

# **Sexual Harassment - Title IX – Policies & Procedures**

As Required by the U.S. Department of Education Title IX Amendments  
(34 C.F.R. § 106.30, 106.44, 106.45, effective August 14, 2020 – “Title IX Amendments”)

## **I. Introduction**

As required by the U.S. Department of Education (USDOE), effective August 14, 2020, this *Sexual Harassment – Title IX – Policies & Procedures* document (the “Title IX Policy”) addresses certain allegations of Sexual Misconduct subject to the Title IX Amendments as set forth in Section II, below. This Title IX Policy contains citations to the applicable sections of the Title IX Amendments (34 C.F.R. Part 106) throughout. For the complete *TBC Sexual Misconduct Policy*, which addresses Sexual Misconduct beyond the scope of this Title IX Policy, please access the following link: <https://txbarber.edu/wp-content/uploads/2021/09/Sexual-Misconduct-Policy-2021.pdf>.

The following Title IX Policy proceeds in five additional sections:

- **Section II** defines the scope of this Title IX Policy.
- **Section III** contains the USDOE’s statements regarding equitable treatment under the Title IX Amendments. Equitable treatment includes the provision of Supportive Measures and waiting until the Grievance Process ends to make conclusions as to whether a person violated the Title IX Policy.
- **Section IV** describes TBC’s Responses to Sexual Harassment
- **Section V** sets for the Grievance Process for Formal Complaints of Sexual Harassment. This section provides information on filing a Formal Complaint of Sexual Harassment, the investigation process, the role of the Title IX Coordinator, Title IX’s live hearing option, the appeals process, and related topics.
- **Section VI** explains that TBC will not retaliate against any person for that person’s involvement in activities related to Title IX complaints.

This Title IX Policy, as dictated by the USDOE, along with the comprehensive *TBC Sexual Misconduct Policy*, are intended to define, address, and remedy Sexual Misconduct for members of the TBC community (defined for purposes of this Process to include faculty, staff, students, and those who use TBC facilities as well as those who are seeking to participate in TBC’s educational and employment programs, such as applicants for admission or employment). TBC prohibits Sexual Misconduct by members of the TBC community. The prohibition applies regardless of the gender of the individuals involved and includes sexual relationships involving a status differential and those between peers, colleagues, and co-workers.

This Title IX Policy applies to all members of the TBC community and its terms supersede any contrary TBC policies pertaining to the investigation or adjudication of Sexual Harassment as defined in this Title IX Policy. Questions about this Title IX Policy and its applicability to any alleged conduct may be directed to TBC’s Title IX Coordinator, who oversees compliance with applicable non-discrimination policies, including this Title IX Policy:

*Anthony Reed*  
*Director of Barbering*  
*8201 S. Gessner Road, Ste. A*  
*Houston, Texas 77036*  
*(713) 953-0262, ext. 1403*  
*Email address: [titleixreports@txbarber.edu](mailto:titleixreports@txbarber.edu).*

## **II. Scope of Process**

This Title IX Policy, as required by the Title IX Amendments (§ 106.44(a)), applies to conduct that meets both:

- A definitional requirement: conduct on the basis of sex that constitutes “Sexual Harassment” and
- A jurisdictional requirement: conduct that relates to a TBC “education program or activity” against a person in the United States on or after August 14, 2020.

### **A. Definitional Requirement**

***Sexual Harassment*** means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of TBC conditioning the provision of an aid, benefit, or service of TBC on an individual’s participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TBC’s education program or activity; or
- (3) “Sexual assault” as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), “dating violence” as defined in [34 U.S.C. 12291\(a\)\(10\)](#), “domestic violence” as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or “stalking” as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

### **B. Jurisdictional Requirement**

An “education program or activity” includes buildings or other locations that are part of TBC’s operations and off-campus settings if TBC exercises substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by TBC.

The Title IX Amendments exclude any “education program or activity” that does not occur in the United States. (§ 106.44(a).) Sexual Misconduct that does not satisfy the USDOE’s jurisdictional requirement, such as off-campus behavior alleged to have an on-campus effect, may be addressed under alternative procedures, as provided in the *TBC Sexual Misconduct Policy*, instead of this Title IX Policy.

### **C. Other Definitions**

***Actual Knowledge*** means notice of Sexual Harassment or allegations of Sexual Harassment to TBC’s Title IX Coordinator or any official of TBC who has authority to institute corrective measures on behalf of TBC<sup>1</sup>. Notice can be through an oral report of Sexual Harassment by a Complainant or anyone else, a written report, through personal observation, through a newspaper article, through an anonymous report, or through various other means. However, imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge. This standard is not met when the only official of TBC with Actual Knowledge is the Respondent. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of TBC.

***Complainant*** means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

***Formal Complaint*** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that TBC investigate the allegation of Sexual Harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of TBC with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided for the Title IX Coordinator, and by any additional method designated by TBC. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by TBC) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party, and must comply with the requirements of this part,

***Respondent*** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

***Sexual Misconduct*** is a broader term that covers other sex-based conduct beyond the USDOE’s Title IX “Sexual Harassment” definition. Sexual Misconduct that does not satisfy the USDOE’s

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<sup>1</sup> Officials with authority to institute corrective measures on behalf of TBC are the Chief Financial Officer/Chief Operating Officer, the President/General Counsel, and the Director of Barbering.

definition of “Sexual Harassment” may be addressed under alternative procedures, as provided in the *TBC Sexual Misconduct Policy*, instead of this Title IX Policy.

***Supportive Measures*** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent 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 TBC’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or TBC’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, mutual restrictions on contact between the parties, changes in work or campus locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. TBC must 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 the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

### **III. USDOE Statements of Equitable Treatment**

A. As required by USDOE’s Title IX Amendments, TBC’s Title IX Policy treats Complainants and Respondents equitably by: (1) offering Supportive Measures (as defined above) to a Complainant, and (2) following a complaint process that complies with the procedural requirements of the Title IX Amendments before the imposition of any disciplinary sanctions against a Respondent. (§ 106.44(a); § 106.45(b)(1)(i).) Supportive Measures also may be offered as needed to Respondents and other members of the TBC community who may be affected by Sexual Harassment.

B. TBC will keep any Supportive Measures provided to a Complainant or Respondent private, to the extent possible. Supportive Measures that affect other members of the TBC community (e.g., mutual No-Contact Directives, where the other party must be informed of the order and its implications) may be disclosed to facilitate implementation. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

C. An individual’s status as a Respondent will not be considered a negative factor during any part of an informal complaint process or the Grievance Process. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct unless and until the process concludes and a determination regarding responsibility is issued. Similarly, a person’s status as a Complainant, Respondent, or witness will not determine whether that person is deemed credible. (§ 106.45(b)(1)(ii-iv).)

D. TBC’s Grievance Process provides remedies to a Complainant only if the Formal Complaint results in a determination that the Respondent is responsible for Sexual Harassment. Remedies are designed to restore or preserve equal access to TBC’s education program or activity and may include the same individualized services as TBC provided to the Complainant

as Supportive Measures, additional services, or different services. Remedies may be disciplinary and punitive and may burden a Respondent. (§ 106.45(b)(1)(i).)

E. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (collectively, Title IX Administrators) will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or an individual Complainant or Respondent. TBC will provide necessary and appropriate training to each Title IX Administrator to accurately identify situations that require a response under Title IX. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment. (§ 106.45(b)(1)(iii).)

## **IV. TBC's Responses to Sexual Harassment**

### **General Response to Sexual Harassment**

With or without a Formal Complaint, if TBC has Actual Knowledge of Sexual Harassment in its education program or activity against a person in the United States, TBC will respond promptly in a manner that is not deliberately indifferent. TBC is deliberately indifferent only if its response to Sexual Harassment is clearly unreasonable in light of the known circumstances. For the purposes of this Policy, "education program or activity" includes locations, events, or circumstances over which TBC exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

TBC's response will treat Complainants and Respondents equitably by offering Supportive Measures to a Complainant, and by following a process that complies with the policies and procedures set forth in the Grievance Process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

The Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

### **Response to a Formal Complaint**

In response to a Formal Complaint as defined in Section II above, TBC must follow the Grievance Process set forth in Section V below.

### **Emergency Removal**

Nothing in this Title IX Policy precludes TBC from removing a Respondent from TBC's education program or activity on an emergency basis, provided that TBC undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual

Harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

### **Administrative Leave**

Nothing in this Title IX Policy precludes TBC from placing a non-student employee Respondent on administrative leave during the pendency of a Grievance Process.

## **V. Grievance Process for Formal Complaints of Sexual Harassment**

### **Formal Complaint**

If an individual wishes to pursue an incident of Sexual Harassment beyond simply reporting it, they may file a Formal Complaint, which can be done through a TBC *Formal Complaint Questionnaire* or other documented means, and submitted to the Title IX Coordinator via hand delivery, by mail, email, or fax. TBC does not limit the timeframe for filing a Formal Complaint, which can be submitted at any time following an incident, although TBC's ability to take any action may be limited because of the passage of time.

**If TBC receives an allegation of Sexual Misconduct that falls within the Formal Complaint Process' scope (it meets both the Title IX Amendments' definition of "sexual harassment" and their jurisdictional requirements (see Section II above)), but no Formal Complaint is filed, then the Title IX Amendments prevent TBC from administering this formal Grievance Process (including any informal or early resolution) that permits the imposition of any disciplinary sanctions or other actions against a Respondent. Supportive Measures, however, may still be given. (§ 106.44(a); § 106.45(b)(1)(i); see also § 106.8(c).) Accordingly, TBC strongly encourages Complainants to file a Formal Complaint, so that the required Grievance Process can be followed.**

### **Grievance Process – Basis Requirements**

The Grievance Process **treats Complainants and Respondents equitably** by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by this specific process before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. The Grievance Process includes TBC's procedures and permissible bases for the Complainant and Respondent to appeal, and it describes the range of Supportive Measures available to Complainants and Respondents.

Remedies must be designed to restore or preserve **equal access to TBC's education program or activity** and may include Supportive Measures; however remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. TBC may convert a report of Sexual Harassment into a Formal Complaint if TBC determines that it must take additional steps to protect the TBC community.

The TBC Grievance Process will include an **objective evaluation of all relevant evidence** - including both inculpatory and exculpatory evidence - and credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

The Title IX Coordinator, investigator, decision-maker, or any person designated by TBC to facilitate an **informal resolution process**, will not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. In addition, these individuals will have received training on the definition of Sexual Harassment, the scope of TBC's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

In the event of a **live hearing**, TBC decisionmakers will have received training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will have received training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of Sexual Harassment.

The TBC Grievance Process will include a **presumption that the Respondent is not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.

The conclusion of the Grievance Process will occur within a **reasonably prompt time frame**, and temporary delays of the Grievance Process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance, or accommodation of disabilities.

Following any determination of responsibility, TBC may implement the following **disciplinary sanctions and remedies**: (i) written disciplinary warning; (ii) disciplinary probation; (iii) suspension of rights and privileges; (iv) suspension from school if a student or paid or unpaid suspension if a TBC employee; (v) expulsion from School, or termination of employment in the case of a TBC employee; (vi) prohibition of any interaction between the victim and the accused and/or a requirement that they maintain a specified distance apart (e.g., a "No Contact" directive); (vii) refusal to service a client at a TBC campus; or (viii) termination of services with a third party vendor.

The **standard of evidence** to be used to determine responsibility is the **clear and convincing** evidence standard, which will be applied uniformly to all categories of Complainants and Respondents.

TBC will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a **legally recognized privilege**, unless the person holding such privilege has waived the privilege.

## **Notice of Allegations**

Upon receipt of a Formal Complaint, TBC will provide the following written notice to the parties who are known:

- TBC's written Grievance Process, including any informal resolution process;
- the allegations of Sexual Harassment, which includes sufficient details known at the time and with sufficient time to prepare a response before any initial interview (e.g., identities of the parties involved in the incident, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known);
- a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the Grievance Process;
- inform the parties that, pursuant to applicable regulations, they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence;
- inform the parties of provisions in its policies on harassment that knowingly making false claim of harassment during the Grievance Process will be subject to corrective action, up to and including, termination of employment or enrollment.

If, in the course of an investigation, TBC decides to investigate allegations about the Complainant or Respondent that are not included in the above-described notice, TBC will provide notice of the additional allegations to the parties whose identities are known.

## **Dismissal of a Formal Complaint**

TBC will investigate all allegations in a Formal Complaint. However, if the conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved, did not occur in TBC's education program or activity, or did not occur against a person in the United States, then TBC will dismiss the Formal Complaint with regard to that conduct for purposes of Sexual Harassment under Title IX or 34 CFR §106.45. Such a dismissal does not preclude action under another provision of TBC's policies and procedures.

In addition, TBC may dismiss a Formal Complaint or any allegations therein 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;
- the Respondent is no longer enrolled or employed by TBC; or



- specific circumstances prevent TBC from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon a dismissal required or permitted pursuant to the above, TBC will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

### **Consolidation of Formal Complaints**

If there are Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances, TBC may consolidate the complaints as to allegations of Sexual Harassment.

### **Investigation of a Formal Complaint**

When investigating a Formal Complaint and throughout the Grievance Process, TBC will do the following:

- ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on TBC and not on the parties provided that TBC cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless TBC obtains that party's voluntary, written consent to do so for a Grievance Process pursuant to this Title IX Policy;
- provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- provide the parties with the same opportunities to have others present during any grievance meeting or proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, TBC may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;

- provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a **Formal Complaint**, including the evidence upon which TBC 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. Prior to completion of the investigative report, TBC will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. TBC will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- create an investigative report that fairly summarizes relevant evidence and, ten (10) days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

## **Hearings**

TBC's Grievance Process includes the opportunity for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such 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 personally, notwithstanding the discretion of TBC to establish restrictions regarding the extent to which the advisor may participate in the proceedings as stated above, or to otherwise restrict the extent to which advisors may participate in the proceedings.

At the request of either party, TBC must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, TBC will provide without fee or charge to that party, an advisor of TBC's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are 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 consent.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) 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.

Live hearings pursuant to this section may be conducted with all parties physically present in the same geographic location or, at TBC's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. TBC will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Proceedings for Sexual Harassment complaints will be conducted by trained officials and will include a prompt, fair and impartial process.

### **Determination Regarding Responsibility**

The decision-maker(s), who will not be the same person(s) as the Title IX Coordinator or the investigator(s), will issue a written determination regarding responsibility (the "Determination"). To reach this Determination, TBC will apply the clear and convincing evidence standard.

The Determination will include the following:

- identification of the allegations potentially constituting Sexual Harassment;
- 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;
- findings of fact supporting the Determination;
- conclusions regarding the application of TBC's policies and procedures and/or code of conduct to the facts;
- statement of, and rationale for, the result as to each allegation, including a Determination regarding responsibility, any disciplinary sanctions TBC imposes on the Respondent, and whether remedies designed to restore or preserve equal access to TBC's education program or activity will be provided by TBC to the Complainant; and
- TBC's procedures and permissible bases for the Complainant and Respondent to appeal.

TBC will provide the Determination to the parties simultaneously. The Determination becomes final either on the date that TBC provides the parties with the written determination of the result of an 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.

The Title IX Coordinator is responsible for effective implementation of any remedies.

## **Appeals**

Both parties have the opportunity to appeal a determination regarding responsibility, and TBC's dismissal of a Formal Complaint or any allegations therein, on the following bases:

- a 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, that could affect the outcome of the matter; and
- the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

TBC may offer an appeal equally to both parties on additional bases.

In the event of any appeal, TBC will:

- notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- ensure that the decisionmaker(s) for the appeal is not the same person as the decisionmaker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- ensure that the decisionmaker(s) for the appeal complies with the standards set forth in Section 3. E. above;
- give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- issue a written decision describing the result of the appeal and the rationale for the result; and
- provide the written decision simultaneously to both parties.

An appeal must be in writing signed by the party initiating the appeal and delivered to the Title IX Coordinator within thirty (30) calendar days from the date the parties received the Determination. If submitted via email, the appeal request must be sent to the following email address: [titleixreports@txbarber.com](mailto:titleixreports@txbarber.com) with the word **APPEAL** in the subject heading. The Title IX Coordinator will issue a written finding to the Complainant and Respondent of the outcome of the appeal as soon as practicable, but no later than forty-five (45) calendar days from receipt of the appeal, subject to good cause exception.

## **Informal Resolution**

TBC will not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of Sexual Harassment. Similarly, TBC will not require the parties to participate in an informal resolution process pursuant to this Title IX Policy and may not offer an informal resolution process unless a Formal Complaint is filed.

However, at any time prior to reaching a Determination, TBC may facilitate an informal resolution process – a process intended to allow the Complainant and the Respondent to provide information about the alleged incident(s) of Sexual Harassment, and to reach a mutually agreeable resolution that does not involve a full investigation and adjudication, provided that TBC does the following:

- provides to the parties a written notice disclosing:
  - The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Grievance Process with respect to the Formal Complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- obtains the parties' voluntary, written consent to the informal resolution process; and
- does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

### **Recordkeeping**

TBC will maintain for a period of seven (7) years records of the following:

- each Sexual Harassment investigation including any Determination and any audio or audiovisual recording or transcript required by law or regulation, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to TBC's education program or activity;
- any appeal and the result therefrom;
- any informal resolution and the result therefrom; and
- all materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. These training materials are publicly available on TBC's website.

For each response required under § 106.44, TBC will create, and maintain for a period of seven (7) years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint . In each instance, TBC will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to TBC's education program or activity. If TBC does not provide a Complainant with Supportive Measures, then TBC will document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit TBC in the future from providing additional explanations or detailing additional measures taken.

## **V. Retaliation (§ 106.71.)**

A. 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, its regulation, or this Title IX 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. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Title IX Policy, constitutes retaliation.

B. TBC will “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, any [C]omplainant, any individual who has been reported to be the perpetrator of sex discrimination, any [R]espondent, and any witness, except as may be permitted” by Title IX, FERPA, or as otherwise required by law, or to carry out TBC’s Title IX Policy or other resolution procedures under this Title IX Policy.

C. The exercise of rights protected under the First Amendment does not constitute retaliation. The First Amendment does not restrict the activities of private universities including TBC; however, the USDOE is subject to the First Amendment and may not administer the Title IX Amendments in a manner that violates the First Amendment.

D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of the Grievance Process or any proceeding relating to Sexual Harassment does not constitute retaliation. A Determination alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.

E. Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow grievance procedures under the *TBC Sexual Misconduct Policy*. In the event an individual alleges that the Title IX Coordinator retaliated against them, the individual may file a complaint with the President, who will follow the grievance procedures either under the *TBC Sexual Misconduct Policy*. The Title IX Coordinator (nor staff under the Title IX Coordinator’s supervision) will not oversee the investigation or adjudication of a complaint alleging that the Title IX Coordinator engaged in retaliation. If the President is also the Title IX Coordinator, an individual alleging the Title IX Coordinator retaliated against them may file a complaint with the Director of Student Services.