

****DRAFT INTRODUCTION****

This document is a work in progress, and provides the current consensus view of the Implementation Task Force, however it does not attempt to provide a unanimous view. The Task Force continues to meet at least once per week (and often more) to better define policy and procedures. This document will continue to evolve as we consider additional feedback from leadership, the faculty senate, student associations, and the community at large.

You may comment on this draft policy at <https://titleix.rice.edu/draft-policy-and-feedback>

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Rice University Policy 828 (DRAFT)

Sexual Misconduct Policy for Faculty, Staff, and Students

I. General Policy Statement

Rice University is a diverse community guided by the values of responsibility, integrity, community, and excellence. These values can only thrive in an environment that is free from sexual harassment and sexual misconduct. Rice is committed to maintaining and strengthening educational, working and living environments where students, faculty, staff, and visitors are free from sexual harassment or misconduct of any kind.

It is the policy of Rice University to provide an environment that is free from sexual harassment and gender-based violence because such conduct seriously undermines the atmosphere of trust and respect that is essential to a healthy work and academic environment.

This Policy applies to all Rice administrators, faculty, staff, students, and third parties within the University's control, including visitors and applicants for employment. This Policy applies regardless of sex, sexual orientation, gender identity, gender expression, religion, race, ethnicity, immigration status, veteran status, or citizenship status.

While this policy is the primary policy for sexual misconduct matters, it is not the exclusive policy and is intended to work in conjunction with other relevant policies (including but not limited to Policy 830, Harassment and Discrimination, Policy 829, Consensual Sexual or Romantic Relationships in the Education or Workplace Environment, and the Code of Student Conduct).

II. Definitions

Advisor: An individual who is selected by a party (complainant or respondent) and who helps the party prepare for meetings and hearings, accompanies the party in any proceedings, and advises the participant during the appeals process. An advisor can be an attorney, but is not required to be an attorney.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment or sexual misconduct (as defined in this policy).

Confidential Resource Employee: Rice employee designated as a person with whom students may speak confidentially concerning sexual harassment, sexual assault or other forms of unwanted sexual contact, dating violence, or stalking, or who receives information regarding such an incident under circumstances that render the employee's communications confidential or privileged under other law. Such employees include the staff of a counseling or health center acting in their capacity as a counseling or health professional. These employees must communicate to the Title IX Coordinator or a Deputy Title IX Coordinator the type of incident reported to them, but absent a request by the Complainant, should not report information that would violate the Complainant's expectation of privacy, except as required by law.

Consent: For purposes of this Policy, consent is defined as an active, ongoing, and voluntary agreement by each participant to engage in sexual activity or sexual contact, communicated by clear actions or words.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, including sexual or physical abuse, or threats of such abuse. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Education Program or Activity: The locations, events, or circumstances over which Rice exercises substantial control over both the parties and the context in which the sexual harassment occurs, including but not limited to classrooms, residential colleges, and online course platforms. This also includes any building owned or controlled by a student organization that is officially recognized by Rice.

Formal Complaint: A formal complaint is a written document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment or other sexual misconduct against a respondent and requesting that Rice investigate the allegation of sexual harassment or misconduct.

Incapacitation: A person is incapacitated (not legally competent) and cannot consent to sexual activity if the person is unconscious or otherwise unable to resist; the person is unaware that sexual activity is occurring; or the person does not have the legal capacity to consent (for example, if they are a under statutory age for consent, which in the State of Texas is 17 years old.

Rice will consider a variety of relevant factors when determining whether someone is incapacitated as result of alcohol or drugs. Those factors include, but are not limited to, ability to control one's physical movements such as stumbling or falling, the lack of awareness of the current circumstances or surroundings, slurred or incomprehensible speech, the ability to communicate, combativeness or other emotional volatility, vomiting or incontinence. The determination of incapacitation is based on objective and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

Mandatory Reporter (or "Responsible Employee"): Any individual who is employed by Rice University is considered a Mandatory Reporter, and has a duty to report information they receive, directly or indirectly, regarding harassment, sexual harassment, sexual assault, dating violence, or stalking by or against a University student or employee, unless they have been designated as a Confidential Resource Employee.

All Mandatory Reporters are required by Texas law to report information relating to sexual harassment to the Title IX Coordinator (see <https://aeco.rice.edu/sexual-harassment>)

Reporter: Any person who reports incidents of sexual harassment, sexual assault or other forms of unwanted sexual contact, dating violence, and stalking to any responsible employee. A reporter who is reporting activity that happened to them personally is also considered a complainant.

Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment, sexual misconduct, or a violation of this policy. Rice begins any investigation with the presumption that a respondent is not responsible for the alleged conduct until such time that a determination regarding responsibility is made in accordance with this policy.

SAFE Office: provides interpersonal misconduct prevention and support services to students who are reporting an incident of interpersonal violence perpetrated against them, and to students who have been accused of perpetrating interpersonal violence.

The SAFE Office also provides prevention education to the Rice community on sexual and domestic violence, sexual harassment, stalking and Title IX and Clery Act requirements. The SAFE Office offers assistance with emotional support, education, safety planning, information on reporting options, accompaniments to appointments, assistance with supportive measures, referrals to on and off campus resources, and navigation support for reporting and responding students in sexual misconduct matters. All services are provided at no cost to the student.

Sexual Assault: As defined by law in (a)(34 U.S.C. 1229110), sexual assault is an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting program. This term includes the following:

- *Rape* - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- *Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- *Incest* - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- *Statutory Rape* - Sexual intercourse with a person who is under the statutory age of consent (which in the State of Texas is at least seventeen (17) years old).

Sexual Harassment (Title IX): For the purpose of Title IX and this policy, sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- An employee of Rice conditioning the provision of an aid, benefit, or service of Rice on an individual's participation in unwelcome sexual conduct;
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to Rice's education program or activity;
 - Note: Employees must also be aware that employee conduct may be subject to adjudication under Policy 830, which has a different definition of sexual harassment (based on Title VII)

Sexual Misconduct (Title IX) is conduct that includes the following offenses (as defined in this section): Sexual Assault, Sexual Harassment (Title IX), Dating Violence, Domestic Violence, and Stalking. Under federal Title IX regulations, Title IX does not apply to conduct that occurs outside the United States or that does not arise as part of the educational activities and programs of Rice University (however, such conduct may still violate and be adjudicated under other Rice University policies including Policy 830 or the Student Code of Conduct).

Sexual Misconduct (Non-Title IX): is unwelcome conduct that is based on sex, gender, gender identity, or sexual orientation, but that is not explicitly prohibited under Title IX. This includes any conduct that is reasonably regarded as offensive and has the purpose or effect of substantially interfering with the educational or work opportunities of students, staff, faculty or colleagues, or creating an intimidating, hostile, or offensive educational or working environment. Sexual Misconduct (Non-Title IX) is prohibited

and will be adjudicated under other policies (including Policy 830 Harassment and Discrimination or the Code of Student Conduct). Specifically, prohibited Sexual Misconduct (Non-Title IX) includes:

- Continued unwelcome contact, advances, or requests that are sexual in nature
- Unwelcome verbal or physical behavior that is sexual in nature
- Non-consensual touching or kissing (that does not meet the definition of fondling),
- Sexual exploitation
- Lewd or inappropriate sexual verbal comments, or online postings
- Sexual harassment that does not meet the definition under Title IX, but that still rises to the level of severe, pervasive, **or** objectively offensive

Stalking: engaging in a course of conduct directed at a specific person and on the basis of sex that would cause a reasonable person to fear for the person’s safety or the safety of others, or to suffer substantial emotional distress. A “course of conduct” may be established when an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.

Student: An individual who is either currently enrolled or attempting to enroll in a Rice University academic program or activity. This term includes undergraduate or graduate students who are working on campus, teaching or researching (provided they are enrolled).

Supportive measures: Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Supportive measures are available before or after the filing of a formal complaint, or where no formal complaint has been filed. See below for more details on the type of supportive measures that are available.

Title IX Coordinator: The person who has been designated at Rice to coordinate efforts to comply with and implement this policy. The Title IX Coordinators are available to discuss options, provide support, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. To contact the Title IX Coordinator, please email: titleix@rice.edu.

III. Elaboration of Policy

a. Emergency Support and Law Enforcement

An individual who experiences any form of sexual assault, misconduct, dating violence, or domestic abuse that involves violence is encouraged to seek immediate medical care for any injuries. Individuals are also encouraged to consider a forensic exam. Preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a forensic exam to preserve physical evidence with or without police involvement. If possible, this should be done immediately. If an immediate medical exam is not possible, individuals who have experienced a sexual assault or domestic violence may request a forensic exam be performed by a Forensic Nurse Examiner (FNE) within 96 hours of the incident. With the examinee's consent, the physical evidence collected during this forensic exam can be used in a criminal investigation; however, a person may undergo a forensic exam even without contacting, or intending to contact the police. To request a forensic exam, you may either go to a hospital that provides forensic exam services, such as Memorial Hermann, or contact Texas Forensic Nurse Examiners for the closest location. Students may contact the The SAFE Office to request to have an exam provided to them at no cost by the Texas Forensic Nurse Examiners, who will meet with the student and perform the exam at Student Health Services. Upon request, a member of the The SAFE office or a Title IX Coordinator can accompany an individual to the forensic exam or other medical appointment. For more information about forensic exams, please contact The SAFE Office at <https://safe.rice.edu/contact-us>.

Individuals may choose whether to report a criminal allegation to law enforcement. Upon request, a member of the The SAFE office or a Title IX Coordinator will accompany the individual to report the incident to law enforcement. If the Complainant makes a report to the police agency having jurisdiction over the alleged conduct, that police agency (very often Rice University Police Department (RUPD)) will conduct a law enforcement investigation that is distinct from the investigation that would result from the filing of a formal complaint with the Title IX Coordinator. At RUPD, this will involve providing the Complainant an explanation of the options available and ascertaining the complainant's wishes on how to proceed.

Nothing in this policy is contingent upon seeking medical services or reporting to law enforcement.

b. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Supportive measures are available before or after the filing of a formal complaint, or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to Rice's education program or activity without unreasonably burdening either party, including measures designed to protect the safety of all parties or Rice's educational environment, or deter sexual harassment.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutually agreed restrictions on contact between the parties, voluntary changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Regardless of the stage of the process, the university may take supportive measures (e.g., workplace relocation or class modification), when appropriate, to protect the parties involved and the University

community. Supportive measures may be requested by either party. Supportive measures will be individualized on a case by case basis, considering the rights and obligations of all parties.

Rice University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of Rice to provide the supportive measures.

To request or discuss supportive measures, individuals should contact The SAFE Office (for students) or the Title IX Coordinator (for employees). Contact information is available at <https://safe.rice.edu/contact-us>.

c. Employee Duty to Report: Mandatory Reporters

In addition to adopting high standards for our own conduct, when members of the Rice community observe, or have knowledge of, behavior that may violate this policy, we all have a responsibility to report such behavior. All faculty and staff who receive information, directly or indirectly, regarding harassment, sexual harassment, sexual assault, dating violence, or stalking by or against a University student or employee must promptly report the incident to the Title IX Coordinator (or a Deputy Title IX Coordinator). Generally, reports should be made within 24 hours of receiving the information. When making a report, faculty and staff should communicate all relevant information, including whether the alleged complainant has expressed a desire for confidentiality.

This mandatory reporting obligation not only covers incidents that occur on campus, but also incidents that occur off-campus where there is a connection to the employment or educational activities of Rice University (e.g., sexual harassment during field work or a student organization trip, or at a work conference).

Faculty and staff making such reports in good faith are protected from retaliation (See Policy 813. Whistleblower Protection and Non Retaliation). Failure by faculty and staff to promptly comply with their mandatory reporting obligation may itself be a basis for disciplinary action, up to and including termination of employment.

University employees serving in a privileged, licensed professional capacity (e.g. therapists and medical providers) are considered “Confidential Employees” for purposes of this policy. Confidential Employees must communicate to a Title IX Coordinator the type of incident reported to them (as required by state law), but absent a request by the Complainant, are not required to report information that would violate the complainant’s expectation of privacy, except as required by law.

Individuals may get more information, ask questions, and satisfy their obligation to report information in one of the following ways:

- Filling out an information form at: <https://aeo.rice.edu/sexual-harassment>
- Emailing a Title IX Coordinator. A list of individuals is available at <https://safe.rice.edu/contact-us> (or you may email titleix@rice.edu)
- Calling the Title IX Coordinator at 713-348-4350
- Submitting a report to the anonymous reporting hotline at 1-866-294-4633 or online at www.rice.edu/ethics.

Faculty and staff are not required to report an incident in which they were the victim of sexual harassment, sexual assault, dating violence, or stalking, though the University strongly encourages them to utilize the available reporting mechanisms and resources.

d. Pre-Investigation Administrative Leave, Emergency Removal, or Interim Actions

If Rice University determines that there is an immediate threat to the physical health or safety of any individual, then it may take such actions as necessary and available to prevent such harm. This includes threats of self-harm.

Emergency removal, administrative leave, or interim actions under this policy may only be ordered by the Provost (for faculty or students), Dean of Undergraduates (for undergraduate students), Dean of Graduate and Postdoctoral Students (for graduate students), or the Vice President of Administration (for staff). When Emergency removal or administrative leave is ordered under this policy, the respondent shall be provided with written notice and an opportunity to challenge the decision immediately following the removal.

Emergency removal or administrative leave is not appropriate in every situation where sexual misconduct has been alleged, but only in situations where an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual justifies the removal.

Other interim actions, such as no contact orders or exclusion from certain locations, may be ordered where necessary for the health or safety of any individual. Such interim actions may be offered and agreed to voluntarily as a supportive measure, or may be ordered. When such actions are ordered, there must be a written health and safety determination, and the respondent must be provided written notice and an opportunity to challenge the decision immediately following the order.

IV. Formal Complaint Process

Throughout the process, and to the maximum extent practical, Rice will consider the wishes of the reporting party as to how they want to proceed with a case.

A. Requirements, Process, and Jurisdiction to File a Complaint

A formal complaint may be filed with the Title IX Coordinator or Deputy Title IX Coordinator in person, by mail, or by electronic mail. Contact information is available here: <https://safe.rice.edu/contact-us>

At the time of filing, a complainant must be participating in or attempting to participate in the education program or activity of Rice University. **Other than a Title IX Coordinator, third parties cannot file formal complaints. The complainant cannot choose to remain anonymous or prevent the complainant's identity from being disclosed to the respondent.**

A formal complaint under this policy must have at least one allegation of Sexual Misconduct (Title IX), and that allegation must have occurred in an Educational Program or Activity of Rice University in the United States. A complaint that cannot meet these requirements will be dismissed as a Title IX matter but may still be subject to other policies, including University Policy 830 and the Code of Student Conduct.

As long as at least one allegation meets this test, other allegations that are related to the same facts, events, or parties may be included in the complaint.

B. Complaint Filed by the Title IX Coordinator

When the Title IX Coordinator believes that, with or without the complainant's desire to participate in a grievance process, the allegation requires an investigation (for example, due to health and safety concerns, or Title IX requirements), then the Title IX Coordinator has discretion to initiate a formal complaint. The Title IX Coordinator may consider a variety of factors, including a pattern of alleged misconduct by a particular respondent, or considerations such as whether a complainant's allegations involved violence, use of weapons, or similar factors.

The Title IX Coordinator's decision to sign a formal complaint will occur only after the Title IX Coordinator has promptly contacted the complainant to discuss availability of supportive measures, considered the complainant's wishes with respect to supportive measures, and explained to the complainant the process for filing a formal complaint.

When a formal complaint is signed by a Title IX Coordinator rather than filed by a complainant, the written notice of allegations will be sent to both parties; the notice will include the identity of the parties if known. The grievance and investigative process may proceed if the Title IX Coordinator determines it is necessary to sign a formal complaint, even though the written notice of allegations does not include the complainant's identity.

C. Principles of Investigation and Fairness

When investigating a formal complaint and throughout the grievance process, Rice will adhere to the following principles:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Rice University

- Provide an equal opportunity for both parties to gather, inspect, and present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence
- Allow for both parties to choose their own advisor and, should they not have an advisor, make one available to them
- Notify both parties of the availability of Supportive Measures, and provide both parties with a Resource Navigator to help understand the process or assist with supportive measures.
- Not unduly restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence
- Provide equal notice to both parties about the progress of the case, including reports, dates and location of events or interviews, and allow sufficient time for preparation for a hearing
- The processes of investigating an allegation and conducting a live hearing will be done as expeditiously as possible, while still being fair and complete. Whenever possible, the process will be completed before the end of the semester when the formal complaint was filed. Where conducting a fair and thorough process requires additional time, with a showing of good cause, there will be communication to the parties about the reason for additional time, and a revised timeline.
- Persons involved with the investigation or hearing will be properly trained on this policy, Title IX, implicit bias, and trauma informed investigation techniques.

D. Support Persons in Investigations or Hearings

Rice recognizes that talking about an incident or allegation of sexual misconduct might be difficult for the reporting or responding individuals. While it is appropriate and necessary for the conversation about such an incident to take place directly between only the party and the investigator, it is permissible for either the reporter or the respondent to have a single support person accompany them to any investigation interview or hearing. This support person may also be the person that functions as the party's advisor in other parts of the grievance process.

The support person's role is limited to providing emotional or moral support during the meetings or proceedings, and listening carefully to information provided, including information about the process and resources available to the individual. The support person may not participate or contribute to the discussion or interview, may not advise the party on how or when to answer, and may not disrupt the discussion in any way. The support person is limited to talking with the party only during breaks or passing an occasional note to the party during the meeting or proceeding.

Support persons must follow the instructions of the investigator in how they conduct themselves in the meeting or proceeding and may be asked to leave if they interfere with the conduct of the meeting or proceeding or fail to comply with the instructions of the investigator conducting the meeting or proceeding.

A support person can be any individual chosen by the party (e.g. a friend, advisor, or attorney). The same individual may not serve as the support person for both the reporting and responding student in a single proceeding. The Investigator may decline to allow any person to serve as a support person if there is an actual or potential conflict of interest, in which case the student may bring a different support person. If a party intends to bring a support person to any meeting or proceeding, the party must notify a Title IX Coordinator or Student Judicial Programs in advance, including identifying the support person.

E. Required Notifications

Upon receipt of a formal complaint, Rice will simultaneously provide both parties a written notice with the following information:

- A copy of this policy
- A copy of the complaint, including notice of the allegations and details known at the time (including relevant known identities, dates, and locations) and with sufficient time to prepare a response before any initial interview
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will not be made until the conclusion of the grievance process
- The parties have the right to have an advisor of their choice--who may be, but is not required to be, an attorney, and may inspect and review evidence
- Expectation that the parties are expected to be truthful and behave in good faith throughout the process
- Notification that additional allegations or charges may be added at a later date and will be provided in writing
- Notification about the existence of supportive measures, and how to obtain them

F. Consolidation of Formal Complaints

Rice has discretion to consolidate formal complaints in situations that arise out of the same facts or circumstances and involve more than one complainant, more than one respondent, or what amount to counter-complaints by one party against the other(s) related to these same facts and circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

G. Dismissal of Formal Complaints

If at least one of the allegations in the formal complaint would not constitute Sexual Misconduct (Title IX), then the Title IX Coordinator will dismiss the complaint. Complainants are allowed to amend and resubmit their complaints.

If at any time during the investigation or hearing a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein, then Rice may, but is not required to, dismiss the formal complaint. If the complainant is no longer enrolled or employed by Rice, or is no longer participating in the grievance process, then the matter may be dismissed or may continue as a Title IX Coordinator Filed Complaint.

If the Respondent is no longer enrolled or employed, then the matter will generally proceed as if they were still enrolled or employed but elected not to participate. The individual may elect to begin or continue participation at any time. If the Respondent is a student who resigns or graduates from Rice while a Sexual Misconduct (Title IX) case is pending, the case will not be dismissed or closed until a final determination of responsibility is made. The responding student in that case would not be issued an official transcript or diploma until the case is resolved.

In certain limited circumstances where the respondent is no longer enrolled or employed, the complaint may be dismissed after considering relevant factors such as the wishes of the complainant, the length of time since the respondent’s separation from Rice, any continuing involvement by the Respondent with the Rice community, the likelihood that the respondent would re-engage with the Rice community, or the impact of the behavior on the community.

When a complaint is dismissed due to the respondent being no longer enrolled or employed, the Title IX Coordinator will discuss the matter with the complainant prior to dismissing the case, and will document the reasoning and rationale in writing.

Upon a dismissal, Rice must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. Either party may appeal a dismissal by providing written notice to the Title IX Coordinator, who will coordinate notification of both parties. Appeals of a dismissal of a formal complaint are decided by the VP of Administration (for employees), the Dean of Undergraduates (for undergraduate students), or the Dean of Graduate and Postdoctoral Students (For graduate students).

H. Informal Resolution

After the filing of a formal complaint, either party may request to pursue an informal resolution by submitting a written request to the Title IX Coordinator or Deputy Title IX Coordinator. If the University, the complainant, and the respondent all agree that the matter is eligible for informal resolution without additional investigation, then the parties may engage in informal resolution. **Informal resolution may occur only after the filing of a formal complaint and with the informed and voluntary consent of both parties and the Title IX Coordinator.** Informed and voluntary consent must be documented by written agreement.

Informal resolution is generally not appropriate for sexual assault or violent conduct, and is prohibited where the complaint is filed by a student against a respondent who is an employee (regardless of the content of the allegation).

Participation in the informal resolution process is completely voluntary. Participation may be initiated or withdrawn by either party at any time after the filing of a formal complaint but before a determination has been made at a live hearing, or before the signing of a mutual agreement. If participation is withdrawn, or if the informal resolution process concludes without an agreement, then either party is able to continue with the formal complaint process under this policy.

Verbal or written statements made by parties or witnesses during the informal resolution process may **not** be used by the University or by the parties in a live hearing or other disciplinary process; however, physical evidence or other factual information that is introduced during informal resolution may be submitted as evidence in a subsequent investigation and in the hearing process if the informal resolution is not successful..

Informal resolution may encompass a broad range of conflict resolution strategies, including administrative disposition, voluntary resolution agreements, mediation, or restorative justice activities. The parties (including the University) may agree to any reasonable resolution to the complaint including (but not limited to) termination or withdrawal, other sanctions, no contact orders, location restrictions, education or training, or restorative justice activities.

Informal resolution agreements, once signed by both parties, are considered final actions, binding the parties to the agreed upon terms and resolving conduct up to the point of being signed.

I. Investigation

Rice University will investigate all formal complaints alleging sexual misconduct or violations of this policy. Throughout the investigation, the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University, not on either party. Investigations will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

Investigators will be trained in trauma-informed techniques, practices, or approaches and will be free from bias or conflicts of interest. Further, an investigator cannot serve as a hearing officer or appellate officer for a case or matter for which they served as an investigator. Investigators will be appointed by the following:

If the Respondent is a....	Then the Investigator will be appointed by....
Student	Student Judicial Programs
Faculty or Staff	Title IX Coordinator
Senior Administrator (Provost, Dean, Vice President, Vice Provost, Institute Director, or Athletic Director)	Title IX Coordinator
President or member of the Board of Trustees	Chairman of the Board of Trustees (or Chair of the Audit Committee)
Title IX Coordinator(s)	President

Investigators will not access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, therapist or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, without the party’s voluntary, written consent.

During an investigation, the investigator will collect information related to the allegations contained in the formal complaint and any other written statement provided by the reporter. This may include photographs, text messages, social media posts, or group chat communications. The investigator will interview both parties and any witnesses who may have information related to the alleged conduct or incident. These interviews will be recorded and either the audio recordings or transcriptions of the interviews will be made available to the parties prior to the close of the investigation. Parties and witnesses are not permitted to record any investigative meetings. The parties will be updated as the investigation proceeds and will have access to the materials collected by the investigator.

Upon completion of an investigation, Rice will simultaneously provide both parties with a written report that fairly summarizes relevant evidence and any charges supported by that evidence. The list of charges must include all charges that are related to the investigation arising from the same events, or between the same parties. This includes charges that are “embedded” within other charges.

For example, every case of sexual assault or fondling is also a case of non-consensual touching. To be considered at the hearing, non- consensual touching must also be included as a charge.

J. Preparing for the Live Hearing

Absent extenuating circumstances, the Hearing Officer will schedule a hearing to be held within a reasonable amount of time from the filing of a charge of misconduct. Once the hearing is scheduled, requests to reschedule the hearing must be submitted in writing to the Hearing Officer. Both parties may bring an advisor of their choosing, consistent with this policy.

No later than ten (10) business days prior to the hearing, all materials that will be used at the hearing must be submitted to the Hearing Officer, who will simultaneously make available for inspection or provide the materials to both parties. The materials must include:

- All documents (including the investigative report) and other tangible evidence that will be used as evidence during the hearing.
- The names of any witnesses and a brief summary concerning the subject matter of the witness' expected testimony.
- The name of any advisor or support person to be in attendance at the hearing and whether that person is an attorney.

The Hearing Officer may schedule a pre-hearing Conference. During that conference, the parties may discuss the hearing schedule (e.g., the order of events, time frames or limits, and other particulars of the hearing) and any accommodation request made by either party for the purpose of the hearing. During the prehearing conference, the hearing officer may rule on the accommodation request and on the relevance of any evidence or witnesses provided by the parties. The Hearing Officer may also request that particular witnesses be invited to participate in the hearing. No advisor, witness, or document, or tangible evidence will be permitted at the hearing unless such information was timely submitted.

It is the responsibility of the party wanting to present a witness to ensure that the witness is present at the hearing.

K. Live Hearing

i. General Information and Hearing Officer

As required by federal regulations, adjudications of Sexual Misconduct (Title IX) are conducted by live hearings. Live hearings will be presided over by a single hearing officer who is trained on this policy, Title IX regulations, trauma informed responses, relevant evidentiary standards, and who is free from conflicts of interest. A hearing officer cannot be an investigator on the matter or a Title IX Coordinator.

Prior to the hearing, the hearing officer will work with the parties to schedule the hearing and will provide parties with relevant information regarding the conduct of the hearing. Hearing officers will also make rulings on the relevancy of evidence or testimony, and other matters that arise that must be decided during the hearing.

A hearing officer may also recommend to the Title IX Coordinator that the University bring charges of false statements or bad faith based on the conduct of a party. Both parties must be given written notice of any such charge and must be offered a chance to answer for it during the live hearing.

ii. Rules for Live Hearings

It is expected that all parties and individuals will not be purposefully disruptive, and will maintain professional decorum throughout the hearing. Abusive statements towards others will not be tolerated.

At the live hearing, the hearing officer shall permit each party's advisor to ask the other party and any witnesses questions and follow-up questions, including those challenging credibility. The hearing officer has sole authority to determine the relevance of each question and to disallow questions. Cross-

examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party.

Rice will provide for the live hearing to occur with the parties located in separate rooms with technology enabling both the hearing officer and the parties to simultaneously see and hear the proceedings in real time. Parties or witnesses will also be allowed to appear remotely, so long as it is in real time.

Individuals may have an advisor of their choosing attend the hearing with them. These advisors may be attorneys, but are not required to be an attorney. The role of an advisor during the hearing is limited to asking questions of the opposing party.

Additionally, parties may choose to have one support person attend the hearing with them (this support person may not participate in the hearing).

The names of advisors and support individuals should be provided to Student Judicial Programs (students) or Title IX Coordinator (staff) prior to the hearing. If a party does not have an advisor present at the live hearing, Rice will provide, without fee or charge to that party, an advisor of Rice's choice to conduct cross-examination on behalf of that party.

Only relevant cross-examination and other questions may be asked of a party or witness. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant and are prohibited, unless the Hearing Officer determines that such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove a prior relationship.

If a party or witness does not appear at the hearing, or does not submit to cross-examination at the live hearing, the Hearing Officer must not rely on any statement of that party or witness in reaching a determination regarding responsibility. This does not apply to "statements" made outside of the investigation process which are contained in verifiable media such as emails, text messages, or video recordings.

The Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Rice will create an audio or audiovisual recording of any live hearing and make it available to the parties for inspection and review. All parties are prohibited from making video or audio recordings during a live hearing. The hearing officer may remove any person who violates this rule from the hearing.

iii. Determination and the Standard of Evidence

The hearing officer will make a determination of "In Violation" or "Not in Violation," which will be based on the *preponderance of evidence* standard, meaning that to find a person responsible for a charge it must be more likely than not that the reported conduct happened.

For students, the hearing officer will hear relevant testimony regarding all charges and issue a written determination on each charge, including Sexual Misconduct (Title IX and Non-Title IX) and any other charged conduct offenses.

For employees, the hearing officer will hear relevant testimony regarding all charges and issue a written determination on each charge that is Sexual Misconduct (Title IX). Other charges will be separately

adjudicated under the applicable policy for that conduct (for example, Policy 830). This is because Title IX uses a more demanding standard to establish sexual harassment with different procedural rules, such that an employee may be found not responsible for sexual harassment under Title IX but still be found responsible for sexual harassment under Title VII (and Rice Policy 830).

Within seven calendar days of the completion of the hearing, the hearing officer will issue a written determination which will be provided to both parties simultaneously. The written determination must include the following:

- A statement of, and rationale for, the finding related to each charge, including a determination regarding responsibility, any disciplinary sanctions for the respondent if found in violation, and whether remedies designed to restore or preserve equal access to Rice’s education program or activity will be provided by Rice to the complainant.
 - After making a determination of “in violation” the hearing officer must decide any disciplinary sanctions in consultation with the appropriate administrator in the Dean of Undergraduates, Dean of Graduate and Postdoctoral Studies, the Provost (for faculty respondents), or the Vice President of Human Resources (for staff respondents) (or their designee).
- Each charge must be determined separately, however a sanction can be applied that is intended to be applied across multiple determinations of responsibility.
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
- Rice’s procedures and permissible bases for the complainant and respondent to appeal.

The determination regarding responsibility becomes final either on the date that Rice provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

If there is a finding of a violation of this Policy, and any appeal of the finding has been exhausted, then any remaining sanctions should be implemented in a timely manner. In the case of students, this will be carried out by the Dean of Undergraduates or the Dean of Graduate and Postdoctoral Studies (or a Title IX Coordinator acting on their behalf). In the case of employees, this will be carried out by the appropriate vice president or provost.

iv. Sanctions for Students

Sanctions for violations of this policy will be commensurate with the offense and may include, but are not limited to, one or more of the following:

- Probation (including disciplinary probation)
- Temporary or permanent ban from campus or specific campus locations (such as residential colleges or other Rice University residential facilities.), sometimes known to students as “rustication”
- Mandatory educational programs
- Ban from participating in campus organizations or campus activities, including bans on particular forms of undergraduate activities, sometimes known to students as “social rustication”

- Disqualification from future employment or student leadership positions Withholding of transcripts, grades, diploma, or degree until after the hearing, appeal, or the sanction is complete
- Partial or full criminal trespass warnings to remain off campus or parts of campus
- Separation from the university, which includes suspension, for a period of time
- Revocation of admission and/or degree
- Expulsion

If a student is issued a sanction that makes them ineligible to reenroll in the University, the University will include on the student’s transcript a notation stating that the student is ineligible to reenroll in the University for a reason other than an academic or financial reason. On request by the student, the University may remove this notation if the student becomes eligible to reenroll in the University; or the Dean of Undergraduates or Dean of Graduate and Postdoctoral Studies determines that good cause exists to remove the notation.

v. Sanctions for Employees

Sanctions for violations of this policy will be commensurate with the offense and may include, but are not limited to, one or more of the following:

- Unpaid administrative leave
- Temporary or permanent ban from campus or specific campus locations
- Mandatory educational programs
- Partial or full criminal trespass warnings to remain off campus or parts of campus
- Permanent or temporary suspension from employment and/or enrollment
- Removal of supervisory titles or duties
- Termination of employment

In accordance with Texas law, the University must terminate an employee who is found to have knowingly failed to make a report of sexual harassment, sexual assault, dating violence or stalking when the Responsible Employee was required to do so or knowingly made a false report of sexual harassment, sexual assault, dating violence or stalking with intent to harm or deceive. Knowingly failing to make a report and knowingly making a false report are criminal offenses under Texas law.

L. Appeals

i. Procedures

If either party is dissatisfied with a dismissal, a determination, or a sanction, then that party may appeal; however, such appeal must be based on one of the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the matter;
- The Title IX Coordinator, investigator, or hearing officer had a conflict of interest or bias for or against complainants or respondents generally, or against the individual complainant or respondent, that affected the outcome of the matter.
- The sanction issued is not commensurate with the policy violation.

An appeal must be made within 10 calendar days of receiving the hearing officer’s written determination. During this period, Rice may provide supportive measures to either party but will not impose sanctions or

take other disciplinary action. A request for an additional five calendar days may be made prior to expiration of the original time (for a total of 15 days) upon written request stating a reasonable cause for additional time. Appeals may be amended until the expiration of the allotted time (including the additional days, if requested).

Following the expiration of time for appeal, Rice will provide both parties with a copy of any appeals filed. Additionally, once appeals have been sent to each party, either or both parties will be given four days from receiving this copy to file personal statements of support or challenge regarding any determination, sanction, or submitted appeal.

ii. Requirements to be an Appellate Officer

In any appeal, the person deciding the appeal (the Appellate Officer) cannot be the hearing officer, an investigator on the matter, or a Title IX Coordinator. Appeals are decided by the following individuals:

If the Respondent is a	The Appellate Officer is
Undergraduate Student	Dean of Undergraduates
Graduate Student	Dean of Graduate and Postdoctoral Studies
Faculty	President (with a recommendation by the Faculty Senate)
Staff	Vice President of Administration
Vice President, Provost, Vice Provost, Athletic Director, Institute Director	President

If the stated Appellate Officer is unavailable, for example because the position is vacant or there is a conflict of interest, then the Title IX Coordinator will appoint an alternative Appellate Officer.

The Appellate Officer must make a good faith effort to issue a decision within 30 calendar days, but may request more time for good cause that is stated in writing and provided to both parties. All appeals will be decided in writing, with the decision being provided to both parties simultaneously.

The Appellate Officer’s review is limited to the investigative report, the written determination, evidence that was presented during the hearing, any new evidence submitted by the parties that was not reasonably available at the time of the live hearing, and the parties’ written appeals to decide if an appeal should be granted or denied. Appeals—including those conducted by a Faculty Senate panel—cannot include a distinct appeals hearings or additional witnesses or testimony of any form.

iii. Appeals by Faculty

Appeals for faculty members follow the same procedures as appeals by staff or students. However, in the case of faculty, the President will refer the matter to the Speaker of the Faculty Senate for a non-binding recommendation on the appeal (generally issued within 30 days). The Speaker of the Faculty Senate will refer the matter to a panel of the Faculty Senate which is appointed by the Speaker, Deputy Speaker, and the Convener of the Appeals and Grievances Committee.

The faculty panel must rely on the investigative report, the written determination, evidence that was presented during the hearing, and the parties' written appeal as the basis for their recommendation. In cases of Sexual Misconduct (Title IX), there is no second or separate hearing in front of a faculty panel.

The President will consider the Faculty Senate recommendation, and decide the appeal. Either the President or Faculty Senate may request more time for good cause that is stated in writing and provided to both parties and the Title IX Coordinator.

iv. Appellate Officer Determination

The Appellate Officer must issue a written determination that describes the rationale to deny or approve and appeal, and provide it to both parties simultaneously. For each ground for appeal that is proffered, the Appellate Officer must first decide if it is more likely that not that the ground is true. If it is not, then that ground for appeal is denied. If it is true, then the Appellate Officer must decide if that ground would have affected the outcome of the matter (either the determination or the sanction). If it did not affect the outcome, then that ground for appeal is denied.

If a ground for appeal is more likely than not true, and it affected the outcome, then either the determination or the sanction may be modified to the extent necessary to remedy the harm caused by the ground.

M. Expectation of Good Faith and Prohibition of False Statements

Rice University expects all parties to behave in good faith when adjudicating matters under this policy. This includes a strict prohibition on knowingly making false statements, submitting false information, or on withholding evidence during any phase of the process.

N. Conflict of Interest and Bias

Any individual designated by Rice as a Title IX Coordinator, investigator, hearing officer, appellate officer, or any person designated by Rice to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

In the event that there is a conflict of interest, the University will appoint an alternative individual who meets the training or position requirements of this policy, but does not have a conflict.

O. Prohibition against Retaliation

The University prohibits retaliation in any form against a person for reporting suspected or actual wrongful conduct in good faith, including any conduct believed to violate this policy. The University will take all appropriate and necessary action to punish retaliation against persons making such reports. See also University Policy 813, *Whistleblower Protection*.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy

Rice must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex

discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Complaints alleging retaliation should be filed with the Office of Access, Equity and Equal Opportunity, or if the complaint involves that office or a Title IX Coordinator, the complaint should be filed with the Chief Compliance Officer.

P. Training Requirements

The University will provide appropriate training for faculty, staff, and students concerning this policy and the duty to report information.

Further, those individuals involved in investigations, hearings, or appeals under this policy will receive additional training as may be appropriate or required. This includes training on Title IX definitions, the scope of Rice educational programs and activities, trauma informed responses, and how to serve impartially (including avoiding prejudgment of the facts, conflicts of interest, and bias). Additionally, individuals will be trained on investigations, relevancy, or informal resolution (as may be appropriate). These training materials will be posted at <https://titleix.rice.edu/>

Q. Relationship to other laws or individual privileges

Nothing in this policy should be read to unduly restrict our commitment to free and open debate, academic freedom, or constitutional guarantees that might be applicable to an individual.

The process outlined in this is separate from any criminal proceeding related to the reported behavior and may occur while criminal proceedings are ongoing. Prohibited actions defined in this policy may also constitute a violation of criminal law. Anyone who reports Sexual Misconduct will be notified of their right to speak to the appropriate law enforcement agency and file a report for possible criminal prosecution.

Where conduct may implicate both Title IX and Title IV, this policy will take precedence in order, but is not exclusive. The University will also adjudicate the matter under Policy 830, notwithstanding the outcome of any determination or appeal under this policy.

Rice University will abide by FERPA to the maximum extent practical (unless FERPA would interfere with the primary purpose of the Title IX regulations).

V. **Cross References to Related Policies**

- a. Policy 815: Equal Opportunity / Non-Discrimination / Affirmative Action Policy
- b. Rice University Standards of Ethical Conduct
- c. Rice Code of Student Conduct
- d. Policy 813: Whistleblower Protection
- e. Policy 829: Consensual Sexual or Romantic Relationships in the Educational or Workplace Environment
- f. Policy 830. Harassment and Discrimination

VI. **Responsible Official and Key Offices to Contact Regarding the Policy and its Implementation**

Responsible Official: VP Administration

Other Key Offices: Provost, EEOP/AA; Human Resources; The Office of Sexual Violence Prevention and Title IX Support; Title IX Coordinator and Deputy Coordinators; General Counsel
Dean of Undergraduates
Dean of Graduate and Postdoctoral Studies

VII. **Links to Additional Information**

See <https://titleix.rice.edu/> and <https://safe.rice.edu/>

Policy History

Issued: ____ TDB _____, 2020 (as part of implementing Title IX regulations, existing Policy 830 was split into new policy 828 and revised policy 830).