

Sexual Misconduct Adjudication Process (SMAP)

**For Complaints against Students of the University of the Incarnate Word by Students of
the University of the Incarnate Word**

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I. Introduction

Unlawful discrimination has no place at the University of the Incarnate Word. It violates the University's core values, including its commitment to equal opportunity and inclusion, and will not be tolerated. Sex discrimination and harassment are prohibited by the University of the Incarnate Word policy and can constitute violations of state and/or federal law. State and federal law, including Title IX of the 1972 Education Amendments, prohibits sex-based discrimination in all of the University's programs and activities, and Title VII of the 1964 Civil Rights Act, and its state counterpart, TEX. LAB. CODE ANN §§ 21.001—21.446, prohibits sex based discrimination in employment. University of the Incarnate Word policy, the Violence Against Women Act (VAWA), as amended, and other state and federal laws prohibit sexual assault, stalking and relationship violence (including dating and domestic violence).

The University of the Incarnate Word's Sexual Misconduct Policy applies to students, faculty, staff, and third parties (including visitors and community members) and this process, which applies to students, should be read in conjunction with the expectations set forth in that policy which prohibits: sexual harassment, sexual assault, sexual exploitation, stalking, relationship violence (including dating and domestic violence) and related retaliation. See www.uiw.edu/titleix.

Any incidents or concerns regarding sexual misconduct should be reported immediately, even if the person concerned about or harmed by the misconduct is unsure about pursuing a disciplinary complaint through this process. "Responsible Employees" under the Sexual Misconduct Policy are required to promptly report allegations of sexual misconduct that they observe or learn about to the Title IX Coordinator.

The University of the Incarnate Word is committed to assisting complainants of Sexual Misconduct through various support services available for students. These support services are available to students even if they choose not to file or pursue a disciplinary complaint or if the status of a respondent to the University is unclear (unenrolled student, non-employee, etc.). Students should feel assured that these support services will be available to them throughout this process and even after the conclusion of the adjudication process. Students who wish to receive **confidential** support services are encouraged to speak to the counselors at the University of the Incarnate Word Counseling Services and/or to seek medical services at University of the Incarnate Word Health Services.

Students should contact the University of the Incarnate Word Police Department at (210) 829-6030 if they have concerns about their safety.

To make a report online, please visit www.uiw.edu/titleix, click on the "Report an Incident" button. Any member of the University of the Incarnate Word community can file a report or complaint of sexual misconduct online. Online reporting provides individuals the option to report anonymously if they choose. However, anonymous complainants should understand that while the University of the Incarnate Word will do its best to address anonymous complaints and reports, it may be limited in its ability to investigate and otherwise respond to or address them.

Please note that the University of the Incarnate Word will never utilize mediation for the resolution of issues of sexual assault or other sexual violence and parties will not be required to resolve this matter through direct communication with each other.

The University will always attempt to respond to sexual misconduct that it knows or should know about in order to stop prohibited conduct, prevent the recurrence of any conduct of concern, prevent and/or eliminate any hostile environment, and, where appropriate, address any effects on campus from such prohibited conduct. The University of the Incarnate Word is committed to addressing and working towards preventing crimes of sexual violence.

Retaliation against anyone who reports an incident or brings forward a complaint of Sexual Misconduct is strictly prohibited. Any person responsible for or involved in retaliation will be subject to disciplinary action by the University.

II. Preliminary Issues/Definitions

- A. Jurisdiction:** Any student may file a complaint of Sexual Misconduct through this process against a University of the Incarnate Word student. The person filing the complaint is the *Complainant*. The student against whom the complaint is filed is the *Respondent*. In cases where the University of the Incarnate Word has exercised jurisdiction, the University will investigate the incident of Sexual Misconduct to the best of its ability.
- B. Timing of Complaints:** There is no time limit for the submission of a complaint alleging Sexual Misconduct. A complaint may be filed at any time during the semester, as long as the accused student remains enrolled at the University. A complaint received after the semester has ended or during a University break may result in a short delay in the adjudication of the complaint. The Title IX Coordinator and/or Title IX Deputy Coordinators will make every effort to try and conduct investigations during school breaks or between school years unless doing so would sacrifice witness availability or otherwise compromise the process. The University of the Incarnate Word may be limited in its ability to respond if a respondent is not enrolled. The University of the Incarnate Word will make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.
- C. Intentional Presentation of False Information:** Participants in the Sexual Misconduct Adjudication Process must present good faith, truthful and accurate information to the Title IX Deputy Coordinators and/or the Title IX Coordinator. Knowingly making false statements or presenting inaccurate information is unacceptable and may result in a separate disciplinary action regarding that conduct. Please note that filing a complaint or providing information which a party or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does NOT constitute the intentional presentation of false information.
- D. Focus on Sexual Misconduct in Disciplinary Matters**
Under Texas law, a postsecondary educational institution may not take any disciplinary action against a student enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

- E. Right to Investigate and Decide Related Matters:** The Fact-Finding Investigation and the Decision will not be restricted to the violations alleged in the disciplinary complaint. The University of the Incarnate Word reserves the authority to pursue any additional potential violations of University Policy that have been identified through the Sexual Misconduct Adjudication Process Investigation. The Title IX Coordinator will notify the parties of the new allegations, and will decide whether such allegations will be investigated by the Title IX Deputy Coordinators or will be considered in another student judicial process. In any case, the adjudication of any other violations of University of the Incarnate Word Policy outside of the realm of Sexual Misconduct will not delay the prompt and equitable resolution of the pending Sexual Misconduct complaint.
- F. No Contact Orders:** When the Title IX Coordinator receives a complaint alleging Sexual Misconduct, a University No Contact Order may be issued barring any communication between the Complainant and Respondent. This No Contact Order may prohibit any attempt to contact or respond to any communication from the other party, either directly or through others (e.g. friends, family members, others). The Title IX Deputy Coordinators and the Dean of Student Success or designee will work with the students involved in the Sexual Misconduct Adjudication Process to help facilitate the No Contact Order between the parties, so that they may attend classes and use University facilities as appropriate. A No Contact Order may be extended after the conclusion of the Sexual Misconduct Adjudication Process at the request of either party. In cases where a demonstrated violation of this No Contact Order has been shown, the responsible student may be separated from the University of the Incarnate Word pending the final resolution of the disciplinary complaint.
- G. Interim Measures:** The University of the Incarnate Word will not automatically restrict a student from attending classes or participating in other University activities on the basis of a disciplinary complaint pending in the Sexual Misconduct Adjudication Process. However, the University does reserve the right to impose interim measures at any time upon learning of an allegation of Sexual Misconduct, if the University has concerns about the safety of the University of the Incarnate Word community. Such measures may include, but are not limited to, restrictions regarding movement on campus, removal from University housing and/or removal from campus. The decision to impose interim remedial measures is made at the discretion of the Title IX Coordinator, in consultation with the Associate Provost for Academic Support Services, if necessary. The University of the Incarnate Word will also enforce any orders that are issued by the Courts of the State of Texas.
- H. No Retaliation:** Retaliation against anyone who in good faith reports an incident of Sexual Misconduct or who in participates in this Sexual Misconduct Adjudication Process in any manner is strictly prohibited. Retaliation is also prohibited against anyone who opposes, in a reasonable manner, an act or policy believed to constitute a violation of the Sexual Misconduct Policy. Retaliation includes things such as hostility, intimidation, threats, or in any way discriminating against an individual because of the individual's complaint or participation in this Sexual Misconduct Adjudication Process. Anyone responsible for retaliation or threats of retaliation, whether that person is the accused party or another person, will be subject to disciplinary action by the University of the Incarnate Word.

Retaliation should be reported promptly to the Title IX Coordinator. Retaliation by a person not affiliated with the University of the Incarnate Word may be addressed by the police.

- I. **Witnesses:** The Complainant and Respondent have the right to identify any individuals who may be witnesses to the conduct alleged in the complaint of Sexual Misconduct. The parties should be aware that it is possible for both the Respondent and Complainant to list the same people to speak as witnesses on their behalf. Witnesses should only be encouraged to cooperate and to speak the truth. Witnesses should not be intimidated, threatened or improperly influenced in any way by either party or through others. Any attempt to threaten, intimidate or to otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by the University of the Incarnate Word. The Title IX Deputy Coordinator will attempt to contact and interview any witness identified by the parties that the Title IX Deputy Coordinator deems to be relevant to the resolution of the disciplinary complaint.

- J. **Support Person:** Students involved in the Sexual Misconduct Adjudication Process as Complainants or Respondents may be more comfortable navigating the process with the help of a support person. A support person is someone whom the student trusts to provide advice and support during the process. A support person can be any person the student feels comfortable confiding in, and need not be affiliated with the University of the Incarnate Word (e.g., a friend, a family member, a person from a support or advocacy agency, attorney, etc.). A support person may accompany the student to any part of the adjudication process, including any meetings with the Title IX Deputy Coordinators, and/or Title IX Coordinator. The support person may **NOT** participate in the process in any way and, as such, cannot be a witness to the allegations in the complaint. Attorneys may serve as support persons, with the same rules applying. A support person must agree to sign a Non-Retaliation Acknowledgement form prior to being present for any meeting. Failure to sign a Non-Retaliation Acknowledgement will result in the support person being excluded from the interview.

- K. **Confidentiality:** In some instances, the Respondent can be spoken to without the Complainant being identified and without filing or moving forward with a formal complaint. In these instances, the privacy and confidentiality of the individual raising a concern will be protected to the extent possible. In other cases, issues of confidentiality must be balanced against the University's need to investigate and to take appropriate action for the safety of the community.

- L. **Criminal Conduct:** The University of the Incarnate Word will conduct its own investigation and adjudication of a disciplinary complaint, regardless of whether the alleged Sexual Misconduct is also being pursued through the criminal justice system. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding investigation as soon as it is notified that doing so would not impede any law enforcement activities.

M. Admissibility of Evidence: The Fact-Finding Investigation process is intended to arrive at the truth of the matter. It should be noted that if the Investigators determine that the issues raised and/or documents presented are relevant and probative of whether the alleged conduct occurred, then, in the interest of fairness, that information will be disclosed to the opposing party.

1. *Sexual History:* In a case of Sexual Misconduct, the past sexual history of the Complainant and/or the Respondent or either party's sexual history with others will NOT be used in determining whether the Sexual Misconduct occurred. Prior consensual activity between the two parties will not be determinative of the issue of consent in the pending disciplinary complaint. Consent to one sexual act does not constitute consent for another sexual act.
2. *Medical and Counseling Records:* The use of medical and/or counseling records in the Sexual Misconduct Adjudication Process is rare. Medical and counseling records are privileged and confidential documents that students will never be required to disclose in this Process.

A Complainant/Respondent who, after due consideration, believes that his/her own medical or counseling records would be helpful in determining whether Sexual Misconduct occurred, has several options for **voluntarily** presenting this information:

- a. The Complainant/Respondent can voluntarily decide to present his/her own medical or counseling records to the Investigators as part of the documents that he/she would like to have the fact-finder consider in deciding the disciplinary complaint. Please note that if a party decides to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
- b. On occasion, the Investigators may ask the Complainant/Respondent to voluntarily agree to provide these records if the Investigators believe that such documentation exists and that it would be helpful in deciding the disciplinary complaint. A party is under **no obligation** to provide this information and may simply say "no" to this request. A party has a right to refuse to provide these records and that refusal is completely acceptable. Prior to responding to such a request, a party is encouraged to consult with their support person about the implications of agreeing or denying the request. Please note that if a party does decide to produce such records, they must be produced in their entirety. The production of excerpts or selected documents is inappropriate and will not be considered.
- c. The Investigators may ask a Complainant or Respondent to voluntarily provide a verification of therapeutic or medical services to confirm simply that such treatment occurred, but not providing any details regarding that treatment.

- N. Effect of Pending Complaint on Respondent:** When a complaint is filed under this Sexual Misconduct Adjudication Process, the notation “Disciplinary Charges Pending” will be placed on the Respondent’s student transcript. This notation will be removed or changed as appropriate following final resolution of the disciplinary complaint. If the Respondent withdraws from the University of the Incarnate Word while the disciplinary complaint is pending, a permanent notation will be placed on the Respondent’s student transcript stating, “Student Withdrew with Disciplinary Charges Pending.” A Respondent cannot receive a degree while there is a pending, unresolved disciplinary complaint against him or her.
- O. Decision:** Under the Sexual Misconduct Adjudication Process, the final decision regarding the complaint will be made by the Title IX Coordinator. The Title IX Coordinator has been specially trained in the adjudication of Sexual Misconduct. In the event that the Title IX Coordinator has a conflict of interest, they may recuse themselves. In case of a conflict of interest, the Director of Human Resources will make the final decision regarding the complaint.

III. The Sexual Misconduct Adjudication Process

- A. Filing a Disciplinary Complaint
- B. Responding to a Disciplinary Complaint
- C. Fact-Finding Investigation
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This is the adjudication process under which allegations of Sexual Misconduct, including sexual assault, will be resolved at the University of the Incarnate Word. The University of the Incarnate Word will make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution. Students may also have legal remedies available outside of the University of the Incarnate Word, including filing charges with the police, filing a civil action and/or filing an administrative action.

The University of the Incarnate Word recognizes that the decision about whether to bring a disciplinary complaint against another student can be complicated and challenging. Nevertheless, students should know that all complaints will be taken seriously and investigated in a prompt and equitable manner.

A. Filing a Disciplinary Complaint

A person who has experienced an incident of Sexual Misconduct, including sexual harassment, , sexual assault, sexual exploitation, stalking, or relationship violence committed by a University of the Incarnate Word student, may file a complaint online at www.uiw.edu/titleix or with the Title IX Coordinator. After an initial report is filed online, a Complainant will be contacted and trained Title IX Deputy Coordinators will be assigned to act as Investigators. Title IX Deputy Coordinators will contact the Complainant and attempt to schedule an interview. The Complainant is welcome to bring a support person to any meetings with the Title IX Deputy Coordinators assigned as Investigators.

At the meeting with the Complainant, the Title IX Deputy Coordinators will explain the rights and responsibilities of the Complainant, explain the prohibition against retaliation, explain the Sexual Misconduct Adjudication Process and give the Complainant a copy of the relevant policies. At this initial meeting, the Complainant will be required to sign a Non-Retaliation Acknowledgement, agreeing to refrain from any retaliatory conduct against the Respondent or any witnesses in the matter.

Although each investigation will vary based on allegations, scope and other factors, the Complainant and Respondent in each case will be permitted to describe their allegations in support of or in response to the complaint, suggest witnesses to be interviewed and present evidence.

Interviews will be the primary method of collecting information as part of the fact-finding investigation. It is the responsibility of the Title IX Deputy Coordinators, not the parties, to gather the evidence relevant to the complaint from the parties and witnesses, to the extent reasonably possible.

B. Responding to a Disciplinary Complaint

The person against whom the disciplinary complaint is brought is called the Respondent. The Respondent shall be given written notification when a disciplinary complaint has been filed against him/her. The Respondent must meet with the Title IX Deputy Coordinators assigned as Investigators. The Respondent is welcome to bring a support person with them to any meetings with the Title IX Deputy Coordinators assigned as Investigators.

At this meeting, the Title IX Deputy Coordinators will discuss with the Respondent the nature of the Complaint, explain the rights and responsibilities of the Respondent, explain the prohibition against retaliation, explain the Sexual Misconduct Adjudication Process and give the Respondent a copy of the relevant policies. At this initial meeting, the Respondent will be required to sign a

Non-Retaliation Acknowledgement, agreeing to refrain from any retaliatory conduct against the Complainant or any witnesses in the matter

Refusal or failure by the Respondent to meet and cooperate with the Title IX Deputy Coordinators regarding this matter or to sign the Non-Retaliation Acknowledgment, as determined by the Title IX Coordinator and/or the Dean of Student Success or designee, may result in either (1) an automatic suspension of the Respondent from the University, and/or (2) the adjudication of the disciplinary complaint without input from the Respondent.

C. Fact-Finding Investigation

It is the responsibility of the Title IX Deputy Coordinators assigned as Investigators, **not the parties**, to gather evidence relevant to the Complaint and the facts raised in the parties' interviews, to the extent reasonably possible. Either party has the right to raise any concerns he/she may have regarding a possible conflict of interest with any of the Title IX Deputy Coordinators who have been assigned to the matter. In the event that one of the Title IX Deputy Coordinators has a conflict of interest, they may recuse themselves from the investigation. Parties must raise the issue of a conflict of interest within **two (2)** days of learning the identity of the Title IX Deputy Coordinators assigned as Investigators. Failure to raise a conflict concern within **two (2)** days of learning the identity of the Title IX Deputy Coordinators assigned as Investigators will act as a waiver of any perceived conflict. During the course of the investigation, the Title IX Deputy Coordinators assigned as Investigators may utilize some or all of the following procedures, in whatever order the Title IX Deputy Coordinators assigned as Investigators deems most appropriate. The scope of the Fact-Finding Investigation will not be limited to information provided by the parties or to the violations outlined in the disciplinary complaint. In all cases, the Title IX Deputy Coordinators assigned as Investigators will conduct an adequate, reliable, and impartial investigation into the allegations of the disciplinary complaint, reviewing all evidence deemed to be relevant.

1. Document Review: The Title IX Deputy Coordinators assigned as Investigators will then attempt to obtain any of the documents or other materials deemed relevant to the investigation.
2. Party Interviews: The Title IX Deputy Coordinators assigned as Investigators will interview the Complainant and the Respondent separately. This meeting is an opportunity for the participant to discuss his/her recollection of the event in question, voice any concerns and to work with the Title IX Deputy Coordinators assigned as Investigators to determine what information may be helpful in the investigation of the allegations. Interviews will be the primary method of collecting information as part of the fact-finding investigation. Parties may also discuss the impact that this experience has had on them. The Title IX Deputy Coordinators assigned as Investigators may interview the parties more than once, as necessary. The Complainant's or Respondent's support person may accompany him/her to all the meetings with the Title IX Deputy Coordinators assigned as Investigators but **may not** participate in the conversation. Prior to sitting in on any interviews, the support person will be required to sign a Non-Retaliation Acknowledgment, agreeing to refrain from any retaliatory conduct against the Complainant or any witnesses in the matter.

Failure to sign a Non-Retaliation Acknowledgement will result in the support person being excluded from the interview.

3. *Witness Interviews*: The Title IX Deputy Coordinators assigned as Investigators will attempt to contact and interview any witnesses identified by the parties that the Title IX Deputy Coordinators assigned as Investigators deems to be relevant to the resolution of the disciplinary complaint. The Title IX Deputy Coordinators assigned as Investigators may also interview any other persons which he/she finds to be potentially relevant to this matter. Witnesses **may not** bring support persons to their interviews. Prior to being interviewed, a witness will be required to sign a Non-Retaliation Acknowledgment, agreeing to refrain from any retaliatory conduct against the parties or any witnesses in the matter. The Title IX Deputy Coordinators assigned as Investigators will employ best efforts to interview relevant witnesses who are no longer on campus, attempting to contact them by telephone or email.
4. *Expert Witnesses*: The Title IX Deputy Coordinators assigned as Investigators reserve the right to consult with any experts which they deem necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the Fact-Finding Investigation.

D. Investigation Report

Once the Fact-Finding Investigation has been completed, the Title IX Deputy Coordinators assigned as Investigators will evaluate the information obtained during this process. The Title IX Deputy Coordinators assigned as Investigators will prepare a report summarizing and analyzing the relevant facts received through the Fact-Finding Investigation, noting any supporting documentation. The Title IX Deputy Coordinators assigned as Investigators may draw conclusions regarding the credibility of witnesses and reliability of documentation. The Title IX Deputy Coordinators assigned as Investigators will present the Investigation Report to the Title IX Coordinator. The Investigation Report will be shared with the parties, but copies will not be given. Copies of the Investigation Report will be given only to the Title IX Coordinator, except as required by court order.

E. Title IX Coordinator's Decision

Upon determining that all of the issues regarding the disciplinary complaint have been fully investigated and adequately addressed, the Title IX Coordinator will issue their Decision. The Title IX Coordinator's Decision will be made on the preponderance of the evidence standard—that is whether the facts presented in the Investigation Report support a finding that it is more likely than not that University policy has been violated. The Title IX Coordinator will base their decision solely on the information presented in the Investigation Report and its attachments.

The Title IX Coordinator may issue the following decisions to a disciplinary complaint:

- A finding that a University policy was violated. The Title IX Coordinator will then impose the appropriate disciplinary action.
- A finding that a University policy was not violated as there is insufficient information to substantiate the allegations of the disciplinary complaint. The Title IX Coordinator will then dismiss the disciplinary complaint.

Once the Title IX Coordinator's Decision has been issued, both the Complainant and the Respondent will be notified by the Title IX Coordinator. Each party will meet with the Title IX Coordinator separately to receive a copy of the Title IX Coordinator's Decision, referencing the supporting information that the Title IX Coordinator relied on from the Investigation Report. If the Title IX Coordinator's Decision results in disciplinary action which includes separation from the University, that sanction will be imposed immediately, regardless of whether an appeal has or will be filed. The Dean of Student Success has the discretion to allow a Respondent to complete any pending coursework remotely, if deemed appropriate by the faculty members involved.

F. Appellate Process

Both the Complainant and Respondent are entitled to appeal the Title IX Coordinator's Decision issued through the Sexual Misconduct Process. The person filing the appeal is the Appellant. An appeal must be filed, in writing, within **five (5) business days** of their meeting with the Title IX Coordinator. The opposing party will be notified if an appeal has been filed. In some situations, both parties may file an appeal. In this situation, the Appellate Panel will consider and review both appeals together.

An appeal should be filed with the Title IX Coordinator, Dr. Chris Leeth via email at leeth@uiwtx.edu.

The appeal will be considered by an impartial, trained, three-person Appellate Panel. This Panel will consist of three administrators, staff or faculty members from within the University of the Incarnate Word. These panelists have been specially trained in the adjudication of Sexual Misconduct. The decision regarding the composition of the Appellate Panel will be made at the discretion of the Title IX Coordinator. In considering the appeal, the Appellate Panel will be given the appeal, the Investigation Report, and the Title IX Coordinator's Decision to review.

There are only two grounds on which the Title IX Coordinator's Decision can be appealed:

1. Procedural Error: The Appellant alleges there was a deviation or change from the procedures outlined in the Sexual Misconduct Adjudication Process which adversely impacted the outcome of the matter. If the Appellate Panel determines that there was a procedural error which could have altered the outcome of the case, the matter will be remanded to the Title IX Coordinator for a determination regarding the impact of the procedural error on the outcome of the complaint.
2. New Evidence: The Appellant alleges that, after the issuing of the Title IX Coordinator's Decision, new evidence became available which would have impacted the outcome of the

disciplinary complaint. The Appellant must: (i) present the new evidence; (ii) show why it was unavailable prior to the Title IX Coordinator's Decision; and (iii) show that the new evidence could have altered the outcome of the complaint. The opposing party will be given an opportunity to rebut these assertions by the Appellant. If the Appellate Panel determines that there is evidence that meets these requirements, it will remand the matter to the Title IX Coordinator for investigation and review in light of the new evidence.

The written appeal must specifically state the grounds under which the appeal has been filed and must be submitted within the **five (5) business day** time limit after their meeting with the Title IX Coordinator. The appeal must set forth the information/evidence to support the appeal. Appeals that do not comply with these requirements will not be considered. The appeal is not an opportunity to argue that the initial decision was wrong. The appeal is not a new fact-finding process.

G. Conclusion of the Case

1. Document Retention: After the Panel's Decision has been issued, and after all appeals by the parties have been exhausted, all materials created by or reviewed by the Title IX Coordinator and/or the Title IX Deputy Coordinators assigned as Investigators will be maintained by the University and for purposes of Title IX Compliance in accordance with retention policies.