or University housing, when such classes or housing are available and the transfer is feasible. The Responding Party may request similar reasonable supportive measures to shield the

Responding Party from unwanted on-campus conduct by the Reporting Party. The Response Manager will consider and make determinations with respect to such requests.

## **3. Consideration of Potential Academic Freedom Issues as Part of Initial Assessment**

If the Responding Party is a faculty member alleged to have engaged in sexual harassment of the Reporting Party, the Response Manager will consider, in consultation with the dean of the respective school or college (or, if the dean has a conflict of interest, with the provost or the provost's designee), whether there is a perceived or potential conflict between (a) the limitations on conduct and communications implied by the definition of sexual harassment under the policy and (b) the principles of academic freedom as defined by the AAUP Principles and Comments.

## **4. Emergency Removal Process**

In certain cases, the Response Manager, in consultation with the Title IX Coordinator and other appropriate St. Thomas officials, will determine that emergency removal of the Responding Party from their educational program or activity or the St. Thomas campus is necessary pending the completion of the resolution process.

In order to determine if an emergency removal is necessary, St. Thomas will conduct an individualized safety and risk analysis. If St. Thomas determines that there is an immediate threat to the physical health or safety of any student or other individual, including the Responding Party, arising from the allegations of sexual harassment, St. Thomas may choose to institute an emergency removal. The Responding Party will be provided notice of this determination and given the opportunity to challenge the decision immediately following the removal.

## **5. Administrative Leave**

For a Responding Party who is a faculty or staff employee, St. Thomas maintains the right to require the Responding Party to take administrative leave when St. Thomas determines it is an appropriate action under the circumstances. Administrative leave may not be utilized unless a Formal Complaint has been filed and a response process initiated.

### **D. Determination of Whether to File Formal Complaint**

A Reporting Party may decide whether or not to file a Formal Complaint. If a Formal Complaint is not filed, the Reporting Party is still entitled to appropriate supportive measures, as defined and discussed above. A Formal Complaint may be filed by a Reporting Party or signed by the Title IX Coordinator.

In matters involving Title IX-based sexual misconduct, a Formal Complaint must be filed to participate in either the Alternative Resolution or the Formal Process. In matters involving non-Title IX-based sexual misconduct, a Formal Complaint must only be filed if the Reporting Party wishes to utilize the Formal Process.

In situations in which the Reporting Party initially declines to file a Formal Complaint, the Reporting Party may file a Formal Complaint at a later date, though the University's ability to effectively investigate a Formal Complaint may diminish with the passage of time.

After a Formal Complaint is filed, the Reporting Party will be referred to as the "Complainant," and the Responding Party will be referred to as the "Respondent."

### **E. Notice to Parties**

Upon receipt of the Formal Complaint, St. Thomas will provide written notice to the known parties that includes:

- A general description of the allegations of sexual harassment, including the identities of the parties, the conduct allegedly constituting the policy violation, and the date and location of the alleged incident, if known;
- A general explanation of the response procedures;
- A statement that the Complainant is presumed to have made the Formal Complaint in good faith;
- A statement that the Respondent is presumed not responsible and that a determination of responsibility will be made at the conclusion of the process;
- Information about a party's right to have an advisor of their choice;
- A statement that parties may inspect and review evidence gathered by the Investigator(s);
- Information about the prohibition of knowingly making false statements or submitting false information during the process

- Information about the University's non-retaliation policy

If St. Thomas becomes aware of additional allegations during the course of the investigation and chooses to investigate those allegations, St. Thomas will provide additional notice of those allegations to known parties.

**F. Determination of Title IX-Based Sexual Misconduct for Purposes of Response and Resolution Process**

Prior to or following Notice to the parties, the Response Manager will make an initial determination of whether the reported misconduct meets the requirements for Title IX-based sexual misconduct. In order to be addressed in the process as Title IX-based sexual misconduct, it must meet the definition in the policy, as well as the following additional qualifications:

- The Complainant and the Respondent are both Covered Persons,
- The Complainant was located in the United States at the time of the reported conduct, and
- The alleged conduct occurred on the St. Thomas campus or within a St. Thomas education program activity.

If the Response Manager makes any of the following findings, the Formal Complaint cannot be treated as a complaint of Title IX-based sexual misconduct and instead must be addressed as non-Title IX-based sexual misconduct:

1. Even if true, the allegations would not constitute Title IX-based sexual harassment;
2. The alleged sexual misconduct did not occur in a St. Thomas education program or activity;
3. The alleged sexual misconduct did not occur against a person in the United States.

If the Response Manager makes any of the following findings, the Title IX Coordinator has discretion to dismiss the Formal Complaint or to address it in a manner at the Title IX Coordinator's discretion:

1. At any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing of a desire to withdraw the Formal Complaint or any allegations contained within the Formal Complaint,
2. The Respondent is no longer enrolled or employed by St. Thomas;
3. Specific circumstances prevent St. Thomas from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations contained within it.

In any of the above circumstances where the Formal Complaint is dismissed, the Title IX Coordinator will send prompt written notice simultaneously to both parties of the dismissal and its reason(s). Both parties will have the right to appeal the University's dismissal of the Formal Complaint or any allegations within the complaint. Such appeal will follow the process outlined below (Section VI. E.). In the absence of an appeal, or following an appeal where the dismissal is upheld, the Title IX Coordinator will then address the matter in the Title IX Coordinator's discretion, consistent with any other applicable St. Thomas policies and procedures.

## **G. Determination of Whether to Follow the Formal Process or Alternative Resolution Process**

After a Formal Complaint is filed, the Response Manager will communicate with the Complainant to discuss whether to follow the Formal Process or to pursue an Alternative Resolution Process. If the Complainant has filed the Formal Complaint, St. Thomas will generally defer to the wishes of the Complainant as to whether to pursue the Formal Process or the Alternative Resolution Process. If the Title IX Coordinator has filed the Formal Complaint on behalf of St. Thomas, the Title IX Coordinator and Response Manager, if different from the Title IX Coordinator, will determine whether the nature of the allegations, expectation of party participation, or other circumstances suggest that a particular process is more appropriate. The Response Manager may also gather additional information if needed in order to make this determination. Based on this assessment, St. Thomas may, in its sole discretion, require the initiation of the Formal Process.

## **SECTION V. ALTERNATIVE RESOLUTION PROCESS**

The Alternative Resolution Process is a voluntary, structured process designed to be used when a Complainant does not wish to follow the Formal Process, when a Respondent accepts responsibility and sanctions, when the Title IX Coordinator determines that the nature of the Report or Formal Complaint does not necessitate the initiation of the Formal Process, and/or in other appropriate circumstances as determined by the Title IX Coordinator.

For Title IX-based sexual misconduct, the Alternative Resolution Process may not be initiated unless a Formal Complaint has been filed but remains an option for the parties at any point up until a determination regarding responsibility has been made. For non-Title IX-based sexual misconduct, the Alternative Resolution Process may be initiated without filing a Formal Complaint.

The Alternative Resolution Process may be used to provide remedies for the Reporting Party/Complainant and in some cases, to provide an opportunity for the Responding

Party/Respondent to accept responsibility for harm to the Reporting Party/Complainant and/or to the University community, without going through the Formal Process. Resolution options are designed to eliminate the conduct at issue, prevent it from recurring, and address its effects. The Alternative Resolution Process may not be utilized for Title IX-based sexual misconduct when allegations involve an employee Respondent who has sexually harassed a student Complainant.

### **A. Notice Provided to Parties**

At the initiation of the Alternative Resolution Process, parties will be provided with written notice disclosing the following:

- The allegations of sexual misconduct;
- An explanation of the alternative resolution process, including whether and when it prevents parties from resuming a Formal Complaint arising from the same allegations
- An explanation that any party has the right to withdraw from the alternative resolution process and resume the Formal Process at any time prior to agreeing to resolution; and
- Any consequences resulting from participating in the process, including records that will be maintained or could be shared.



## **B. Structure of Alternative Resolution Process**

After parties have been provided with Notice, any party who wishes to pursue the Alternative Resolution Process to address Title IX-based sexual misconduct must provide voluntary, written consent to the process.

The structure of the Alternative Resolution Process will depend on the facts and circumstances of the situation. The Response Manager will meet with the Reporting Party/Complainant to review and consider available options to address the alleged misconduct using alternatives to the Formal Process. The Alternative Resolution Process may include one or more of the following:

- acceptance of responsibility by and disciplinary sanctions against the Responding Party/Respondent either before or following the investigation process outlined in the formal process (Section VI.E.) below;
- mediation;
- facilitated communication between the Reporting Party/Complainant and Responding Party/Respondent with appropriate involvement by St. Thomas;
- a single or series of educational conversations between Response Manager and Responding Party/Respondent regarding the reported conduct as well as follow up meetings with the Reporting Party/Complainant; and
- a change in the Reporting Party's/Complainant's work, academic, living or other situation within the control of St. Thomas.

At any time before a final resolution is reached, including up to the start of the live hearing in matters eligible for a live hearing under the Formal Process, the Reporting Party/Complainant, the Responding Party/Respondent, and/or the Title IX Coordinator have the right to end the Alternative Resolution Process and initiate or resume the Formal Process. Parties may use a support person in the Alternative Resolution Process to the same extent they could use a support person in the Formal Process. (See Section V.C above.)

St. Thomas will strive to conclude the Alternative Resolution Process promptly and within ninety (90) calendar days of receiving a Report. The timeframe for particular matters may vary depending on the circumstances, and additional time may be necessary in some situations. All extensions and postponements of the time limits must be authorized by the Title IX Coordinator or designee and will be no longer than reasonably necessary.

The Alternative Resolution Process will not result in a disciplinary sanction against the Respondent unless the Respondent participates in the process, is given an opportunity to review and respond to the Report or Formal Complaint as applicable and accepts responsibility. This can occur prior to, during, or following the conclusion of the investigation outlined below in the formal process. The disciplinary sanctions under the Alternative Resolution Process may not include expulsion or termination of employment. Remedies available under the Alternative Resolution Process may include, but are not limited to, any one or any combination of the following:

### Possible remedies available in all matters include:

- An agreement by St. Thomas to provide additional training to the University community or to a particular audience within the University community;
- An agreement by St. Thomas to provide agreed support measures to the Complainant;
- An agreement by St. Thomas to send a message to the Respondent;

- A mutual no-contact directive.

Possible remedies that include disciplinary sanctions that are available if Respondent participates in the Alternative Resolution Process and accepts responsibility include:

- Behavioral contract;
- Requirement that Respondent attend educational sessions or programs;
- Requirement that Respondent participate in drug and/or alcohol treatment;
- Requirement that Respondent participate in psychological assessment and follow recommendations made;
- Parental notification;
- Requirement that Respondent serve conduct probation (for students);
- Requirement that Respondent move out of University housing;
- Restrictions on campus privileges and access;
- Continuing any interim measures in place;
- Suspension or voluntary withdrawal for one or more semesters (for students); and/or
- Termination warning or other disciplinary warning (for staff) or disciplinary letter (for faculty).

At the conclusion of the Alternative Resolution Process, St. Thomas will provide the Complainant with a letter that includes a written description of the remedies. The Respondent will be provided a similar letter listing any sanctions against the Respondent. The letter to the Respondent will not include information on any support services, accommodations or protective measures offered to the Complainant unless a protective measure, like a no-contact directive, impacts the Respondent. The Complainant and Respondent (if sanctions and acceptance of responsibility are required) will have three (3) working days to agree to the remedies (including any sanctions and acceptance of responsibility) or to request that the Formal Process be instituted or resumed. If neither party objects to the remedies by requesting the Formal Process, the remedies will be entered and considered final.

In cases in which the remedies imposed included disciplinary sanctions against the Respondent, the results of the Alternative Resolution Process are final and will not be changed, except in extenuating circumstances and at the sole discretion of the Title IX Coordinator.

Any resolutions reached in the Alternative Resolution Process must be documented and approved by the Title IX Coordinator (in cases in which the Response Manager is not the Title IX Coordinator) to ensure consistency with the University's Title IX obligations.

## **SECTION VI. FORMAL PROCESS**

The Formal Process generally is used when: (1) a Reporting Party files a Formal Complaint and requests that St. Thomas investigate and adjudicate allegations of sexual misconduct using the Formal Process; (2) St. Thomas determines that use of the Formal Process is necessary based on the totality of the circumstances as described in Section IV.E and the Title IX Coordinator signs a Formal Complaint; or (3) either the Reporting Party or the Responding Party requests or the Title IX Coordinator determines that the Alternative Resolution Process end and the Formal Process be used. As noted above, once a Formal Complaint is filed, the Reporting Party will be referred to as "Complainant," and the Responding Party as "Respondent."

## **A. Equitable Process for Reporting Party and Responding Party**

In the Formal Process, the responsibility lies with St. Thomas to gather evidence sufficient to reach a determination regarding responsibility based on the preponderance of evidence standard. Additionally, the Complainant and Respondent can expect the following:

- equitable procedures that provide both parties with a prompt and impartial investigation and resolution conducted by individuals who receive annual training on conduct prohibited by the policy;
- an equitable opportunity to identify relevant witnesses and other evidence and to suggest possible questions to be asked of witnesses during the investigation, and to present such witnesses and evidence during a live hearing, if any;
- an opportunity to meet with the Investigator(s) and present information on their own behalf, including written and oral statements and physical exhibits;
- an opportunity to receive similar and timely access to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the complaint, including evidence upon which St. Thomas does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;
- timely written notice of meetings and hearings, including the date, time, location, participants, and purpose;
- the opportunity to have an advisor of the individual's choice, accompany the individual to meetings and proceedings that are part of the response and resolution process. See Part V.C for additional information;
- the opportunity to determine when and whether to provide or repeat a description of an incident of reported sexual misconduct, and to be informed of the consequences, if any, of not providing or repeating such a description. A decision not to provide or repeat a description of an incident involving reported sexual misconduct may impact the outcome of the investigation or hearing because the recommendation or determination regarding responsibility made by the Investigator(s) and the determination regarding responsibility by an appointed hearing panel in matters involving a live hearing will be based on a Preponderance of the Evidence.
- The provision of remedies to a Complainant/Reporting Party where a determination of responsibility for sexual harassment has been made against Respondent/Responding Party.

## **B. Timing**

St. Thomas will strive to conclude factfinding and make a determination regarding responsibility as soon as possible and within 90 calendar days of a Formal Complaint being filed. The time frame for particular matters may vary depending on the complexity of the investigation and other factors, and additional time may be necessary in some investigations. In addition, temporary extensions to the timing requirements may be necessary due to factors like the absence of a party, party's Hearing Advisor, or witness, campus offices being closed, the need for language assistance or accommodation of disabilities, or for other reasonable cause. If factfinding is delayed due to law enforcement gathering evidence, St. Thomas will resume its factfinding when law enforcement has finished collecting evidence or earlier, as permitted by law enforcement.

Appeals will be conducted within the timeframe set forth in Section V.E.

All extensions and postponements of the time limits in these procedures must be authorized by the Title IX Coordinator or designee and will be no longer than reasonably necessary. The Complainant and Respondent will be provided timely notice of any timing extension or postponement that will delay the notice of outcome, including the reason for such extension and postponement.

### **C. Role of Support Person**

Complainants and Respondents may invite a Support Person of their choice to accompany them to meetings or proceedings with St. Thomas officials related to a Report or Formal Complaint of sexual misconduct. The role of the Support Person is to support the Complainant or Respondent in the response and resolution process. A Support Person may consult with and advise the party they are supporting, but the Support Person may not otherwise participate in the University's response and resolution process, unless they are serving as a Hearing Advisor. The Support Person may not speak for or submit information on behalf of the party they are supporting as part of the response and resolution process except as described in the live hearing process. When a party is meeting with the Investigator(s), a party may request reasonable breaks to speak with the party's Support Person.

A Support Person may be any person, such as a St. Thomas faculty or staff member, an attorney, a family member, or any other person. Support persons who are attorneys are subject to the same limitation on participation in the response and resolution process as other Support Persons. If a Support Person is an attorney, St. Thomas has the right to have its own legal counsel present for any meeting at which the attorney Support Person is present. A Support Person for such meetings may or may not be the same person as an individual's Hearing Advisor. However, a party is generally permitted only one accompanying individual—a Support Person in any meeting and a Hearing Advisor in any proceeding. Exceptions will be made at the discretion of the Response Manager.

### **D. Steps in the Formal Process**

If the Complainant, Respondent or St. Thomas decides to pursue the Formal Process, the following steps will be taken.

#### **1. Submission of Signed Complaint**

The Complainant must submit a Formal Complaint (as defined in Section I) to the Title IX Coordinator. If the Complainant does not wish to pursue the Formal Process and St. Thomas decides to initiate the Formal Process, then the Title IX Coordinator may sign and submit the Formal Complaint.

#### **2. Assignment of Investigator**

The Response Manager will appoint one or more Investigators.

Investigator(s) may be trained St. Thomas employee(s) or trained external Investigator(s), as determined in the sole discretion of the Title IX Coordinator. The Response Manager, if different from the Title IX Coordinator, will consult with the Title IX Coordinator to select the appropriate Investigator(s). Before appointing the Investigator(s), the Response Manager will consider potential conflicts of interest to ensure the appointed Investigator(s) are capable of conducting an impartial fact-finding investigation.

### **3. Determination of Whether Live Hearing is Required in Non-Title IX-Based Sexual Misconduct Matters**

In matters of non-Title IX-based sexual misconduct in which either or both parties are students, the Response Manager will review the Formal Complaint and make a determination, as to whether suspension or expulsion are possible outcomes if a determination of responsibility is made. If suspension or expulsion are not possible outcomes, the process will conclude with the determination of responsibility by the Investigator(s). If suspension or expulsion are possible outcomes, the process will conclude with the live hearing. In all matters, the appeal process outlined below is available to all parties.

### **4. Notice to Complainant and Respondent**

The Response Manager will provide a written notice of investigation to the Complainant and Respondent pursuant to section IV.F. above. Investigator(s) If the Complainant or Respondent have concerns that an assigned Investigator has a conflict of interest, they must notify the Response Manager within two (2) working days of their receipt of the notice of investigation.

### **5. Opportunity to Meet with Response Manager**

The Response Manager will offer to meet individually with the Complainant and the Respondent to:

- Review the notice of investigation.
- Inform the party about available supportive measures to support the party. Ensure the party understands how to access appropriate support resources.
- Review the policy and these procedures, specifically noting:
  - the expectation of an equitable process, as described in section VI.A of these procedures;
  - the timing and deadlines for action under the policy;
  - the confidentiality provisions, including, in student matters, the University's general practice of not notifying parents and encouraging students to inform their parents; and
  - the prohibition on retaliation.
- Address the party's questions about the policy and the Formal Process and discuss whether the party has concerns about any potential conflicts of interest that could affect the process.
- Discuss any anticipated follow-up by St. Thomas that the parties can expect.

### **6. Investigation**

#### **a. Factfinding Process**

The Investigator(s) will conduct an impartial inquiry into the facts and circumstances related to the Complaint. At a minimum, the Investigator(s) will seek to interview the Complainant and Respondent. While the structure of the factfinding process may vary depending on the circumstances of each matter, the process will generally include: one or more interviews of each party by the Investigator(s), interviews by the Investigator(s) of witnesses, review by the

Investigator(s) of other available evidence, and an opportunity for each party to review and respond to summaries of witness interviews and inculpatory or exculpatory evidence whether obtained from a party or other source so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

## **b. Principles for the Collection and Consideration of Evidence**

The Investigator(s) have authority and discretion to determine the scope of the investigation and to request potentially relevant information, documentation, other materials and interviews from individuals as the deem appropriate. The Investigator(s) have authority, at their discretion, to weigh evidence collected during the investigation, including the credibility of the parties and witnesses and the appropriateness, relevance and significance of information collected during the factfinding investigation. In matters that result in a live hearing, the Investigator(s) will make a recommendation regarding responsibility based on their investigation and utilizing the

Preponderance of the Evidence standard. The hearing panel may consider the recommendation of the Investigator(s), but ultimately must make its own independent determination regarding responsibility based on the facts and evidence available and presented in the hearing as described below. In matters that do not result in a live hearing, the Investigator(s) will make determinations on the basis of the Preponderance of the Evidence standard. The following principles generally apply to the investigation process:

- **Recommendations and Determinations Made Based on Evidence.** The investigation is a neutral, fact-gathering process. Investigator(s) begin an investigation with a presumption that the Complaint is made in good faith and that the Respondent is not responsible for a policy violation until a determination regarding responsibility is made at the conclusion of the process. Recommendations and determinations regarding responsibility are based on the Investigators' assessment of the facts and an objective evaluation of relevant evidence collected. The Investigator(s) will only determine or recommend a finding that a Respondent is responsible for a policy violation if the Investigator(s) determines that there is sufficient evidence, by a Preponderance of the Evidence standard, to support such a recommendation or determination.
- **Voluntary Participation by Complainant and Respondent.** Complainants and Respondents may choose to participate or decline to participate in the investigation. The participation of both parties is not required for an investigation to proceed or a hearing to occur. When considering whether to participate in the investigation or hearing, it is important for parties to be aware that if a party declines to participate in the investigation, the other party's version of events may be left unrefuted, and the Investigator(s) may not have all the relevant evidence when making the recommendation regarding responsibility, and the hearing panel may not have all the relevant evidence when making a determination regarding responsibility.
- **Expectation of Truthfulness.** The Complainant, the Respondent, and all witnesses are expected to provide truthful information to the Investigator(s).
- **Expectation of Timely and Prompt Cooperation.** In order to ensure completion of the investigation in a timely manner, parties are expected to make themselves available to meet with Investigator(s) at the requested times. Investigator(s) schedule meetings at times that do not conflict with the class schedule of student and faculty parties and make reasonable efforts to accommodate other scheduling needs of a party. In order to assure a timely process, the Investigator(s) may deny a party's request to re-schedule meetings. If a party wishes to have an advisor accompany them to meetings with the Investigator(s), the advisor is expected to arrange to be available to meet at the time designated by the Investigator(s).
- **Ability to Identify Witnesses and Provide Evidence.** Both parties will be provided an opportunity to identify potential fact and expert witnesses and to provide documents, communications (such as email or text messages), photographs, video and other evidence to

the Investigator(s). Additionally, parties have the opportunity to identify or provide inculpatory or exculpatory evidence whether from a party or other source.

- Investigator(s) Determine Relevance of Evidence During Investigation. The Investigator(s) have discretion to determine the relevance and significance of any evidence collected. The Investigator(s) must gather evidence directly related to the allegations, whether or not such evidence will be relied on. In general, Investigator(s) will not give weight to statements as to any party's general reputation for any character trait. The Investigator(s) will generally only interview witnesses whom the Investigator(s) determine are likely to have factual information related to the investigation. Witnesses generally cannot participate in the investigation process solely to speak about a party's or another witness's character unless it is directly related to the allegations.
- Investigator(s) Make Credibility Determinations Regarding Witnesses During Investigation. The Investigator(s) will make determinations regarding the credibility, or perceived truthfulness, of all parties, including witnesses. Such determinations will not be based on a person's status as a Complainant/Reporting Party, Respondent/Responding Party, or witness.
- Investigator(s) Have Discretion to Seek Additional Evidence. The Investigator(s), in their discretion, may:
  - visit relevant locations and record observations through written, photographic or other means;
  - interview witnesses not identified by the parties; and
  - consult medical, forensic, technological or other experts when they determine that expertise will help the Investigator(s) to achieve a fuller understanding of issues or evidence relevant to the particular investigation.
- Opportunity to Respond to Evidence. The Investigator(s) will provide the Complainant and Respondent timely and equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised, including evidence upon which the Investigator does or Investigators do not intend to rely in reaching a recommendation regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, and an opportunity for each party to meaningfully respond to the evidence prior to conclusion of the investigation through written or oral statements.
- Medical Records. A party's medical and counseling records are confidential and are not accessible to the Investigator(s) without the consent of the party who is the subject of the record. Parties are not required or expected to share medical records. Parties may choose voluntarily to share all or a portion of such information in the party's sole discretion. Sharing private medical information may have consequences. Parties are encouraged to speak with someone they trust, including their medical provider(s), their attorney if they have one, or their advisor before making a decision of whether to share medical records. Complainants who have filed a criminal complaint also may want to speak with the investigating agency. If a party voluntarily chooses to share information from medical or counseling records with the Investigator(s), relevant portions of the medical records and/or a summary of those records, like other evidence, will be made available for the other party to review consistent with the "Opportunity to Respond to Evidence" paragraph above.
- Prior Consensual Sexual History. Evidence related to the prior consensual sexual history of either of the parties generally is not relevant to the determination regarding responsibility

for a policy violation and will be considered only in limited circumstances. For example, evidence of consent to sexual contact on one occasion will not, by itself, be used to demonstrate consent on a subsequent occasion. However, if the question being determined is whether consent was given, information about the manner and nature of communication between the two parties related to sexual contact in prior sexual encounters involving the two parties may be deemed relevant to the determination of whether consent was given during the incident in question. Additionally, prior sexual history may be relevant if it is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant.

- Determinations of Policy Violations Involving Consent. Independent corroboration of a Complainant's testimony is not required to show lack of consent. This means, for example, that there does not need to be an eyewitness to the sexual interaction (other than the Complainant or Respondent) for the Investigator(s) to recommend or the hearing board to find responsibility for a policy violation. All recommendations and determinations of policy violations are made based on a Preponderance of the Evidence ("more likely than not") standard based on all the evidence, including information provided by the Complainant and the Respondent.
- Determinations of Policy Violations Involving Incapacitation. Incapacitation will be determined based on all the facts and circumstances, looking at whether the individual was able to understand the facts, nature or extent of the sexual conduct and whether such condition was known or reasonably should have been known to the Respondent. In matters where there is a question about whether the Complainant was incapacitated, St. Thomas will ask: (1) Was the Complainant incapacitated, and (2) Did the Respondent know, or should the Respondent reasonably have known, that the Complainant was incapacitated? Only if the answer to both questions is "yes", and it is determined that sexual activity took place, will the Respondent be determined responsible for a violation of the policy, regardless of whether the Complainant expressed consent.
- Special Considerations Applicable to Investigations Involving Certain Schools and Colleges. Given the possible application of professional duties of confidentiality, confidential email, files and other data of designated members of the School of Law, the College of Education, Leadership and Counseling, and the School of Social Work will not be examined for content nor disclosed without the prior approval of the dean of the school or, in matters of a conflict of interest, the provost or provost's designee.
- Application of AAUP Principles and Comments Relating to Academic Freedom. If the Respondent is a faculty member alleged to have engaged in sexual harassment of the Complainant, and if there is a perceived or potential conflict between (1) the limitations on conduct and communications implied by the definition of sexual harassment under the policy and (2) the principles of academic freedom, the Investigator(s) will work with the dean, provost or the provost's designee (as applicable) to ensure the appropriate application of the AAUP Principles and Comments.

### **c. Status Updates**

The Investigator(s) will provide status updates to the Complainant and Respondent at least monthly during the investigation and as necessary to alert them of any material changes in time estimates for completing the investigation.



**d. Notice of Close of Investigation**

As the investigation nears its end, the Investigator(s) will provide written notice to the Complainant and Respondent of the pending close of the investigation and a final deadline by which additional evidence or information must be submitted for consideration by the Investigator(s).

**e. Review of Preliminary Factfinding Report in Certain Matters**

In matters involving reports of Title IX-based sexual misconduct or non-Title IX-based sexual assault, domestic violence, dating violence or stalking, and in matters involving reports of sexual harassment in which a faculty member is a party and has asserted a defense of academic freedom, the Investigator(s) will prepare a preliminary factfinding report upon completion of all interviews with the parties and witnesses and review of other evidence submitted. The preliminary factfinding report will contain a summary of the interview(s) with each party and witness and will identify all evidence initially determined by the Investigator(s) to be relevant to the investigation.

Following preparation of the preliminary factfinding report, the Response Manager will notify the Complainant and the Respondent of an opportunity to review the report and to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which the Investigator does or Investigators do not intend to rely in making a recommendation regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The Response Manager will send to the parties and their advisor, if any, the preliminary report and evidence subject to inspection and review in an electronic format or hard copy. The parties will have ten (10) calendar days to submit a written response. The parties may take notes regarding the report. Parties may not make copies, take photographs or make other recordings or images of the report or evidence. Parties and their advisors may be required to sign a non-disclosure agreement identifying that the review and use of evidence is permitted solely for the purposes of the sexual misconduct process.

The purpose of this response is (1) to identify any evidence the party believes to be relevant that the Investigator(s) did not include in the preliminary report or initially identify as relevant, and (2) to meaningfully respond to the preliminary report and evidence. The purpose is not to present additional evidence, unless there is new evidence documented in the report that was not known to the party. Each party's response should not exceed 2,000 words in length, unless one party requests and the Response Manager grants an opportunity for both parties to submit a longer response. The response must be submitted within ten (10) calendar days after the first day the report has been made available for review. Any response submitted by a party will be made available for the other party in an electronic format or hard copy.

The Response Manager and the Investigator(s) will review the responses submitted by the parties, if any. Based on this review, the Investigator(s), in consultation with the Response Manager, will decide whether to: (1) proceed to make a recommendation regarding responsibility, or (2) conduct additional factfinding. If additional factfinding will be conducted, the Response Manager will provide written notice to the Complainant and the Respondent of the determination to conduct additional factfinding, the anticipated timeline for such factfinding, and any opportunity for both parties to review and respond to additional evidence collected.

**f. Recommendation Regarding Responsibility**

Upon completion of the investigation and following review of the preliminary report by the parties and any responses and additional factfinding (if any) consistent with Section V.D.8 above, the Investigator(s) will weigh the evidence and in a matter of Title IX-based sexual misconduct, or a matter of non-Title IX-based sexual misconduct that may result in suspension or expulsion, make a recommendation, using a Preponderance of the Evidence standard (e.g. "more likely than not"),

whether the Respondent is responsible or not responsible for violating the policy. If the allegations concern non-Title IX-based sexual misconduct for which suspension or expulsion are **not** potential sanctions, the Investigator(s) will make a determination using the Preponderance of the Evidence standard whether the Respondent is responsible or not responsible for violating the policy.

**g. Final Factfinding Report**

The Investigator(s) will prepare a final factfinding report that fairly summarizes relevant evidence and includes the Investigator(s)' recommendation or determination regarding responsibility and identifies the reasons for the recommendation or determination.

The Investigator(s) will submit the preliminary factfinding report, any response(s) by the parties, and the final factfinding report to the Response Manager and (if different) the Title IX Coordinator. The Title IX Coordinator will review the final factfinding report and other relevant materials to ensure that the report and recommendation or determination are consistent with St. Thomas policies, procedures and practices. If the Title IX Coordinator determines that the report and recommendation or determination are not consistent with St. Thomas policies, procedures and practices, the Title IX Coordinator has discretion to direct or take appropriate action.

At least ten (10) calendar days prior to a hearing, if required, the final factfinding report will be sent to each party and the party's advisor, if any, in electronic format or hard copy, for their review and written response. The purpose of the written response is to (1) identify any disagreements by the party with the determinations of the Investigator(s) regarding the relevance of particular evidence, or (2) to comment on the final factfinding report.

**h. Live Hearing Principles and Process**

For all Formal Processes involving Title IX-based sexual misconduct or involving non-Title IX-based sexual misconduct that may result in a student's suspension or expulsion, the conclusion of the investigative process will lead to the 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 a determination of responsibility. All participants—parties, Hearing Advisors, and witnesses—are required in advance of the hearing to agree in writing to abide by any additional rules governing conduct at the hearing that are created and disseminated by St. Thomas. Any questions regarding those rules should be directed to the Title IX Coordinator.

**1. Timing**

Parties will be informed of the date and time of the live hearing no fewer than ten (10) calendar days prior. The Response Manager will strive to be respectful of party and advisor schedules in determining a suitable time for the hearing. In matters involving student parties, the hearing will be scheduled so as not to conflict with student class schedules. To ensure prompt and equitable conclusion of the process, parties are expected to make themselves available to the greatest extent possible so a hearing can be scheduled promptly following completion of the final factfinding report. Parties will have two (2) calendar days to inform the Response Manager in writing of any conflict that prevents them from attending the scheduled hearing. In the absence of such notice or other unique circumstances, the hearing will move forward on the scheduled date, regardless of whether both parties or Hearing Advisors are present. If a party is present but the Hearing Advisor is absent without timely notice as described above, the University reserves the right to move forward with the hearing utilizing a University-provided Hearing Advisor or to reschedule for a future date.

## **2. Hearing Panel**

The Hearing Panel will be composed of two St. Thomas employees, who may be either faculty or staff, and a chair. The chair may be a trained St. Thomas employee or a trained external individual. All members of the Hearing Panel will receive annual and ongoing training in compliance with federal regulations.

At least five (5) calendar days prior to the hearing, the Response Manager will inform the parties of the individuals serving on the hearing panel. If the Complainant or Respondent has concerns that an assigned hearing panel member has a conflict of interest, they must notify the Response Manager within three (3) calendar days of their receipt of the notice.

The chair will be responsible for conducting the hearing, including making determinations of relevance for cross-examination questions, and explanations to exclude questions deemed by the chair to not be relevant.

## **3. University-Provided Hearing Advisor**

A party may never conduct cross examination on their own behalf. If a party does not have a Hearing Advisor present, St. Thomas will provide one without charge or fee to conduct cross-examination on the party's behalf.

In the event that neither a party nor their Hearing Advisor is present at the hearing, St. Thomas will provide a University-appointed Hearing Advisor to appear on behalf of the non-appearing party to conduct appropriate and relevant cross-examination of the other party and witnesses.

Parties are strongly encouraged to contact the Response Manager in advance of the hearing to request a Hearing Advisor if one is needed, or to inform the Response Manager if neither they nor their Hearing Advisor plan on attending the hearing. The absence of such notice may make it difficult for St. Thomas to provide a Hearing Advisor for the scheduled hearing, requiring the hearing to be cancelled and rescheduled, thus delaying the process.

## **4. Role of Hearing Advisor**

Whether provided by St. Thomas or chosen by the party, the primary role of the Hearing Advisor is to conduct cross-examination on behalf of the party. Hearing Advisors may ask the other party and witness relevant questions and follow up questions, including questions challenging credibility.

## **5. Right of Non-Participation**

Neither parties nor witnesses are required to participate in the live hearing process. When considering whether to participate in the hearing, it is important for parties to be aware that if a party declines to participate in the hearing, the hearing panel may not have all the relevant evidence when making a determination regarding responsibility. A party who chooses not to attend a hearing may still send that party's Hearing Advisor to the hearing to appear and conduct cross-examination.

## **6. Hearing Process**

All hearings will generally occur with parties located in separate rooms with technology enabling the hearing panel and parties to simultaneously see and hear the party or witness answering questions. Parties are required to keep their cameras on for the entirety of the hearing, excluding scheduled breaks. Witnesses are required to keep their cameras on for the entirety of their participation in the hearing.

- i. **Hearing Panel Questions.** The chair, at their discretion, will ask parties and witnesses questions determined by the hearing panel to be relevant. Parties and witnesses may refuse to answer such questions, and the hearing panel cannot draw any inference of responsibility based solely on a party's refusal to answer such questions.
- ii. **Cross-Examination.** At the conclusion of the panel's questions, the parties will each have an opportunity, via their advisor, to ask the other party and any witnesses relevant questions and follow up questions, including questions challenging the credibility of a party or witness. While parties and their Hearing Advisors are not required to submit cross-examination questions in advance, St. Thomas encourages parties and Hearing Advisors to do so when possible in order to facilitate advance determinations of relevancy to facilitate the smooth functioning of the hearing process and decrease delays due to the need to otherwise make simultaneous determinations of relevancy.
- iii. **Determinations of Relevance.** Before a party or witness answers a cross examination or other question, the chair will make a determination of whether the question is relevant and explain any decision to exclude a question as not relevant.

A determination of relevance generally involves whether a question asks about information that is "probative of any material fact concerning the allegations." More simply, the hearing chair must determine whether a question seeks evidence or information that is likely to prove whether important facts regarding the allegations are more or less likely to be true.

Questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant unless such questions or evidence is offered to (1) prove that someone other than Respondent committed the alleged conduct, or (2) if the questions and evidence concern specific instances of Complainant's prior sexual behavior with Respondent and are offered to prove consent.

- iv. **Evidence and Information Generally Considered Irrelevant or Not Appropriate for Use in the Live Hearing.** In addition to the information above that is relevant in only narrow circumstances, the following information is also not subject to use in the formal process and live hearing:
  - o Information protected by a legally recognized privilege;
  - o Evidence about a Complainant's prior sexual history (subject to exceptions above);
  - o Any party's medical, psychological, and similar records unless a party has given voluntary, written consent;
  - o Questions that are duplicative or repetitive.
- v. **Options When a Party Disagrees with a Relevance Determination.** If a party or witness disagrees with a relevance determination, they may either (1) abide by the determination and answer the question, or (2) refuse to answer the question.
- vi. **No Inference Drawn from Lack of Participation or Refusal to Answer Questions.** The hearing panel may not draw any inference about the determination regarding responsibility based solely on a party or witness' absence at the hearing or refusal to answer cross-examination or other questions.
- vii. **Consideration of Non-Statement Evidence.** Regardless of whether a party or witness submits to cross-examination, the hearing panel must always evaluate relevant non-statement evidence.

- viii. Determination When No Party Appears for Hearing.** If neither party appears for the live hearing, or both parties indicate that they do not intend to participate, the hearing panel can and should still make a determination regarding responsibility where evidence has been gathered and presented to the panel.
- ix. Determination Regarding Responsibility.** Following the conclusion of the hearing, the hearing panel will deliberate and make a determination regarding responsibility on the basis of the preponderance of the evidence. Such determination will be made upon consideration of the relevant evidence.

The hearing panel will issue a written determination regarding responsibility. The written determination will be provided to the parties simultaneously and will include the following:

- Identification of allegations;
  - Description of procedural steps taken from receipt of Formal Complaint through determination, including communications with parties, site visits, methods used to gather evidence, and hearings held;
  - Findings of fact supporting the determination;
  - Conclusions based on the application of the policy to the facts;
  - A statement of, and rationale for, the determination as to each allegation, including a determination regarding responsibility and relevant sanctions and remedies; and
  - A description of the procedures and bases for appeal.
- x. Recording of Hearing.** The hearing will be recorded, by either video or audio, at the determination of the Title IX Coordinator, and will be made available to the parties for inspection and review upon request.

**i. Sanctions Determination**

**1. Title IX-Based Sexual Misconduct and Certain Non-Title IX-Based Sexual Misconduct Sanction Determination**

In matters involving Title IX-based sexual misconduct or involving non-Title IX-based sexual misconduct in which the potential sanctions include a student's suspension or expulsion, the hearing panel will determine appropriate sanctions. The hearing panel will consult with relevant St. Thomas officials, generally those identified in the chart below or their designee, as part of the sanction determination process.

**2. Non-Title IX-Based Sexual Misconduct Sanction Determination**

In matters of non-Title IX-based sexual misconduct in which the potential sanctions do not include a student's suspension or expulsion, the Response Manager will work with the appropriate St. Thomas administrators, as set forth below, to determine what, if any, sanctions will be imposed or other action will be taken by St. Thomas.

If the Respondent is a(n) . . .	Sanctions will be determined by or in consultation with the . . .
Undergraduate student	Dean of Students, in consultation with the Response Manager and, if different, the Title IX Coordinator, and if appropriate under the circumstances, such as matters involving students in licensure programs, the dean of the applicable college or school
Graduate or professional student	Dean of Students and dean of the applicable college or school, in consultation with the Response Manager and, if different, the Title IX Coordinator
Faculty or staff member	The member of the President's Cabinet with the most direct responsibility for the Respondent's school, college or unit and the Chief Human Resources Officer or designee, in consultation with the Response Manager and, if different, the Title IX Coordinator
Both a student and an employee	Dean of Students and Chief Human Resources Officer or designee, in consultation with the Title IX Coordinator
Not a student or employee	Title IX Coordinator, in consultation with Public Safety and any other appropriate administrators

### **E. Possible Sanctions**

Not all policy violations are deemed equally serious offenses, and St. Thomas may impose different sanctions depending on the particular violation, facts and circumstances, including but not limited to the severity of the offense, any previous conduct violations or disciplinary action, and whether the Respondent poses a threat to the health or safety of member(s) of the St. Thomas community. The imposition of sanctions is designed to address sexual misconduct, prevent its recurrence and remedy its effects, while supporting and advancing the University's mission and convictions. Examples of sanctions that may be used include but are not limited to any one or any combination of the following:

#### **Student Respondent**

- Written warning;
- No contact directive;
- Disciplinary probation;
- Requirement to attend educational sessions or programs;
- Requirement to participate in drug and/or alcohol treatment;
- Requirement to participate in psychological assessment;
- Behavioral contract;
- Removal from University housing;
- Removal from specific course(s) or activities;
- Restriction on campus privileges and access;
- Continuing any interim measures in place;
- Suspension; and/or
- Expulsion.

#### **Faculty/Staff Respondent**

- Written warning;

- No contact order;
- Requirement to attend educational sessions or programs;
- Requirement to participate in drug and/or alcohol treatment;
- Behavioral contract;
- Disciplinary letter;
- Unpaid suspension;
- Loss of faculty or staff privilege(s);
- Demotion (staff);
- Notice of contract non-renewal (contracted staff and faculty without tenured appointment);
- Termination (staff; faculty without an annual contract); and/or
- Recommendation to President to institute dismissal for cause proceedings (faculty with an annual contract or tenured appointment).

For staff who are Respondents, the application of sanctions will be in accordance with all applicable policies and, if the employee is a member of a collective bargaining unit, the applicable labor agreement. For faculty who are Respondents, the application of sanctions will be consistent with the applicable disciplinary policies contained in the Faculty Handbook and, to the extent applicable and not superseded by the Faculty Handbook, all other applicable policies.

The identified administrators, in consultation with the Response Manager and, if different, the Title IX Coordinator, are authorized to apply any sanction or other response that they together determine to be fair and proportionate to the misconduct.

#### **F. Notice of Outcome to Complainant and Respondent**

The Response Manager will provide a written notice of outcome, by letter or email, to the Complainant and to the Respondent. The notice also will include information about the appeal process and when the outcome will be final. In matters that involved a hearing, the notice of outcome will include a copy of the hearing panel's determination of responsibility. In matters resolved without a hearing that involved sexual assault, domestic violence, dating violence, or stalking and in matters involving reports of sexual harassment in which a faculty member is a party and has asserted a defense of academic freedom, the notice of outcome will include information about the opportunity to review the final factfinding report. Any such review of the final factfinding report will be conducted a manner consistent with any applicable St. Thomas practices regarding confidentiality and privacy, including the Family Educational Rights and Privacy Act, if applicable and consistent with practices outlined above regarding review of the preliminary report. The written notifications must be sent within ten (10) working days of the Response Manager's receipt of the final factfinding report and will be sent to the Complainant and the Respondent at the same time.

St. Thomas may be limited in the information it may share with the Complainant as part of or otherwise in connection with this notice of outcome. At a minimum, the outcome letter sent to the Complainant will contain the following information: the determination regarding responsibility, information about the rationale, and, if the Respondent was determined responsible for a policy violation, any sanctions imposed that directly relate to the Complainant. In sexual misconduct incidents involving allegations of Title IX-based or non-Title IX-based sexual assault, domestic violence, dating violence or stalking, the notice of outcome also will contain additional information about sanctions against a Respondent who was determined responsible for a policy violation.

The Response Manager also will ensure that appropriate St. Thomas administrators, faculty and/or staff members who have a need to know information about the outcome have been or are provided with such information. This may include the member(s) of the President's Cabinet responsible for a Respondent's school, college or unit, and in the circumstance of Respondents who are employees, the Respondent's supervisor.

If there is any change to the outcome following delivery of the original notice of outcome, including a change as a result of a typing error, the Complainant and Respondent will be provided notice of the change at the same time.

## **G. Appeal Process**

### **1. Grounds for Appeal**

Both the Complainant and the Respondent are entitled to appeal the results of the Formal Process if on one or more of the following bases:

- a. 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;
- b. the decision violated academic freedom;
- c. 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;
- d. 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.

An appeal represents a procedural safeguard for the parties. Appeals may not be brought merely because one of the parties disagrees with the outcome. Similarly, an appeal is not an opportunity to present evidence previously known or reasonably available to the appealing party that the appealing party omitted to provide to the Investigator(s) during the investigation or the hearing panel during the live hearing, if any.

### **2. Submitting an Appeal**

A written request for an appeal must be submitted to the Title IX Coordinator within five (5) working days following the date that notification of the outcome of the investigation was sent to the appealing party. The written request for appeal must include a notice of appeal and a signed, written statement, not to exceed 2,000 words, clearly identifying the applicable grounds for appeal, as described in Section V.E.1 above, and the reason(s) for the appeal with respect to each ground identified. The notice of appeal and the written statement may be submitted together or separately.

### **3. Supportive Measures**

Consistent with the provisions of Section IV.C.1, following the submission of a notice of appeal, the Response Manager, in consultation with appropriate administrators, will determine appropriate supportive measures designed to protect the safety of all parties or the University's educational environment or to deter sexual harassment. protect the community and the parties while the appeal is pending. The Response Manager shall notify the Complainant and the Respondent of such supportive measures. Examples of supportive measures are listed in Section IV.C.1.



#### **4. Opportunity to Review the Request for Appeal**

Within two (2) working days of receiving a notice of appeal from a party, the Title IX Coordinator will inform the other party that a notice of appeal has been submitted. For matters that went to a hearing, the other party will have up to two (2) working days following the deadline for submission of an appeal to review the request for appeal, which the Response Manager will send to the party in electronic format. For matters that did not go to a hearing, the other party will have the same amount of time and ability to review the request for appeal, though review will be subject to the University's obligations under FERPA. In either instance, the other party may, if they choose, submit written comments, not to exceed 500 words, within three (3) working days following such review.

#### **5. Appointment of Appeal Officer**

Promptly following receipt of the request for appeal, the Title IX Coordinator will appoint an Appeal Officer. The Appeal Officer generally is determined based on the identity of the Responding Party, as set forth in the table below. The Appeal Officer has the duties described in the subsequent paragraphs.

If the Respondent is a . . .	The Appeal Officer is. . .
Student (who is not also a regular faculty or staff member)	The Vice President for Student Affairs
Faculty or staff member (who is not a student worker)	Executive Vice President and Provost

The Title IX Coordinator will consider whether the proposed Appeal Officer has a conflict of interest. In matters involving a potential conflict of interest or other issue preventing an individual from serving as an Appeal Officer, the Title IX Coordinator may appoint an alternate Appeal Officer who has received appropriate training. The Appeal Officer may not be an Investigator, hearing panel member or the Title IX Coordinator.

#### **6. Appointment of Appeal Board**

In matters in which the Respondent is a staff or faculty member, the Appeal Officer will appoint an appeal board comprising five St. Thomas employees who do not have a conflict of interest and who have not served as Investigators, hearing panel members or the Title IX Coordinator. If the Respondent is a faculty member, the members of the appeal board will be full-time tenured faculty members selected in accordance with the Faculty Handbook process for appointing grievance hearing committees.

In matters in which the Respondent is a student and in matters in which the Respondent is another individual who is not a student or employee, the Appeal Officer may consider the appeal directly or the Appeal Officer may, using personal discretion, appoint an appeal board of three to five employees who are faculty or staff members (not student workers).

All appeal board members must receive or have in the past year received training on the policy, procedures and applicable law. The appeal board will appoint a chair from among its members.

#### **7. Consideration of Appeal**

The appeal board (or Appeal Officer, if no appeal board has been appointed):

- Will review the appeal, any response submitted by the other party, the notices of outcome, hearing panel determination (if any) and the final factfinding report and consider any previously undiscovered evidence (if discovery of new evidence is a ground for appeal).

- May choose to meet with the parties, the Investigator(s), hearing panel members, or others and consider other additional information, in its (or the Appeal Officer's) sole discretion.
- Will consider whether it is more likely than not that the designated grounds for appeal have been satisfied.

If an appeal board is used, deliberations of the appeal board will be confidential. The appeal board will attempt to reach consensus. If consensus is not possible, the appeal board will vote, with each member having one vote. Determinations will be made based on a majority of the total number of votes eligible to be cast.

If an appeal board is used, the appeal board will provide the Appeal Officer with a written report of its findings of whether the designated grounds for appeal have been satisfied and, if so, a recommendation as to whether St. Thomas should remand the matter or take any different or additional action than was originally determined. Such report will be provided to the Appeal Officer no later than twenty (20) working days following the submission deadline for a written request for appeal, unless the Title IX Coordinator extends such timing based on specific facts and circumstances.

The Appeal Officer will give careful consideration to the recommendation of the appeal board but will not be bound by it. As soon as possible, but no later than five (5) working days following receipt of the appeal board's findings and recommendations, the designated Appeal Officer will notify the Complainant and Respondent in writing of the appeal board's findings and recommendation and the final disposition of the appeal. In matters involving sexual assault, dating violence, domestic violence or stalking, the notice will include a description of any change(s) to the outcome, a rationale for the determination, whether the result is final and, if applicable, when the determination will become final.

If no appeal board is used, the Appeal Officer will issue 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.

The Appeal Officer will notify appropriate St. Thomas administrators, faculty and staff members of the outcome on a need-to-know basis.

The Appeal Officer, in consultation with the Title IX Coordinator, may shorten or extend the timeframes above depending on the overall timing of the response and resolution process and other factors, including, without limitation, University holidays and breaks, availability of appeal board members, and specific circumstances related to the appeal. If an extension is necessary, the consideration and determination of the appeal must be conducted as promptly as possible. The parties will be notified in writing if the notice of outcome of appeal will be materially delayed due to any changes to the timeframes noted above.

### **8. No Further Appeal**

Appeals arising out of alleged violations of the policy must be made under this appeal process and are not eligible for consideration under faculty, staff or student grievance policies or processes. The President has discretion to modify a decision in exceptional circumstances.

## **SECTION VII. RECORDKEEPING**

The Title IX Coordinator is responsible for maintaining the official St. Thomas records of sexual misconduct Reports and Formal Complaints. When a Report or Formal Complaint is pending, each official having a role in the response and resolution process is responsible for handling records

appropriate to the official's role. When the process is complete, the official records relating to the Formal Complaint or Report will be provided to the Title IX Coordinator, who will maintain such records in accordance with St. Thomas record retention requirements and applicable law for a period of at least seven (7) years. The official records include:

1. A copy of any Public Safety Report submitted related to the matter (Public Safety will maintain the original or a copy);
2. A record documenting the reason for following the Formal Process or Alternative Resolution Process.
3. Record indicating whether and when the Response Manager met with the Reporting Party and/or Responding Party and the issues covered;
4. A description of any supportive measures provided and copies of correspondence from St. Thomas to the Reporting Party and Responding Party relating to the supportive measures, including:
  - a. Documentation of the basis for concluding the response was not deliberately indifferent;
  - b. Documentation showing that the measures are designed to restore or preserve equal access to the University's education program or activity.
5. If no supportive measures are provided, documentation of reasons as to why such a response is not clearly unreasonable in light of the known circumstances.
6. Copies of any notices or summaries given to the Reporting Party and/or Responding Party;
7. In matters where the Alternative Resolution Process is used:
  - a. a copy of the Formal Complaint;
  - b. the preliminary factfinding report (if applicable) and the final factfinding report;
  - c. a copy of the parties' signed, written consent for resolution via the Alternative Resolution Process;
  - d. evidence submitted by the parties, if any; and
  - e. a summary of the process used and responsive action taken by St. Thomas; and
  - f. copies of the notices of outcome provided to the parties related to the factfinding;
8. In matters where the Formal Process is used:
  - a. a copy of the Formal Complaint;
  - b. the preliminary factfinding report (if applicable) and the final factfinding report;
  - c. copies of any statements provided by the parties or witnesses, including responses to the preliminary factfinding report (if applicable);
  - d. evidence submitted by the parties;
  - e. A recording or transcript of the hearing;
  - f. The hearing panel determination regarding responsibility;
  - g. appeal request, if any;
  - h. documentation demonstrating appointment of appeal board, if applicable;
  - i. report of appeal board, if applicable;
  - j. decision of Appeal Officer; and

- k. copies of the notices of outcome provided to the parties related to the factfinding and, if any, the appeal; and
9. A timeline of communication with the parties.
10. Records of any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to education programs or activities at St. Thomas.
11. All materials starting August 14, 2020, used to train Title IX Coordinators, Investigators, decisionmakers, and any person who facilitates an Alternative Resolution Process.

Each official having a role in the response and resolution process may elect to send additional records to the Title IX Coordinator depending on the particular facts and circumstances. Personal notes of officials involved in the response and resolution process generally will be maintained in the sole possession of the official who took the notes according to the official's normal recordkeeping practices, any applicable St. Thomas record retention requirements and applicable law.

Records related to Reports and Complaints will be treated as confidential and shared only on a need to-know basis or as required by law.