

## Concordia University Texas

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|---|--|-----------------------|--|
| <b>Policy</b>   |  | Effective Date:       | March 15, 2015   |
| <b>DS03 –Prohibition of Discrimination and Harassment</b> |  | Last Revision Date:   | September 4, 2020  |
|   |  | External Review Date: | [Month Day, Year]  |
| Corporate Owner:  | President/CEO  | Operational Owner:    | Vice President for Student Affairs/Chief Diversity Officer |
| Revision Cycle:   | Annually, or as needed to comply with changes to law | Page No:              | Page 1 of 9  |

### I. Purpose

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Concordia University Texas strives to maintain a living, working, and learning environment that is free from discrimination and harassment. Discrimination and/or harassment against any student, employee or visitor of Concordia University Texas or of any other person associated with the University are contrary to the religious and moral tenets and the mission of Concordia University Texas. Such conduct also may violate state and federal law.

It is the policy of the University to provide an equitable complaint process for prompt, fair, and impartial investigation of complaints and the issuance of sanctions against individuals who are found in violation of this policy.

The University, as a Christian educational institution of The Lutheran Church-Missouri Synod, reserves the right to give preference in employment based on religion as permitted by Title VII of the Civil Rights Act of 1964.

This policy details prohibited conduct, the reporting of prohibited conduct, and the components of the complaint process.

### II. Scope

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This policy applies to Concordia University Texas's administrators, faculty, staff, students, and individuals conducting business with or on behalf of the University. This policy applies to behaviors that take place on campus, at University-sponsored events, and in University vehicles. Additionally, the University may investigate allegations involving other misconduct, regardless of where it occurs, when such behavior adversely impacts the educational operations of the University or creates a hostile environment on campus.

All allegations of sex discrimination which rise to the level of Sexual Harassment occurring within the University's education programs and activities as defined by the University's [Sexual Misconduct and Interpersonal Violence Policy](#) are handled exclusively pursuant to the procedures outlined in that policy.

All other acts of discrimination, including acts of sex discrimination, which do not rise to the level of Sexual Harassment occurring within the University's education programs and

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activities as defined by the University's [Sexual Misconduct and Interpersonal Violence Policy](#) are handled pursuant to this policy.

This policy prohibits a wide range of verbal and physical behaviors, ranging from offensive communications to physical aggression or assault. The definitions within this policy are not intended to be mutually exclusive and, in some instances, may overlap.

### III. Definitions

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#### **Definitions of Prohibited Conduct**

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This policy provides definitions based on state or federal statutes and regulations. In some instances, both state and federal law provide overlapping definitions of the same subject matter. This policy shall be construed to provide students and employees with the maximum protection from discrimination required by law.

#### **A. Discrimination**

Discrimination is the act of treating similarly situated persons differently based on any legally protected status.

For employees, this prohibition applies to the terms and conditions of employment such as hiring, placement, promotion, termination, layoff, transfer, compensation, training, and leaves of absence.

For students, this prohibition applies to University operations and activities such as admission, housing, discipline, counseling, scholarship and loan programs, co-curricular experiences, and athletics.

#### **B. Harassment Based on Protected Status**

Harassment is physical, verbal, or nonverbal conduct directed at a person because of any legally protected status and that is so severe, persistent, or pervasive that the conduct:

1. Affects a person's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

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- 2. Has the purpose or effect of substantially or unreasonably interfering with the student’s academic performance or an employee’s work performance; or
- 3. Otherwise adversely affects a person’s educational or employment opportunities.

Examples of prohibited harassment include offensive or derogatory comments, jokes, or slurs because of the individual’s protected status or because of the individual’s need for an accommodation based on disability; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property when motivated by the individual’s protected status.

**C. Other Unprofessional/Inappropriate Conduct**

Behavior or conduct that is unprofessional and/or inappropriate for the educational and/or working environment, but does not rise to the level of other forms of prohibited conduct as outlined above

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**D. Retaliation**

Every student and employee at the University has the right to seek relief under this policy or to participate in an investigation without being subjected to retaliation. Retaliation is an adverse action taken by an employee or student against an individual who makes a complaint of discrimination or harassment, witnesses an incident of discrimination or harassment, reports an incident of discrimination or harassment, or participates in an investigation pertaining to a complaint of discrimination or harassment. For an action or decision to be considered adverse, it must be materially adverse and be of the type that would dissuade a reasonable person from exercising their rights to file a complaint or to participate in an investigation. Unlawful retaliation does not include petty slights or annoyances. It is a violation of this policy to discipline or otherwise discriminate against a student or employee because they made a report or cooperated with an investigation, disciplinary process, or judicial proceeding relating to a report.

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## Additional Policy Definitions

For purposes of this policy, the following definitions are assigned:

*Complainant:* An individual who has been subjected to discrimination or harassment or who makes a complaint of discrimination or harassment. The complainant also may be referred to as the accuser or the victim.

*Respondent:* An individual who has been accused of engaging in discrimination or harassment. The respondent may also be referred to as the accused or alleged perpetrator or offender.

## IV. Policy Statement

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### 1. Lodging a Complaint

#### A. Complaints - In General

An individual who believes that they have been subjected to conduct that violates this policy may report the complaint to the Vice President for Student Affairs/Chief Diversity Officer, Financial Controller/Director of Human Resources. No victim shall be required to report prohibited conduct to the person who allegedly committed the conduct.

An individual may simultaneously file a criminal complaint with law enforcement and a campus complaint with the University. An individual also may choose to file a campus complaint without filing a law enforcement complaint or to file a law enforcement complaint without filing a campus complaint. Additionally, an individual may choose not to file any complaint.

Victims are encouraged to report their concerns as soon as possible after the alleged violation. A failure to immediately report may impair the University's ability to investigate

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and address the alleged violation.

Complaints shall be in writing unless the circumstances are such that it would be impractical or unreasonable to require a written complaint, e.g., the complainant is physically unable to prepare a written complaint. The written complaint shall describe all incident(s) or action(s) considered by the complainant to be harassing or discriminatory. Written complaints shall identify the relevant dates and all witnesses and shall specify a requested remedy. The written complaint shall be signed and dated by the person raising the complaint.

**B. Confidential and Non-Confidential Complaints**

In response to an act of discrimination or harassment, a victim may be unsure whom to contact for information about options and resources both on and off campus. Some victims may prefer a confidential consultation before deciding a course of action.

**Non-Confidential Communications:** With the exception of communications to a counselor in the University’s Counseling Center or the University Campus Pastor, discussed below, all communications, complaints and/or reports of possible violations of this policy are considered non-confidential.

**Requests for Confidentiality:** To the greatest extent possible, the University shall make every effort to respect an individual’s request for confidentiality and maintain the confidentiality of information and records related to investigations of complaints based on discrimination or harassment. Limited disclosures may be necessary in order to conduct a thorough investigation and to provide a safe and nondiscriminatory environment for the entire university community.

**2. Interim Protective Measures**

Concordia University Texas, when advisable, will consider interim measures to remediate the environment where discrimination or harassment allegedly occurred, to prevent its recurrence, and to reduce the impact of the conduct. These measures may include, but are not limited to, notifying the complainant of their options to avoid contact with the

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alleged perpetrator and allowing the complainant to change academic and extracurricular activities or their on-campus working situation as appropriate. These interim actions also include ensuring that the complainant is aware of their rights and any available resources, such as victim advocacy, housing assistance, academic support, counseling, disability services, health and mental health services, and legal assistance, and the right to report a crime to local law enforcement.

A victim may seek administrative protective measures, such as changing a class schedule, without pursuing a formal complaint. The Vice President for Student Affairs/Chief Diversity Officer or their designee (in the case of students), and Financial/Director of Human Resources or their designee (in the case of employees) can assist the complainant in evaluating interim protective measures.

In some instances, the victim may wish to seek a protective order from a court. The University police department can facilitate the victim's access to legal services and law enforcement services to explore this option.

### 3. Complaint Resolution Process

#### A. Receipt of a Complaint and Preliminary Assessment

Upon receipt of a complaint, the Vice President for Student Affairs/Chief Diversity Officer, the Financial Controller/Director of Human Resources, or their designee (hereinafter the "Administrator") will conduct a preliminary inquiry designed to assess:

1. the institutional policy or policies potentially invoked by the alleged conduct,
2. the appropriate University official to respond to the complaint, and
3. the best path of resolution for the complaint.

In the event the Administrator determines there are no reasonable grounds for believing the conduct at issue constitutes a violation of this Policy, the Administrator will close the complaint.

#### B. Informal Resolution

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The Administrator will determine whether informal resolution is an appropriate mechanism of resolution based on the information provided about the incident. Options for informal resolution include, but are not limited to, mediation, restorative justice, or other form of alternative resolution. If informal resolution is determined to be appropriate, the Administrator or their designee will meet separately with both parties to discuss an informal resolution based on the information available. If the proposed resolution satisfies the University's obligation to provide a safe and non-discriminatory environment for the University community, the resolution will be implemented, and the matter will be closed. Human Resources and/or Student Affairs will maintain records of all reports and conduct referred for informal resolution.

### C. Formal Resolution Procedures

If the Administrator determines that a formal investigation is warranted to resolve a complaint, the University will determine whether an employee or student is responsible for a violation of this Policy and what, if any, corrective action is appropriate, in accordance with the procedures described below.

#### 1. Assignment of Investigator

At their discretion, the Administrator may appoint an investigator with experience investigating allegations of discrimination and harassment.

#### 2. The Investigation

The investigation will be conducted in a manner appropriate in light of the circumstances of the case. The investigation may include, but is not limited to conducting interviews of the complainant(s), the respondent(s), and any witnesses (witnesses must have observed the acts in question or have information relevant to the incident); reviewing law enforcement investigation documents, if applicable; reviewing personnel files, if applicable; and gathering, examining, and preserving other relevant documents and physical, written, and electronic evidence (including text messages and other phone records, social media posts, security camera footage, etc.). The parties will be afforded an opportunity to identify and present relevant witnesses and evidence to the investigator, as well as identify witnesses who may have relevant information.

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**3. The Investigator’s Report and Conclusions**

The investigator will make conclusions as to whether the respondent violated any provision of this Policy. The standard of proof shall be by a preponderance of the evidence. The investigator’s findings and conclusions will be shared with the Administrator in a written report.

- a. Determination of No Policy Violation.** If the investigator determines that the respondent did not violate any provision of this policy, the Administrator will determine and document the appropriate resolution of the complaint and notify the parties of that determination. Appropriate resolutions may include, but are not limited to, dismissal of the complaint, conferences with one or more of the parties, and the introduction of remedial and community-based efforts such as educational initiatives and/or trainings.
- b. Determination of a Policy Violation.** If the investigator determines there is sufficient information to find, by a preponderance of the evidence, that the respondent violated this Policy, the matter will be referred for corrective action.

**D. Corrective Action**

If the Respondent is found responsible, corrective action will be addressed as follows:

- 1.** For Policy violations by employees (including staff, faculty, and students acting in their capacity as student employees), the Financial Controller/Director of Human Resources or their designee will consult with the individual supervisor and department head to determine appropriate corrective action up to and including termination of employment.
- 2.** For Policy violations by contractors, vendors, and others doing business with the University, the Financial Controller/Director of Human Resources or their designee will consult with the contracting department to determine the appropriate resolution, up to and including termination of a contractual relationship.

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3. For Policy violations by students, the Vice President for Student Affairs/Chief Diversity Officer or their designee will take corrective action through sanctioning as outlined in the Student Code of Conduct.

### E. Appeals

Appeals of findings of responsibility against Student-Respondents will be handled pursuant to the Student Code of Conduct Appeals Process contained in the University's Student Handbook.<sup>1</sup>

Appeals of findings of responsibility against Employee-Respondents will be handled pursuant to the Employee Handbook available through Human Resources.<sup>2</sup>

### F. Knowingly Filing a False Complaint

Knowingly filing a false complaint is a violation of this Policy. Such conduct may result in corrective action up to and including separation from the University.

## V. Additional References

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<sup>1</sup> <https://www.concordia.edu/student-life/dean-of-students/the-student-handbook.html>

<sup>2</sup> <https://www.concordia.edu/resources/human-resources/>.