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# Sexual Misconduct Policy & Procedures

August 2022

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# **TEXAS STATE UNIVERSITY SYSTEM SEXUAL MISCONDUCT POLICY AND PROCEDURES**

## **1. Introduction**

- 1.1. **Institutional Values.** The Texas State University System (TSUS), its colleges, and universities (collectively referred to as “System” and/or “Components” and used interchangeably herein) are committed to creating and maintaining educational communities in which each individual is respected, appreciated, and valued. The System’s focus on tolerance, openness, and respect is key in providing every member of the TSUS community with basic human dignity free from all forms of Sexual Misconduct, including Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking. Any report of behavior that threatens our institutional values and breaches this Policy shall be promptly investigated and remediated in accordance with principles of law, fairness, and equity to all Parties involved.
- 1.2. **Purpose of Policy.** The purpose of this Policy is to ensure that:
  - 1.2.1. Sexual Misconduct is not tolerated on any System property or in any System Education Program or Activity;
  - 1.2.2. System offices and Components maintain an environment that promotes prompt reporting of all forms of Sexual Misconduct and the timely and fair resolution of Sexual Misconduct Complaints or Reports;
  - 1.2.3. Components take prompt and appropriate action to eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects;
  - 1.2.4. System offices and Components comply with all applicable federal and state laws regarding Sexual Misconduct – including sexual discrimination – in higher education; and,
  - 1.2.5. The System and Components have a uniform Policy that defines and describes prohibited sexual conduct, establishes procedures for processing Complaints or Reports of Sexual Misconduct, permits appropriate sanctions, and identifies available resources.
- 1.3. **Notice of Sexual Misconduct Violations.** Sexual Misconduct as

defined in the Glossary constitutes a violation of this Policy. Students and Employees reported as having engaged in Sexual Misconduct are subject to investigation for violating this Policy. Should an investigation result in a Finding that this Policy was violated, the violator may be subject to sanctions as defined herein.

- 1.4. **Applicability of this Policy.** This Policy applies to all students, faculty, staff, and Third Parties within the System or its Components' Education Programs or Activities and prohibits Sexual Misconduct, as defined in the Glossary, committed by or against students, faculty, staff, or Third Parties.
  - 1.4.1. This Policy applies to:
    - All incidents of Sexual Misconduct (including Title IX Sexual Harassment and Non-Title IX Sexual Misconduct) occurring on or after the effective date of this Policy; and
    - All incidents of Title IX Sexual Harassment, regardless of when they occurred or were reported.
  - 1.4.2. All incidents of Non-Title IX Sexual Misconduct occurring prior to the effective date of this Policy, regardless of when such allegations are reported, are controlled by the Policy in effect at the time the incidents occurred.
    - 1.4.2.1. Incidents of Non-Title IX Sexual Misconduct occurring over a period of time are controlled by the Policy in effect at the time the last incident occurred.
- 1.5. **Supersedes Existing Policies.** In the case of allegations of Sexual Misconduct, this Policy supersedes any conflicting Sexual Misconduct procedures and policies set forth in other Component policies.
- 1.6. **Equal Access.** Each Component shall ensure, to the greatest extent practicable, equal access for Students enrolled at or Employees of the institution who are persons with disabilities. The Component shall make reasonable efforts to consult with a disability services office of the Component, advocacy groups for people with disabilities, and other relevant stakeholders to assist the Component with complying with the Component's duties under this Policy.
- 1.7. **First Amendment Rights.** Freedom of speech and principles of academic freedom are central to the mission of institutions of higher

- education. Constitutionally protected expression cannot be considered Sexual Misconduct under this Policy.
- 1.8. Biennial Policy Review. This Policy shall be reviewed each biennium and, with approval of the System's governing board, shall be revised as necessary.
  - 1.9. Notice of Non-Discrimination. The System complies with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in Education Programs or Activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; Campus Sexual Violence Elimination Act (SaVe); Violence Against Women Act (VAWA); and the Clery Act. Sexual Misconduct constitutes a form of sex discrimination prohibited by Title IX and Title VII.
  - 1.10. Extent of Authority. This Policy applies to all incidents of Sexual Misconduct. However, provisions of the Policy that do not apply to Title IX Sexual Harassment are so indicated, as are provisions of the Policy that are exclusive to Title IX Sexual Harassment.
  - 1.11. Employment at Will. Nothing herein to the contrary shall be construed in derogation of the Texas State University System Board of Regents' employment-at-will policy.

## **2. Definitions**

A Glossary with definitions of Title IX and Non-Title IX-related offenses and other terms used in this Policy is attached.

## **3. Provisions Applicable to the Title IX Sexual Harassment & Non-Title IX Sexual Misconduct Grievance Processes**

- 3.1. Equitable Treatment. A Component's response to an allegation of Sexual Misconduct must treat Complainants and Respondents equitably by offering Supportive Measures to Complainants and Respondents, and by following a grievance process as described herein against a Respondent prior to the imposition of any disciplinary sanctions or other actions that are not Supportive Measures.
- 3.2. Standard of Evidence.

- 3.2.1. Presumption of Non-Responsibility. Any person accused of Sexual Misconduct under this Policy is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- 3.2.2. Preponderance of the Evidence Standard. The Decision Maker will weigh the admissible evidence using the preponderance of the evidence standard.
- 3.3. Conflicts of Interest. Any individual designated by a Component as a Title IX Coordinator, Investigator, Decision Maker, Informal Resolution Facilitator, Appellate Authority, or Campus Administrator may not have a conflict of interest or bias for or against Complainants or Respondents generally, or against an individual Complainant or Respondent. The Title IX Coordinator shall not serve as Decision Maker, Informal Resolution Facilitator, or Appellate Authority.
- 3.4. Promptness. The Component shall make every reasonable effort to ensure that the resolution of a Sexual Misconduct Complaint or Report occurs in as efficient a manner as possible, with an expectation that the process (exclusive of any appeal procedures) will generally be completed within one hundred and twenty (120) calendar days of the date a Complaint or Report is submitted.
- 3.5. Modification of Deadlines. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary to accomplish the purposes stated and for good cause, including, but not limited to, complexity of the investigation and to accommodate semester breaks.
- 3.6. Immunity/Amnesty. Reporting, investigating, and adjudicating incidents of Sexual Misconduct is of paramount importance. The Component does not condone underage drinking, illegal use of drugs, or other criminal behavior. However, the Component will not take any disciplinary action for prohibited conduct in relation to or concurrently with an incident of Sexual Misconduct, against a person who is enrolled with or employed by the Component for any violation of the Component's applicable code of conduct, provided:
  - 3.6.1. the person acts in good faith;
  - 3.6.2. the violation of the code of conduct arises out of the same facts or circumstances as a Complaint or Report of Sexual Misconduct;

- 3.6.3. the violation of the code of conduct is not punishable by suspension or expulsion; and,
  - 3.6.4. the person is not reporting his or her own commission or assistance in the commission of Sexual Misconduct.
- 3.7. **Prohibition on Providing False Information.** Any individual who knowingly makes a false Complaint or Report under this Policy, or knowingly provides false information to Component officials, or who intentionally misleads Component officials who are involved in the investigation or resolution of a Complaint or Report shall be subject to disciplinary action. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by Section 3.14 herein. A determination regarding responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.
- 3.8. **Supportive Measures (Including Immediate and Appropriate Corrective Action.**
- 3.8.1. **Generally.** When an incident of Sexual Misconduct is reported, the Component will consider Supportive Measures while the incident is investigated and adjudicated. The determination of appropriate Supportive Measures in a given situation must be based on the facts and circumstances of that situation. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures, and the duration of such measures. Supportive Measures may include, but are not limited to:
    - 3.8.1.1. Counseling provided by a counselor who does not provide counseling to any other person involved in the incident, including a person who reports an incident of Sexual Misconduct, as long as the Component employs a sufficient number of counselors;
    - 3.8.1.2. extensions of deadlines or other course-related adjustments;
    - 3.8.1.3. without any academic penalty, modifications of work or class schedules or assignments, including the option of dropping a course in which both

- Parties are enrolled;
- 3.8.1.4. campus escort or transportation services;
  - 3.8.1.5. mutual restrictions on contact between the Parties;
  - 3.8.1.6. changes in work or housing locations;
  - 3.8.1.7. leaves of absence;
  - 3.8.1.8. restrictions from specific activities or facilities; and,
  - 3.8.1.9. increased security and monitoring of certain areas of the campus.
- 3.8.2. **Orders of Protection.** The Component will honor any order of protection, no contact order, restraining order or similar lawful order issued by any criminal, civil, or tribal court.
- 3.8.3. **Confidentiality of Supportive Measures.** The Component shall maintain as confidential any measures provided to the Complainant and/or Respondent, to the extent allowed by law and to the extent that maintaining such confidentiality will not impair the ability to provide the measures.
- 3.8.4. **Emergency Removal.** Emergency removal of an Employee or Student prior to a final decision in a Sexual Misconduct matter must comply with System Rules and Regulations Chapters IV § 2.2(14), V § 2.131, and VI § 5.(14). A Component may remove a Respondent from the Component's Education Program or Activity on an emergency basis, provided that the Component 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. The removal challenge does not require a hearing and the burden is on the Respondent to show why the removal should be rescinded.
- 3.8.5. **Administrative Leave.** Nothing herein precludes a Component from placing a non-student employee Respondent on administrative leave with or without pay during the pendency of the grievance or any judicial process.

- 3.8.6. **Supportive Measures when Anonymity is Required.** The Component's inability to take disciplinary action against an alleged Respondent because of a Complainant's insistence on anonymity will not restrict the Component's ability to provide appropriate measures for the reasonable safety of the Component community.
- 3.8.7. **Unreasonable Burden.** Supportive Measures may not impose an unreasonable burden on the other Party.
- 3.8.8. **Failure to Adhere to Supportive Measures.** Failure to adhere to the parameters of any Supportive Measures may be considered a separate violation of this Policy and may result in disciplinary sanctions.

### 3.9. **Informal Resolution**

- 3.9.1. **Eligibility for Informal Resolution.** Informal Resolution is available after a Formal Complaint has been filed in a Title IX Sexual Harassment incident or a Report has been received in a Non-Title IX Sexual Misconduct incident. Informal Resolution may be pursued if:
  - 3.9.1.1. both Parties are willing to engage in Informal Resolution and consent to do so in writing;
  - 3.9.1.2. the Complainant and the Respondent are both Students or are both Employees of the Component;
  - 3.9.1.3. the Title IX Coordinator agrees that Informal Resolution is an appropriate mechanism for resolving the Complaint; and
  - 3.9.1.4. the Component provides written notice to the Parties in accordance with Section 3.9.2.1.
- 3.9.2. **Informal Resolution Procedures.**
  - 3.9.2.1. **Notice.** The Title IX Coordinator shall provide written notice to the Parties of the availability of informal resolution, including:
    - 3.9.2.1.1. the allegations;
    - 3.9.2.1.2. the requirements of the informal resolution process, including the circumstances under which the Parties

are precluded from resuming a Formal Complaint arising from the same allegations;

- 3.9.2.1.3. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and,
- 3.9.2.1.4. the Parties' right to withdraw consent to informal resolution at any time prior to reaching an agreement, and resume the grievance process.
- 3.9.2.2. **Scheduling**. When a Sexual Misconduct Complaint or Report meets the requirements for informal resolution, the Title IX Coordinator will make the requisite arrangements. Informal resolution may take place at any point in the grievance process after a Formal Complaint is filed and any time prior to reaching a determination regarding responsibility.
- 3.9.2.3. **Referral for Investigation**. The Title IX Coordinator will terminate informal resolution and continue the investigation if:
  - 3.9.2.3.1. The Parties are not able to reach an agreement prior to the exhaustion of the administrative process,
  - 3.9.2.3.2. One or more of the Parties withdraws consent to informal resolution, or,
  - 3.9.2.3.3. Title IX Coordinator determines that informal resolution is no longer appropriate.
- 3.9.2.4. **Agreements**. Informal resolutions will be reduced to writing, and signed by both Parties. Agreements will be maintained by the Title IX Coordinator and disclosed only as necessary to implement the provisions of the agreed resolution or as required by law.

- 3.9.2.5. **No Waiver**. A Component may 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 Misconduct consistent with this Policy.
  - 3.9.2.6. **No Recording and no use of statements**. No recording of the informal resolution will be made and all statements made during the informal resolution process may not be used for or against either Party should the Parties be unable to reach an informal resolution and resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.
- 3.10. **Withholding of Transcript**. The Component may not issue a transcript to a student Respondent until the institution makes a final determination of responsibility.
  - 3.11. **Remedies**. Remedies for a Finding of a violation of this Policy must be designed to restore or preserve equal access to the Component's Education Program or Activity to the Complainant. Such remedies may include the same individualized services described in Section 3.8 as "Supportive Measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
    - 3.11.1. The Title IX Coordinator is responsible for the effective implementation of remedies.
    - 3.11.2. Any remedy that does not directly affect the Respondent must not be disclosed to the Respondent.
  - 3.12. **Sanctions**. Sanctions for a Finding of a Policy violation will depend upon the nature and gravity of the misconduct and/or any record of prior discipline for Sexual Misconduct. Sanctions include, but are not limited to, the following:
    - 3.12.1. **Students**
      - 3.12.1.1. no-contact orders;

- 3.12.1.2. probation (including disciplinary and academic probation);
  - 3.12.1.3. expulsion from campus housing;
  - 3.12.1.4. restricted access to activities or facilities;
  - 3.12.1.5. mandated counseling (this may include, but not be limited to education programs and batterer intervention);
  - 3.12.1.6. disqualification from student employment positions;
  - 3.12.1.7. revocation of admission and/or degree;
  - 3.12.1.8. withholding of official transcript or degree;
  - 3.12.1.9. bar against readmission;
  - 3.12.1.10. monetary restitution;
  - 3.12.1.11. withdrawing from a course with a grade of W, F, or WF;
  - 3.12.1.12. relevant training;
  - 3.12.1.13. suspension;
  - 3.12.1.14. deferred suspension
  - 3.12.1.15. written warning; or
  - 3.12.1.16. expulsion.
- 3.12.2. Employees
- 3.12.2.1. withholding a promotion or pay increase;
  - 3.12.2.2. reassigning employment, including, but not limited to demotion in rank;
  - 3.12.2.3. terminating employment;
  - 3.12.2.4. barring future employment from System or Component;
  - 3.12.2.5. temporary suspension without pay;
  - 3.12.2.6. compensation adjustments;
  - 3.12.2.7. no-contact orders;
  - 3.12.2.8. relevant training; or,

- 3.12.2.9. recommendation to revoke tenure.
- 3.13. **Notification of Finding to Postsecondary Institutions.** On request by another postsecondary educational institution, a Component shall provide to the requesting institution information relating to a determination by the Component that a student enrolled at the Component violated this Policy.
- 3.14. **Retaliation.** No Component or 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 Complaint or Report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Any person, who believes that she or he has been subjected to Retaliation, should immediately report this concern to the Title IX Coordinator.

**3.14.1. By the Component**

- 3.14.1.1. A Component may not discipline or discriminate against an employee who in good faith makes a Report of Sexual Misconduct as required by this Policy.
- 3.14.1.2. Subsection 3.14.1.1 does not apply to an employee who perpetrates or assists in perpetrating an incident of Sexual Misconduct.
- 3.14.2. **By Others.** The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

**3.15. Confidentiality**

- 3.15.1. The identity of the following individuals is confidential and not subject to disclosure under the Texas Public Information Act, unless such individual(s) waive nondisclosure in writing:
- 3.15.1.1. an alleged victim of an incident of Sexual Misconduct;
- 3.15.1.2. a person who reports an incident of Sexual Misconduct;

- 3.15.1.3. a person who sought guidance from the Component concerning such an incident;
  - 3.15.1.4. a person who participated in the Component's investigation of such an incident; or,
  - 3.15.1.5. a person who is alleged to have committed or assisted in the commission of Sexual Misconduct, provided that after completion of the investigation, the Component determines the Complaint or Report to be unsubstantiated or without merit.
- 3.15.2. The identity of the individual(s) referenced in Section 3.15.1 may only be disclosed to the following:
- 3.15.2.1. a Component, as necessary to conduct an investigation and resolution of the investigation;
  - 3.15.2.2. the person or persons alleged to have perpetrated the incident of Sexual Misconduct defined in this Policy, to the extent required by other law;
  - 3.15.2.3. a law enforcement officer, as necessary to conduct a criminal investigation;
  - 3.15.2.4. potential witnesses to the incident, as necessary to conduct an investigation; or,
  - 3.15.2.5. a health care provider in an emergency situation, as determined necessary by the Component.
- 3.15.3. Information reported to a health care provider or other medical provider employed by a Component is confidential, and may be shared by the provider only with the Complainant's consent. The provider must provide aggregate data or other non-identifying information regarding incidents of Sexual Misconduct to the Component's Title IX Coordinator.
- 3.15.4. Breaches of confidentiality or privacy committed by Employees receiving a Complaint or Report of alleged Sexual Misconduct or investigating the Report of alleged

Sexual Misconduct may result in disciplinary sanctions.

- 3.15.5. Release of information to the individuals referenced in Section 3.15.2 shall not be construed as a voluntary disclosure for purposes of the Texas Public Information Act.
- 3.15.6. If there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.

#### **4. Reporting Incidents of Sexual Misconduct**

- 4.1. General Information. Each Component will identify and provide complete contact information for their Title IX Coordinator and all Deputy Coordinators in various locations, including but not limited to the Component's website; the Student's handbook; the Dean of Students Office; Human Resources; and Campus Police or Security; or their equivalents. Once a Complaint or Report of Sexual Misconduct is received by the Component, the Title IX Coordinator will determine the appropriate grievance process for resolution.
- 4.2. Victim Reporting Options. Although a victim of Sexual Misconduct may decline to report the incident, the Component supports, encourages, and will assist those who have been the victim of Sexual Misconduct to report the incident to any of the sources below. The alleged victim may use a pseudonym form when making a report to a law enforcement agency.
  - 4.2.1. Title IX Coordinator. Any incident of Sexual Misconduct may be brought to the attention of the Title IX Coordinator. The Title IX Coordinator will discuss with the reporting Party the options for:
    - 4.2.1.1. Filing a Formal Complaint of a Title IX Sexual Harassment incident, if applicable; or,
    - 4.2.1.2. Filing a Report of a Non-Title IX Sexual Misconduct incident, if applicable.
  - 4.2.2. Responsible Employee. An individual may report alleged Sexual Misconduct to a Responsible Employee.

- 4.2.3. Official with Authority. An individual may report alleged Sexual Misconduct to an Official with Authority. A Report to an Official with Authority will impose Actual Knowledge on the Component provided the reported incident of Sexual Misconduct meets the definition of Title IX Sexual Harassment. Each Component will identify and provide contact information of the Official with Authority in various locations, including but not limited to the Component's website and the applicable online handbooks.
- 4.2.4. Component Police or Security. An individual may report an incident of Sexual Misconduct to the Component police or security. Although the Component strongly encourages reporting Sexual Misconduct to the police, a victim may request administrative action by the Component with or without filing a police report. Filing a police report does not obligate the victim to continue with criminal proceedings or Component disciplinary action. Components shall provide to the victim the contact information for the campus police or security personnel.
- 4.2.5. Campus Security Authority. A Report of Sexual Misconduct may be made to a Campus Security Authority (CSA) as defined in each Component's Annual Security Report. All CSAs will promptly inform the Title IX Coordinator of the Complaint or Report and comply with all other reporting obligations required by the Clery Act.
- 4.2.6. Local Law Enforcement. An individual may, but is not required to, report an incident of Sexual Misconduct directly with local law enforcement agencies. At the victim's request, the Component will assist the victim with reporting the incident of Sexual Misconduct to law enforcement.
- 4.2.7. Electronic Reporting. Each Component shall provide an option for electronic reporting of an incident of Sexual Misconduct. The electronic reporting option must:
  - 4.2.7.1. enable an individual to report the

- alleged offense anonymously; and
- 4.2.7.2. be easily accessible through a clearly identifiable link on the Component's internet website home page. (For more information on anonymity, see Section 4.2.8 and Section 4.8.)
- 4.2.8. Anonymous Reports. Individuals who chose to file anonymous reports are advised that:
- 4.2.8.1. it may be very difficult, and in some cases, not possible for the Component to investigate an anonymous Report; and
- 4.2.8.2. filing a Report is not necessary in order to secure Supportive Measures through the Component.
- 4.3. Preservation of Evidence. Preservation of evidence is critical in incidents of Sexual Misconduct. If you experience sexual violence, you are encouraged to seek immediate medical care. Also, preserving DNA evidence can be key to identifying the perpetrator in a sexual violence case. Victims can undergo a medical 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 may have a Sexual Assault Forensic Exam (SAFE) performed by a Sexual Assault Nurse Examiner (SANE) within 4 days of the incident. With the victim's consent, the physical evidence collected during this medical exam can be used in a criminal investigation; however, a person may undergo a SAFE even without contacting, or intending to contact, the police. To undergo a SAFE, go directly to the emergency department of the nearest hospital that provides SAFE services.
- 4.4. Employee Mandatory Reporting. A Responsible Employee who has knowledge of Sexual Misconduct must report promptly to the Title IX Coordinator all relevant details known to the Employee about the alleged Sexual Misconduct shared by the Complainant or Reporting Party. A Responsible Employee must share all information relevant to the investigation, and if applicable, redress of the incident, including whether the Complainant has expressed a desire for confidentiality in reporting the incident.

- 4.4.1. Before a Complainant reveals any information to a Responsible Employee, the Employee should inform the Complainant of the Employee's reporting obligations. If the Complainant requests anonymity and confidentiality, the Employee should refer the Complainant to Confidential Employees. A Responsible Employee may not honor a request for anonymity or confidentiality.
- 4.4.2. A Responsible Employee should not share information with law enforcement without the Complainant's consent, unless the Complainant has also reported the incident to law enforcement.
- 4.4.3. If the Complainant reports an incident to the Responsible Employee and requests confidentiality or no investigation, the Employee should tell the Complainant that the Component will consider the request, but cannot guarantee that the Component will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the Responsible Employee will inform the Title IX Coordinator of the Complainant's request for confidentiality or no investigation.
- 4.4.4. A Responsible Employee will promptly report to the Title IX Coordinator all incidents of Sexual Misconduct, provided:
  - 4.4.4.1. the employee is in the course and scope of employment at the time the employee witnesses or receives information regarding the occurrence of Sexual Misconduct;
  - 4.4.4.2. the employee reasonably believes the incident constitutes Sexual Misconduct; and,
  - 4.4.4.3. the incident of Sexual Misconduct was committed either by or against an enrolled Student or an Employee of the Component at the time of the Sexual Misconduct.
- 4.4.5. A Component may expand, but shall not narrow, the reporting obligations of Responsible Employees under this subsection.
  - 4.4.5.1. A Component that expands the reporting

obligations of a Responsible Employee shall inform such Responsible Employees of their mandatory reporting obligations.

- 4.5. **Termination for Failure to Report or Making a False Report.** A Component shall terminate an Employee it determines to have either:
  - 4.5.1. 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
  - 4.5.2. knowingly made a false Report of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking with intent to harm or deceive.
- 4.6. **No Report Required.** An Employee is not required to report an incident of Sexual Misconduct to the Title IX Coordinator if:
  - 4.6.1. the Employee was the victim of such conduct; or,
  - 4.6.2. the Employee received information due to a disclosure made at a public awareness event sponsored by a Component or by a Student organization affiliated with the Component.
- 4.7. **Confidential Employees.** Each Component will identify and provide contact information for Confidential Employees in various locations, including but not limited to the Component's website and appropriate online handbooks. These Confidential Employees will assist in a crisis and provide information about possible resources, some of which may include law enforcement, medical assistance, psychological counseling, victim advocacy assistance, legal assistance, Component disciplinary action, immigration services, and criminal prosecution. Training for Confidential Employees may be through their professional organizations, if any, or through the Title IX Coordinator.
  - 4.7.1. A Confidential Employee who receives information about an incident of Sexual Misconduct shall report to the Title IX Coordinator only the type of incident reported.
  - 4.7.2. A Confidential Employee shall also provide such information to the Component's Clery Act Coordinator for purposes of the Component's Annual Security Report.
- 4.8. **Request for Anonymity by Complainant.**

- 4.8.1. When considering reporting options, Complainants should be aware that Confidential Employees are permitted to honor a request for anonymity and can maintain confidentiality.
- 4.8.2. With the exception of Confidential Employees, Component personnel have mandatory reporting and response obligations, regardless of the Complainant's request for anonymity or confidentiality.
- 4.8.3. The Complaint or Report shall be used as an anonymous Report for data collection purposes under the Clery Act.

## **5. Classifying Sexual Misconduct Matters, Possible Dismissals, and Transfers**

- 5.1. **Title IX Coordinator's Role in Classifying Sexual Misconduct.** The Title IX Coordinator shall review all allegations of Sexual Misconduct to determine if the allegation will be classified as Title IX Sexual Harassment or Non-Title IX Sexual Misconduct at any point during the grievance process.
- 5.2. **Title IX Sexual Harassment.** Allegations of Sexual Misconduct shall be classified as Title IX Sexual Harassment provided:
  - 5.2.1. the Sexual Misconduct meets the definition of Title IX Sexual Harassment;
  - 5.2.2. the Sexual Misconduct occurred against a person participating in or attempting to participate in a Component's Education Program or Activity; and,
  - 5.2.3. the Sexual Misconduct occurred against a person located within the United States.
- 5.3. **Non-Title IX Sexual Misconduct.** Sexual Misconduct that does not meet all the requirements in Section 5.2 does not constitute Title IX Sexual Harassment and shall be classified as Non-Title IX Sexual Misconduct.
- 5.4. **Mandatory Dismissal of Formal Complaint.** If a Formal Complaint has been submitted by a Complainant and the Sexual Misconduct described in the Formal Complaint does not meet all the requirements in Section 5.2, the Title IX Coordinator shall dismiss the Formal Complaint for purposes of the Title IX Sexual

Harassment process.

- 5.4.1. If a Formal Complaint is dismissed for failing to meet the requirements in Section 5.2, a Component may address such Non-Title IX Sexual Misconduct through the Non-Title IX Sexual Misconduct provisions of this Policy.
  - 5.4.2. If the allegation does not meet the definition of Sexual Misconduct, the Component may address the misconduct through the applicable code of conduct process.
- 5.5. Permissive Dismissal of Formal Complaint and/or Transfer to Alternative Disciplinary Process.
- 5.5.1. A Component may, but is not required to, dismiss a Formal Complaint or any allegations therein, if at any time during the Title IX Sexual Harassment investigation or live hearing:
    - 5.5.1.1. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
    - 5.5.1.2. if the Respondent is no longer enrolled or employed by the Component; or,
    - 5.5.1.3. specific circumstances prevent the Component from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
  - 5.5.2. Any matter permissively dismissed by the Component may require transfer to the Non-Title IX Sexual Misconduct process. Prior to dismissal, the Title IX Coordinator must determine whether the allegations, if proven, mandate transfer to an alternative disciplinary process. Component shall expedite the disciplinary process, as necessary, to accommodate both Parties' interests in a speedy resolution.
    - 5.5.2.1. If a Student withdraws or graduates from a Component pending a disciplinary charge

alleging that the Student violated this Policy, the Component may not end the disciplinary process or issue a transcript to the student until the Component makes a final determination of responsibility.

- 5.5.2.2. On request by another postsecondary educational institution, a Component shall provide to the requesting institution information relating to a determination by the Component that a student enrolled at the Component violated this Policy.

**5.6. Permissive Dismissal of Non-Title IX Sexual Misconduct Allegations and/or Transfer to Alternative Disciplinary Process.**

- 5.6.1. A Component may, but is not required to, dismiss a report or any allegations therein, if at any time during the investigation or hearing:
- 5.6.1.1. a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Report or any allegations therein; or,
- 5.6.1.2. specific circumstances prevent the Component from gathering evidence sufficient to reach a determination as to the Report or allegations therein.
- 5.6.2. Any matter permissively dismissed by the Component may require transfer to an alternative disciplinary process. Prior to dismissal, the Title IX Coordinator must determine whether the allegations, if proved, mandate such a transfer.
- 5.7. **Notice of Dismissal.** Upon a dismissal required or permitted under this Policy, the Component must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the Parties, including information regarding the procedures for appealing the dismissal.

## **6. Title IX Coordinator's Role during Pre-investigation of Sexual Misconduct.**

- 6.1. **Receipt of Allegation.** Upon receipt of an allegation of Sexual Misconduct, the Title IX Coordinator shall:
  - 6.1.1. promptly contact the Complainant to discuss the availability of Supportive Measures, Complainant's wishes with respect to Supportive Measures, and the availability of Supportive Measures with or without the filing of a Formal Complaint or Report;
  - 6.1.2. explain to the Complainant the process for filing a Formal Complaint or Report;
  - 6.1.3. provide an electronic and/or hard copy of this Policy which explains the process and rights of all Parties;
  - 6.1.4. request additional information regarding the reported incident;
  - 6.1.5. explain the investigatory process;
  - 6.1.6. explain the options for reporting to law enforcement authorities, whether on campus or local police;
  - 6.1.7. discuss Complainant's request for anonymity and confidentiality, if such has been requested, and explain that confidentiality may impact the Component's ability to investigate fully;
  - 6.1.8. discuss the Parties' consent to release and share documents and/or the need for non-disclosure agreements;
  - 6.1.9. determine whether the Complainant wishes to pursue informal resolution; and,
  - 6.1.10. refer the Complainant, as appropriate, to the counseling center or other resources, including but are not limited to, law enforcement, medical assistance, psychological counseling, victim advocacy resources, legal resources, student financial aid, alternative disciplinary processes, and visa and immigration assistance.

### **6.2. Complainant's Request Not to Investigate an Incident of Sexual**

**Misconduct.** If the Complainant does not wish to have an incident of Sexual Misconduct investigated, the Title IX Coordinator shall discuss this request with Complainant before the Title IX Coordinator makes a decision on whether to proceed with the investigation.

- 6.2.1. In deciding whether to proceed with such an investigation, the Title IX Coordinator will make an individualized assessment, taking into account the Complainant's wishes not to proceed as well as other relevant factors including, but not limited to:
    - 6.2.1.1. the seriousness of the alleged conduct;
    - 6.2.1.2. whether violence or weapons were involved;
    - 6.2.1.3. the age of the victim;
    - 6.2.1.4. whether other Complaints or Reports have been made against the alleged Respondent; and,
    - 6.2.1.5. whether the alleged incident poses a risk of harm to others.
  - 6.2.2. The Component may investigate the alleged incident of Sexual Misconduct in a manner that complies with the applicable confidentiality provisions in this Policy.
  - 6.2.3. If a Component decides not to investigate, the Component shall take any steps it determines necessary to protect the health and safety of its community in relation to the alleged incident.
  - 6.2.4. A Component shall inform a Complainant of its decision to either investigate or not investigate the allegations.
- 6.3. **Non-Title IX Sexual Misconduct.** Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment shall be classified as Non-Title IX Sexual Misconduct. Non-Title IX Sexual Misconduct may be handled by the Title IX Coordinator's Office or an office or individual(s) the Component determines appropriate to address such Non-Title IX Sexual Misconduct.

## **7. Title IX Sexual Harassment Grievance Process**

- 7.1. **Filing a Formal Complaint.** Incidents of Sexual Misconduct should be reported as per Section 4 of this Policy. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator under this Policy and any additional method designated by the Component.
- 7.2. **Cases Initiated by the Title IX Coordinator.** If the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party.
- 7.3. **Notice of Allegations.** In response to a Formal Complaint the Component must give written notice of the allegations to the Parties. This notice must include:
  - 7.3.1. notice of the Component's grievance process, including informal resolution;
  - 7.3.2. sufficient details of the allegations known at the time;
  - 7.3.3. identities of the Parties involved;
  - 7.3.4. the conduct allegedly constituting Title IX Sexual Harassment;
  - 7.3.5. the date and location of the alleged incident;
  - 7.3.6. 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;
  - 7.3.7. that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney;
  - 7.3.8. that the Parties may inspect and review evidence gathered during the process;
  - 7.3.9. that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited; and,
  - 7.3.10. the availability of Supportive Measures to the Complainant and Respondent.
- 7.4. **Right to Advisor**
  - 7.4.1. Each Party may be accompanied by an Advisor of their

- choice to any related meeting, interview, or proceeding. The Advisor may be, but need not be, an attorney who may provide support, guidance, or advice to the Party. The Advisor may not otherwise directly participate in any meeting, interview, or proceeding except for the limited purpose of conducting cross- examination (as more fully explained in Section 7.11.3) at a live hearing, if any.
- 7.4.2. If a Party does not have an Advisor to conduct cross- examination at the live hearing, the Component will provide the Party with an Advisor, who need not be an attorney, for the limited purpose of conducting cross- examination at the live hearing.
- 7.4.3. Each Party's Advisor is requested to meet with the Title IX Coordinator to discuss hearing procedure and protocols prior to the live hearing, if any.
- 7.5. Informal Resolution. Informal Resolution of Formal Complaints shall be in accordance with Section 3.9 herein.
- 7.6. Consolidation of Complaints
- 7.6.1. A Component may consolidate Formal Complaints as to allegations involving the same circumstances.
- 7.6.2. A Component may consolidate Formal Complaints involving allegations 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 arise out of the same facts or circumstances.
- 7.7. Investigation
- 7.7.1. Scheduling. An assigned Investigator will provide written notice to a Party whose participation is invited or expected, of the date, time, location, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.
- 7.7.2. Information Gathering. Investigator will gather and review information from Complainant, Respondent, and Witnesses. Investigator shall conduct a site inspection, if necessary, and obtain other information as appropriate.
- 7.7.3. Equal Opportunity to Present Evidence and Witnesses. All

Parties will have equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence during the course of the investigation. A Component may not restrict the ability of either Party to discuss the allegations under investigation, or to gather and present relevant evidence.

- 7.7.4. **Burden on the Component.** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Component and not on the Parties. However, a Component cannot access, consider, disclose, or otherwise use a Party's Confidential Treatment Records, unless that Party consents to such access.
- 7.7.5. **Privileges.** The process must 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.
- 7.7.6. **Right to Inspect and Review Evidence Prior to Completion of the Investigation.** Once the assigned Investigator concludes all fact finding and evidence gathering activities, each Party and their respective Advisors must have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint, including the evidence upon which the Component 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 the conclusion of the investigation.
  - 7.7.6.1. Each Party and their Advisor will be sent such evidence in electronic format or hard copy. Each Party will have ten (10) calendar days from the date they are notified to inspect, review, and respond to the evidence.
  - 7.7.6.2. The written response of each Party, if any,

must be considered by the Investigator prior to completion of the Investigative Report.

- 7.8. **Investigative Report.** Investigator will complete a written Investigative Report that includes summaries of interviews conducted; photographs, if any; documents and materials received; descriptions of relevant evidence; summaries of relevant electronic records; and a detailed report of the events related to the incident. When Investigator is not the Title IX Coordinator, the Investigative Report will be submitted to the Title IX Coordinator to ensure all elements of the investigation have been completed. The Title IX Coordinator will forward the Investigative Report to the Decision Maker.
- 7.9. **Notice of Hearing.** Upon completion of the Investigative Report, the Title IX Coordinator will send the Notice of Hearing and the Investigative Report to all Parties and their Advisors. The Notice of Hearing and Investigative Report will be sent no less than ten (10) calendar days prior to the scheduled hearing to allow all Parties an opportunity for response.<sup>1</sup>
- 7.10. **Pre-Hearing Instructions.** The following items should be provided to the Decision Maker no later than three (3) calendar days prior to the date of hearing and apply equally to both Parties:
  - 7.10.1. any written response to the investigative Report;
  - 7.10.2. documents, or other evidence to be used at the hearing;
  - 7.10.3. the name of each witness who is to appear on that Party's behalf (witnesses not previously interviewed or identified may be allowed to testify only at the discretion of the Decision Maker); and,
  - 7.10.4. a list of initial questions and cross-examination questions for the opposing Party and any designated witness. Each Party, through their Advisor, will be permitted to conduct cross-examination even if written questions are not previously submitted by the Party.
- 7.11. **Live Hearings.** All investigations not dismissed pursuant to

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<sup>1</sup>*Component Charter Schools and the Sam Houston State University College of Osteopathic Medicine, Including SHSU Physicians. Pursuant to 34 C.F.R § 106.45(b)(6)(ii), a Formal Complaint filed (1) by or against a student of a Component charter (elementary and secondary) school, (2) by or against an employee or student of the Sam Houston State University College of Osteopathic Medicine, or (3) by or against an employee of SHSU Physicians will not utilize the live hearing process provided in this Policy. The Component Title IX Coordinator shall explain to the Parties and Advisors, if any, the process to be followed.*

Section 5.4 shall have a live hearing. The following are the participants at a live hearing:

- 7.11.1. **Decision Maker**. The Decision Maker determines the relevancy of all questions asked during the hearing, may ask questions of any witness or Party during the hearing, and ultimately issues the written decision of responsibility and sanction, if any, after the hearing. The Component's Title IX Coordinator or the Investigator who conducted the investigation or prepared the Investigative Report may not serve as Decision Maker.
  - 7.11.2. **Parties**. The Parties are the Complainant and Respondent. Each Party may give a statement, answer questions, present evidence, and witnesses, and cross-examine the other Party and witnesses through their Advisor.
  - 7.11.3. **Advisor**. Each Party is entitled to have an Advisor of their choice at the hearing. Each Party must have an Advisor to conduct cross-examination of the other Party and witnesses. An Advisor may, but is not required to be, an attorney. In addition to cross- examination, the Advisor may provide support, guidance, or advice to Complainant or Respondent, but may not otherwise directly participate in the hearing.
    - 7.11.3.1. If a Party does not have an Advisor, the Component will appoint an Advisor of the Component's choice, without fee or cost to the Party, for the limited purpose of conducting cross-examination, including questions challenging the Party or witness's credibility. A Component is not required to appoint an attorney as an Advisor.
  - 7.11.4. **Investigator**. The Investigator will be present at the hearing, and may answer questions from either Party about the investigation and the summary of evidence in the Investigative Report.
  - 7.11.5. **Title IX Coordinator**. The Title IX Coordinator may be present at the live hearing.
- 7.12. **Availability of Investigative Evidence**. The Component must make all

- 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.
- 7.13. Documents. Each Party shall have the opportunity to present relevant documents to the Decision Maker for consideration at the hearing. Only documents and other evidence pre-submitted in accordance with Section 7.10 will be considered.
- 7.14. Witnesses. Each Party shall have the opportunity to present fact and/or expert witnesses to the Decision Maker for consideration at the hearing.
- 7.15. Determination of Relevance of Questions. Only relevant questions may be asked of a Party or witness during the hearing. Before a Party or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant.
- 7.15.1. Questions concerning a Party's prior sexual behavior are not relevant unless offered to prove that someone other than the Respondent committed the alleged misconduct 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.
- 7.15.2. The Decision Maker will explain to the Party's Advisor why a question excluded is not relevant. The Decision Maker's relevancy decision is final and may only be challenged as a procedural defect on appeal, as provided in this Policy.
- 7.16. Live Cross-Examination (Directly, Orally, in real time). The cross-examination of a Party or witness must be conducted by the other Party's Advisor, orally, and in real time. A Party may not directly question the other Party or witness.
- 7.17. (Intentionally left blank.)
- 7.18. Alternative Hearing Locations. The hearing may be conducted with all Parties and witnesses physically present in the same geographic location or, at the Component's discretion, any or all Parties, witnesses, or other participants may appear at the hearing virtually. At the request of either Party, the Component shall provide for the entire hearing, including cross-examination, to occur with the Parties in separate rooms with technology that enables the Parties to see and

hear each other or the witness answering questions, at all times while the hearing is in session.

- 7.19. Recording of Hearing Proceedings. Component shall create an audio or audiovisual recording, or transcript, of any live hearing and make such recording or transcript available to the Parties for inspection and review.
- 7.20. Decision and Sanctions. Once the live hearing has concluded, the Decision Maker will issue a written determination, which shall be sent simultaneously to the Parties, along with information about how to appeal the determination. The contents of the decision will include:
  - 7.20.1. identification of the allegations potentially constituting Title IX Sexual Harassment;
  - 7.20.2. 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;
  - 7.20.3. findings of fact supporting the determination;
  - 7.20.4. conclusions regarding the application of this Policy to the facts;
  - 7.20.5. a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Component imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Component's Education Program or Activity will be provided by the Component to the Complainant;
  - 7.20.6. the Component's procedures and permissible bases for the Complainant and Respondent to appeal; and
  - 7.20.7. the identity and contact information of the appropriate Appellate Authority.
- 7.21. Appeals. Both Parties must be offered an appeal from a determination regarding responsibility, and from a dismissal of a Formal Complaint or any allegations therein.
  - 7.21.1. Grounds for Appeal. The only grounds for appeal are:

- 7.21.1.1. procedural irregularity, including a relevancy determination, that affected the outcome of the matter;
  - 7.21.1.2. 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;
  - 7.21.1.3. the Title IX Coordinator, Investigator, or Decision Maker 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; and,
  - 7.21.1.4. the Sanction is substantially disproportionate to the written decision.
- 7.21.2. Procedure for Appeal. Either Party may appeal a dismissal or Decision Maker's determination by filing a written request to appeal, with supporting information, with the appropriate Appellate Authority within ten (10) calendar days of issuance of the decision. If a Complainant or Respondent appeals, the Component must:
- 7.21.2.1. notify the other Party in writing within five (5) calendar days from when an appeal is filed and implement appeal procedures equally for both Parties;
  - 7.21.2.2. give the non-appealing Party seven (7) calendar days from when the Component notifies the non-appealing Party that an appeal has been filed to submit a written statement in support of, or challenging, the outcome, a copy of which will be provided to the appealing Party; and,
  - 7.21.2.3. issue a written decision, including the rationale therefor, simultaneously to both Parties within twenty-one (21) calendar days from the date the notice is issued. The decision of the Appellate Authority is final.

- 7.22. Implementation of Sanction. No sanction shall be implemented until the appeal, if any, has been concluded, or until the time for either Party to submit an appeal has elapsed.
- 7.23. Implementation of Remedies. Upon the issuance of the written determination and the conclusion of any appeal, if the Decision Maker determines remedies will be provided, the Title IX Coordinator will communicate with Complainant separately to discuss what remedies are appropriate to restore or preserve the Complainant's equal access to the Component's Education Program or Activity.

## 8. Non-Title IX Grievance Process

- 8.1. Filing a Report. Incidents of Sexual Misconduct should be reported as per Section 4 of this Policy. Although the Component strongly encourages reporting Sexual Misconduct to the police, the Complainant may request administrative action by the Component with or without filing a police report.
- 8.2. Notice of Allegations. In response to a Report the Component must give written notice of the allegations to the Parties. This notice must include:
  - 8.2.1. notice of the Component's grievance process, including informal resolution;
  - 8.2.2. sufficient details of the allegations known at the time;
  - 8.2.3. identities of the Parties involved;
  - 8.2.4. the conduct allegedly constituting Non-Title IX Sexual Misconduct;
  - 8.2.5. the date and location of the alleged incident;
  - 8.2.6. that the Parties may have an Advisor of their choice, who may be, but is not required to be, an attorney (the Component is not required to appoint an Advisor);
  - 8.2.7. that the Parties may inspect and review evidence gathered during the process;
  - 8.2.8. that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited; and,

- 8.2.9. the availability of Supportive Measures to the Complainant and Respondent.
- 8.3. **Investigation**
- 8.3.1. **Scheduling**. An assigned Investigator will provide written notice to a Party whose participation is invited or expected, of the date, time, location, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.
- 8.3.2. **Information Gathering**. Investigator will gather and review information from Complainant, Respondent, and Witnesses. Investigator shall conduct a site inspection, if necessary, and obtain other information as appropriate.
- 8.3.3. **Equal Opportunity to Present Evidence and Witnesses**. All Parties will have equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence during the course of the investigation. A Component may not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.
- 8.3.4. **Burden on the Component**. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the Component and not on the Parties. However, a Component cannot access, consider, disclose, or otherwise use a Party's Confidential Treatment Records, unless that Party consents to such access.
- 8.3.5. **Privileges**. The process must 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.
- 8.3.6. **Right to Inspect and Review Evidence Prior to Completion of the Investigation**. Once the assigned Investigator concludes all fact finding, and evidence gathering activities, each Party must have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the Report, including the evidence upon which the Component 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 the conclusion of the investigation.

- 8.3.6.1. Each Party will have ten (10) calendar days to inspect, review, and respond to the evidence.
  - 8.3.6.2. The written response of each Party, if any, must be considered by the Investigator prior to completion of the Investigative Report.
- 8.4. Investigative Report. The Investigator will complete a written Investigative Report that includes summaries of interviews conducted; photographs, if any; documents and materials received; descriptions of relevant evidence; summaries of relevant electronic records; and a detailed report of the events related to the incident. When Investigator is not the Title IX Coordinator, the Investigative Report will be submitted to the Title IX Coordinator.
- 8.5. Title IX Coordinator Finding and Recommended Sanction.
- 8.5.1. The Title IX Coordinator will make a written Finding as to whether:
    - 8.5.1.1. it is more likely than not that Respondent did not violate this Policy, or
    - 8.5.1.2. it is more likely than not that Respondent violated this Policy, and the nature of the violation(s).
  - 8.5.2. The Finding shall include the Title IX Coordinator's basis for the decision and recommended Sanctions when there is a Finding of a violation.
  - 8.5.3. Communication of the Finding and Recommended Sanctions.
    - 8.5.3.1. When there is a Finding of no violation of this Policy, the Title IX Coordinator will communicate the Finding in writing simultaneously to the Complainant and Respondent.
    - 8.5.3.2. When there is a Finding that it is more likely

than not that Respondent violated this Policy, the Title IX Coordinator will communicate the Finding in writing to the Component Administrator with authority to determine and issue appropriate Sanctions.

8.5.3.3. When there is a Finding of a violation by a Respondent employed by the Component, the Title IX Coordinator, in consultation with appropriate administrative officials, will provide the Finding to additional individuals, with supervisory authority over the employee, who are not in the line of appellate review.

8.6. **Sanction Decision.** The responsible Component Administrator will issue written Sanctions promptly and send such Sanctions with a copy of the Findings to the Complainant, Respondent, Title IX Coordinator, and when appropriate, additional individuals with supervisory authority over either Party that are not in line of appellate review. Component Administrator shall inform Complainant of any Sanction(s) imposed on Respondent that directly relates to Complainant.

8.7. **Administrators Responsible for Imposing Sanctions**

8.7.1. **Student Respondent Sanctions.** The Dean of Students will issue Sanctions for Students. When Respondent is both a Student and an Employee, the Title IX Coordinator will determine whether the Respondent's status is that of Student, staff, or faculty for disciplinary purposes. When Respondent's status is determined to be that of a Student employed by the Component, the Dean of Students will consult with the appropriate Human Resources authority prior to issuing Sanctions.

8.7.2. **Staff Respondents.** The Respondent's supervisor, or other authority within the Respondent's chain of command, will issue Sanctions in consultation with Human Resources.

8.7.3. **Faculty Respondents.** The Dean shall consult with the Department Chair as appropriate and issue Sanctions.

8.8. **Dispute of Findings and/or Sanctions.** Complainant or Respondent may elect to dispute the Finding and/or the Sanction. Review of

disputed Findings and/or Sanction(s) are based on the preponderance of evidence standard.

8.8.1. Students. Student Complainants or Respondents must submit a written request for a hearing to the Title IX Coordinator within seven (7) calendar days. Procedures for the hearing are outlined in the System Rules and Regulations, Chapter VI §§ 5.7-5.9, with exceptions as follows:

- 8.8.1.1. The Component Representative for hearings related to the Non-Title IX Sexual Misconduct shall be the Component's Title IX Coordinator;
- 8.8.1.2. The Title IX Coordinator is responsible for arranging the hearing by notifying the Parties of the hearing dates, the availability of documents to be used at the hearing, the witnesses expected to provide information at the hearing, as well as deadlines for submission of questions.
- 8.8.1.3. Each Party shall receive a copy of the written request for hearing and notice of the hearing, and has a right to be present.
  - 8.8.1.3.1. Neither Party shall be compelled to attend any hearing. The hearing may be conducted with all Parties and witnesses physically present in the same geographic location or, at the Component's discretion, any or all Parties, witnesses, or other participants may appear at the hearing virtually.
  - 8.8.1.3.2. At the request of either Party, the Component shall provide for the entire hearing to occur with the Parties in separate rooms with technology that enables the Parties to see and hear each other.
- 8.8.1.4. Complainant and Respondent may submit written questions for the other Party and any

witnesses to the Decision Maker. Such questions shall be submitted by the Parties in accordance with the deadline established. The Decision Maker will determine, and shall ask the questions relevant to the inquiry. Any individual participating as a Decision Maker may ask relevant questions of the Parties and/or witnesses. Relevant follow-up questions may be submitted to the Decision Maker during the hearing.

- 8.8.1.5. Hearing Decision. The Decision Maker may uphold, reject or modify the Finding(s) and Sanctions(s), or remand the matter to the Title IX Coordinator for further investigation and/or other action.
- 8.8.1.6. The Decision Maker shall issue a written, final Decision and shall provide a copy of the Decision to Complainant, Respondent, the Title IX Coordinator, and Dean of Students.

- 8.8.2. Staff. Complainants or Respondents may elect to dispute the Finding and/or Sanction as follows.

- 8.8.2.1. Any request for review of the Finding or Sanction against a staff member must be made in writing and submitted with all information in support of the request to the Chief Human Resources Officer, or his or her designee, within five (5) calendar days of receipt of the Finding or Sanction.
- 8.8.2.2. The Chief Human Resources Officer shall provide a copy of the materials submitted to the other Party, the Title IX Coordinator, and the Decision Maker within five (5) calendar days of receipt.
- 8.8.2.3. A Party who has not requested review, including the Component, may, but is not required to, submit a written response to the Decision Maker within five (5) calendar days of

- receiving the materials.
- 8.8.2.4. The Decision Maker may uphold, reject, modify, or remand the Decision. The Decision is final.
- 8.8.2.5. The Decision Maker will inform Complainant, Respondent, Title IX Coordinator, appropriate supervisor, and appropriate Campus Administrator of the Decision in writing.
- 8.8.3. Non-Tenured Faculty Dispute of Non-Reappointment or Termination After Expiration of Contract Period. Should the Sanction against a non-tenured faculty member result in the non-reappointment or termination of the faculty member after expiration of his/her contract period, faculty member may dispute the Findings and/or Sanctions as described herein. However, the faculty member is not entitled to a hearing.
- 8.8.3.1. No later than thirty (30) calendar days after the faculty member receives notice of the Finding and/or Sanction, he or she may request review from the President by submission of the grievance form prescribed by the Component together with any supporting materials.
- 8.8.3.2. The Component President shall designate a Hearing Officer to review.
- 8.8.3.3. The Hearing Officer shall provide a copy of the materials submitted to the other Party and the Title IX Coordinator within five (5) calendar days of appointment.
- 8.8.3.4. The Hearing Officer will meet with the faculty member at a mutually convenient time to review the dispute.
- 8.8.3.5. The Hearing Officer may secure any information the officer determines necessary to review the dispute.
- 8.8.3.6. The Hearing Officer shall make a written recommendation to the President to approve,

reject, modify, or remand the Finding and/or Sanction and shall provide a copy of the recommendation to the faculty member, the other Party, the Title IX Coordinator and Provost.

8.8.3.7. The Component President shall issue a written, final Decision and shall provide a copy of the Decision to the faculty member, the other Party, the Title IX Coordinator and the Provost.

8.8.4. Faculty Hearing. Tenured faculty receiving a Sanction that impacts the faculty member's continued employment, full-time salary (not including administrative positions or summer teaching) or demotion in rank or other faculty member whose employment is terminated prior to the end of his or her contract period may elect to dispute the Finding and/or the Sanction through a hearing. Hearing procedures are outlined in the System Rules and Regulations, Chapter V, § 4.54 with the following exceptions:

8.8.4.1. The role of the Decision Maker is to review the investigation and the appropriateness of the Sanction for significant procedural errors or omissions;

8.8.4.2. All notices and correspondence shall be sent to Complainant, Respondent, Title IX Coordinator, and Provost who shall be referred to as Required Parties for purposes of this section.

8.8.4.3. Within five (5) calendar days of receipt of the Finding and/or Sanction, the faculty member must file a written request for a due process hearing by submitting the request together with any materials for review to the Provost.

8.8.4.4. The other Party shall receive notice of the hearing and has a right to be present, but shall not be compelled to attend any hearing. Complainant, Respondent, or witness who does not want be in the same room as one of the

- Parties shall, upon advance request, be accommodated.
- 8.8.4.5. Complainant and Respondent may submit written questions for the other Party and any witnesses to the Decision Maker. Such questions shall be submitted by the Parties in accordance with the deadline established by the Decision Maker. The Decision Maker will determine, and shall ask, the questions relevant to the inquiry. Any individual participating as a Decision Maker may ask relevant questions of the Parties and/or witnesses. Relevant follow-up questions may be submitted to the Decision Maker during the hearing.
- 8.8.4.6. Complainant, Respondent, or Component may be assisted or represented by counsel.
- 8.8.4.7. The Decision Maker shall issue a written recommendation to approve, reject, modify, or remand the Finding and/or Sanction. The recommendation shall be forwarded to the President and Required Parties within five (5) calendar days of the hearing.
- 8.8.4.8. When a Finding of Sexual Misconduct is upheld, Sanctions listed herein shall be imposed. When the President finds substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation or determines there is insufficient evidence to support the recommended Finding, he or she may remand the matter to the Title IX Coordinator for further investigation and/or other action, or may reject the recommended Finding(s) or Sanction(s).
- 8.8.4.9. The President shall issue a written, final Decision and shall provide a copy of the Decision to the Required Parties.
- 8.8.5. Other Faculty Disputes. All other disputes of the Finding

- and/or Sanction against faculty shall follow the procedures for Staff stated herein.
- 8.8.6. Third Parties. Third Party Complainants or Respondents have no right to dispute or appeal Findings or Sanctions.
  - 8.8.7. Implementation of Sanction. No sanction shall be implemented until the appeal, if any, has been concluded, or until the time for either Party to submit an appeal has elapsed, unless, in the discretion of the Campus Administrator imposing the Sanction, good cause exists to implement the Sanction.
  - 8.8.8. Implementation of Remedies. Upon the issuance of the written determination, if the Decision Maker determines remedies will be provided, the Title IX Coordinator will communicate with Complainant separately to discuss what remedies are appropriate to restore or preserve the Complainant's equal access to the Component's Education Program or Activity.

## **9. Appeal of Non-Title IX Grievance Outcome**

- 9.1. Right to Appeal. If a student or faculty member Complainant or Respondent is dissatisfied with the determination of a hearing, either Party may appeal.
- 9.2. Grounds for Appeal. Grounds for appeal are limited to the following:
  - 9.2.1. Procedural irregularity that affected the outcome of the matter;
  - 9.2.2. 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;
  - 9.2.3. The Title IX Coordinator, Investigator, or Decision Maker 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;
  - 9.2.4. The Sanction is substantially disproportionate to the written decision.

9.3. Procedure for Student Appeals.

- 9.3.1. Appeals shall be made in writing and include the ground(s) for appeal. All information in support of the appeal must be included and submitted to the Chief Student Affairs Officer, or his or her designee (Appellate Authority), within five (5) calendar days of the hearing Decision.
  - 9.3.2. The Appellate Authority shall provide a copy of the appeal submission(s) to the other Party and the Title IX Coordinator within three (3) calendar days of receipt.
  - 9.3.3. The Party who has not filed an appeal, including the Component, may, but is not required to, submit a written response to the appeal within five (5) calendar days of receipt. The Appellate Authority shall provide a copy of the response, if any, to the other Party and the Title IX Coordinator within three (3) calendar days of receipt.
  - 9.3.4. The Appellate Authority may approve, reject, modify, or remand the Decision. The Appellate Authority shall issue a written Decision and shall provide a copy to Complainant, Respondent, Title IX Coordinator, and Dean of Students. The Appellate Authority's Decision is final.
- 9.4. Procedure for Faculty Appeals. Appeals of faculty hearings are governed by *System Rules and Regulations, Chapter V. § 4.56* with exceptions as follows:
- 9.4.1. A faculty member must submit a written appeal stating grounds with any supporting documentation to the System Administration Office within thirty (30) calendar days of receipt of the President's decision.
  - 9.4.2. The System Office shall provide a copy of the appeal concurrently with receipt to the non-appealing Party, the President, Title IX Coordinator, and additional individuals with supervisory authority over either Party.
  - 9.4.3. The President may submit a written response to the appeal within thirty (30) calendar days of receipt of the appeal from the System Office.
  - 9.4.4. The TSUS Board shall provide notice in writing of the reasons for its Decision simultaneously to the faculty

member, the non- appealing Party, the President, and Title IX Coordinator. The Decision of the Board is final.

9.5. **Modification of Deadlines.** The Appellate Authority may modify the deadlines contained in this section, as necessary to accomplish the purposes stated and for good cause, including, but not limited to, the complexity of the appeal, semester breaks and time-sensitive considerations.

## **10. Administrative Requirements**

10.1. **Component Website Requirements.** A Component shall create and maintain a web page dedicated solely to this Policy.

10.1.1. The web page shall be easily accessible through a clearly identifiable link on the Component's internet website home page.

10.1.2. The Component's internet website home page shall contain a clearly identifiable link to enable an individual to make an anonymous Report of an incident of Sexual Misconduct.

10.2. **Comprehensive Prevention & Outreach Program.** Components shall distribute the sexual misconduct policy to all students, faculty and staff annually. Each Component shall develop and implement a comprehensive prevention and outreach program on Sexual Misconduct. The comprehensive prevention and outreach program must address a range of strategies to prevent Sexual Misconduct. The program must also include a victim empowerment program, a public awareness campaign, primary prevention, bystander intervention and risk reduction strategies. The Component will engage in the risk reduction strategies outlined below to limit the risk of Sexual Misconduct for the campus community.

10.2.1. **Primary Prevention Training.** Primary prevention training programs shall be designed to promote awareness of sexual offenses, and to incorporate risk reduction strategies to enable community members to take a role in preventing and interrupting incidents of Sexual Misconduct.

10.2.1.1. The Component training will be based upon research and will be assessed periodically for effectiveness.

10.2.1.2. Specifically, training will include:

10.2.1.2.1. definitions of Sexual Misconduct

- offenses which are prohibited by the Component, as defined by applicable law;
- 10.2.1.2.2. definition of consent as defined by Texas law;
- 10.2.1.2.3. awareness and prevention of rape, acquaintance Rape, Sexual Harassment, Domestic Violence, Dating Violence, Sexual Assault, and Stalking;
- 10.2.1.2.4. risk reduction, such as recognition of warning signs of possible Sexual Misconduct, situational awareness, and safety planning;
- 10.2.1.2.5. bystander intervention, to encourage identification of situations that might lead to Sexual Misconduct, and promote safe intervention as a means to prevent the misconduct (bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene);
- 10.2.1.2.6. options for reporting Sexual Misconduct and the confidentiality that may attach to such reporting;
- 10.2.1.2.7. the grievance process for Sexual Misconduct, as described in this Policy;
- 10.2.1.2.8. procedures for assessing possible Sanctions for Sexual Misconduct,

- as described in this Policy;
- 10.2.1.2.9. campus and community resources available to Complainants or Respondents;
- 10.2.1.2.10. interim safety measures available for Complainants; and,
- 10.2.1.2.11. descriptions of additional and ongoing Sexual Misconduct prevention and awareness campaigns and training.
- 10.2.1.3. Each entering freshman and undergraduate transfer Student, and New Employees shall attend an orientation regarding Sexual Misconduct and the Sexual Misconduct Policy during the first semester or term of enrollment or employment. The Component shall establish the format and content of the orientation, which may be provided online. The orientation must include the name, office location, and contact information of the Component's Title IX Coordinator. The orientation must contain a statement regarding:
- 10.2.1.3.1. the importance of a victim of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;
- 10.2.1.3.2. the right of a victim of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking to report the incident to the Component and to receive a prompt and equitable resolution of the Report; and,
- 10.2.1.3.3. the right of a victim of a crime to

choose whether to report the crime to law enforcement, to be assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.

- 10.2.2. **Ongoing Sexual Misconduct Education.** The Component's commitment to raising awareness of the dangers of Sexual Misconduct shall include ongoing education.

- 10.2.2.1. Ongoing education must include:

- 10.2.2.1.1. the same information as the primary training;
- 10.2.2.1.2. the name, office location and contact information of the Component's Title IX Coordinator, provided to Students by email at the beginning of each semester;
- 10.2.2.1.3. include a public awareness campaign; and,
- 10.2.2.1.4. include a victim empowerment program.

- 10.2.2.2. Ongoing education may include, but is not limited to:

- 10.2.2.2.1. annual training, lectures by faculty, staff, mental health professionals, and/or trained non-Component personnel;
- 10.2.2.2.2. dissemination of informational materials regarding the awareness and prevention of Sexual Misconduct; and,
- 10.2.2.2.3. event programming, both campus-wide, and coordinated with and delivered to individual groups on

campus.

- 10.2.3. Training of Title IX Personnel. Title IX personnel includes Title IX Coordinators, Deputy Coordinators, investigators, Decision Makers, and facilitators of informal resolution processes.
  - 10.2.3.1. All Title IX personnel shall receive training each academic year including:
    - 10.2.3.1.1. knowledge of offenses, including specific definitions of Sexual Misconduct offenses which are prohibited by the Component as defined by applicable law;
    - 10.2.3.1.2. the scope of the Component's Education Programs and Activities, in order to identify situations that require a response under Title IX; and,
    - 10.2.3.1.3. investigatory procedures, due process, and Component Policy and procedures related to Sexual Misconduct.
  - 10.2.3.2. All Title IX personnel shall receive training in the following areas:
    - 10.2.3.2.1. how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes; and,
    - 10.2.3.2.2. how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
  - 10.2.3.3. Investigators shall receive training on issues of relevance to create an investigative Report that fairly summarizes relevant evidence.
  - 10.2.3.4. Decision Makers shall receive the following training:

- 10.2.3.4.1. the use of technology to be used in a live hearing, to be received prior to that hearing; and,
  - 10.2.3.4.2. 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.
  - 10.2.3.5. Materials used in training of Title IX Personnel must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.
  - 10.2.4. **Trauma-Informed Investigation Training**. Each peace officer employed by a Component shall complete training on trauma-informed investigation into allegations of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking.
  - 10.2.5. **Posting of Training Materials**. All materials used to train Title IX personnel as described in Section 10.2.3 must be made publicly available on the Component's website. This requirement applies regardless of whether materials were created by or procured by the Component.
  - 10.2.6. **Memoranda of Understanding Required**. To facilitate effective communication and coordination regarding allegations of Sexual Harassment, Sexual Assault, Dating Violence, and Stalking a Component shall enter into a memorandum of understanding with one or more:
    - 10.2.6.1. local law enforcement agencies;
    - 10.2.6.2. sexual harassment, Sexual Assault, Dating Violence, or Stalking advocacy groups; and,
    - 10.2.6.3. hospitals or other medical resource providers.
- 10.3. **Requirements of the Title IX Coordinator's Quarterly Report, as Prescribed by Statute**
- 10.3.1. The Title IX Coordinator of each Component, shall, once every three months, submit a written report of sexual

misconduct allegations received by Responsible Employees to the Component's President containing the following information:

- 10.3.1.1. the number of reports of Sexual Harassment, Sexual Assault, Dating Violence and Stalking during the reporting period;
  - 10.3.1.2. the number of investigations conducted during the reporting period;
  - 10.3.1.3. the final dispositions occurring during the reporting period; and,
  - 10.3.1.4. the number of reports for which the Component determined not to initiate a disciplinary process during the reporting period.
- 10.3.2. The Title IX Coordinator of each Component shall immediately report to the Component's President any incident of Sexual Harassment, Sexual Assault, Dating Violence or Stalking if the Coordinator has cause to believe that the safety of any person is in imminent danger as a result of such conduct.
- 10.4. Requirements of the Component President's Annual Report, as Prescribed by Statute
    - 10.4.1.1. the number of reports received of sexual harassment, Sexual Assault, Dating Violence and Stalking during the reporting period;
    - 10.4.1.2. the number of investigations conducted during the reporting period;
    - 10.4.1.3. the final dispositions occurring during the reporting period;
    - 10.4.1.4. the number of reports for which the Component determined not to initiate a disciplinary process

during the reporting period; and,

- 10.4.1.5. any disciplinary actions taken against Employees who knowingly fail to report an incident of Sexual Harassment, Sexual Assault, Dating Violence or Stalking, when required to do so, or who knowingly, with intent to harm or deceive, make a false report of such conduct.
  - 10.4.2. The report to the TSUS Board of Regents may not identify any person, and a copy of such report must be submitted to the Chancellor and the Vice Chancellor and General Counsel.
  - 10.4.3. A President is not required to submit a report to the TSUS Board of Regents for any semester the Component has fewer than 1,500 enrolled students unless more than five reports of either Sexual Harassment, Sexual Assault, Dating Violence or Stalking were received during that semester.
  - 10.4.4. The President's report to the TSUS Board of Regents shall be posted on the Component's internet website.
  - 10.4.5. The President of each Component shall annually certify in writing to the Texas Higher Education Coordinating Board that the Component is in substantial compliance with this subsection. The President shall send a copy of the letter certifying substantial compliance to the Chancellor and the Vice-Chancellor and General Counsel.

## 10.5. Recordkeeping.

- 10.5.1. A Component shall retain for seven years, unless a longer retention period is required by law or record retention schedule, the records of Sexual Misconduct allegations, investigations, hearings, appeals, and all related matters, including the following:

  - 10.5.1.1. the responsibility determination;
  - 10.5.1.2. any audio or audiovisual recording or transcript of any live hearing;
  - 10.5.1.3. the disciplinary sanctions imposed on the Respondent, if any;
  - 10.5.1.4. the remedies provided to the Complainant, if

- any;
- 10.5.1.5. the appeal and its result, if any;
- 10.5.1.6. the informal resolution and its results, if any; and,
- 10.5.1.7. the materials used to train Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates informal resolutions.
- 10.5.2. A Component shall create and retain for seven years, unless a longer retention period is required by law or record retention schedule, the actions, including Supportive Measures, taken in response to a Report or Formal Complaint of sexual harassment. A Component shall document:
- 10.5.2.1. the reasons for its conclusions;
- 10.5.2.2. if Supportive Measures were not provided, the reasons the Component did not provide Supportive Measures, which are not clearly unreasonable in light of the known circumstances; and,
- 10.5.2.3. that it has taken measures designed to restore or preserve equal access to the Component's Education Program or Activity.

## Glossary

**Actual Knowledge**, in the context of Title IX Sexual Harassment, means notice of Sexual Harassment or allegations of Sexual Harassment to a Component's Title IX Coordinator or any official of the Component who has authority to institute corrective measures on behalf of the Component ("Official with Authority"). 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 the Component 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 the Component.

**Advisor** refers to the person who may accompany the Party to any and all meetings, hearings, or proceedings and provides support, guidance, or advice to the Party. The Advisor may not directly participate in any meeting, hearing, or proceeding, except for the limited purpose of conducting oral cross-examination during a live hearing in a Title IX Sexual Harassment matter. The Advisor may not conduct oral cross- examination during a hearing in a Non-Title IX Sexual Misconduct matter.

**Appellate Authority** means an individual(s) appointed or authorized by the Component to hear appeals.

**Campus Administrator** refers to the person(s) authorized by the Component to perform the function(s) as designated in this Policy

**Campus Security Authorities (CSA)** refers to those individuals designated by the Component, including but not limited to, University Police and officials who have significant responsibility for student and campus activities, who are responsible for accurately reporting crime information for purposes of the Clery Act.

**Complaint** refers to Formal Complaint as defined herein.

**Complainant** means an individual who is alleged to be the victim of Sexual Misconduct, and shall be referred to herein as either Complainant or victim. These terms may be used interchangeably throughout this Policy. For Title IX Sexual Harassment complaints, the Complainant must be participating in or attempting to participate in the Component's Education Program or Activity at the time of the alleged incident.

**Component** refers to all member institutions of the Texas State University System, including the System Administration Office, Lamar University, Lamar Institute of Technology, Lamar State College Orange, Lamar State College Port Arthur, Sam Houston State University, Sul Ross State University, and Texas State University.

**Component Premises.** Buildings or grounds owned, leased, operated, controlled, or supervised by the Component including property that is within or reasonably contiguous to the premises owned by the Component but controlled by another

person, is frequently used by students, and supports institutional purposes, such as a food or other retail vendor.

**Confidential Employee** refers to a person designated by the Component to whom students enrolled at the institution may speak confidentially concerning incidents of Sexual Misconduct. The term refers to physical and mental health professionals, including licensed counselors who provide mental health counseling to members of the school community, and those who act under the supervision of a health care employee; and individuals whose scope of employment includes confidentiality requirements under Texas law.

**Confidential Treatment Records** means records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional 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 the Component obtains that Party's voluntary, written consent to do so for a grievance process under this Policy. If the Party is not legally able to give written consent due to minority, then a parent or legal guardian must provide written consent for the Party.

**Consent** is an informed and freely and affirmatively communicated willingness to participate in a particular sexual activity. Consent can be expressed either by words or by clear and unambiguous actions, as long as those words or actions create mutually understandable permission regarding the conditions of each instance of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to ensure that s/he has the consent of the other to engage in each instance of sexual activity. (The definition of consent for the crime of sexual assault in Texas can be found at Texas Penal Code Section 22.011) The Component will consider the following factors in determining whether consent was provided:

- 1) consent is a voluntary agreement or assent to engage in sexual activity;
- 2) someone who is incapacitated cannot consent;
- 3) consent can be withdrawn at any time;
- 4) past consent does not imply future consent;
- 5) silence or an absence of resistance does not imply consent;
- 6) consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another;

- 7) coercion, force, or threat invalidates consent; and
- 8) being intoxicated or under the influence of alcohol, drugs, or any other substance is never an excuse for engaging in Sexual Misconduct.

**Cyberstalking** involves using electronic means, including the Internet, for purposes of a sexual nature, to stalk or harass a person or group of people.

In **Texas**, "**cyberbullying**" is defined as a person using any electronic communication device to engage in bullying or intimidation. So, this form of bullying falls under the broader **bullying law**. Relevant communications include, for example, statements made through social media and text messages. (**Texas Educational Code § 37.218.**)

**Dating Violence** is violence committed by a person: 1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and 2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; (c) the frequency of interaction between the persons involved in the relationship. (20 U.S.C. §1092) and 34 CFR 668.46 (j)(1)(i)(B)

**Decision Maker** means the person or people who makes the determination regarding responsibility or dismissal of an allegation of Sexual Misconduct and the person or people who makes the determination if the responsibility determination or dismissal is appealed. The Appellate Authority may not also serve as the Decision Maker in the same or affiliated grievance.

**Dean of Students** includes the Student Affairs Office, the Student Services Office, the Dean of Student Life, or the equivalent personnel.

**Domestic Violence** includes felony or misdemeanor crimes of 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 or roommate, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Texas, 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 State of Texas.

**Education Program or Activity** means all the operations of a Component on or off campus, including any building owned or controlled by a student organization that is officially recognized by the Component. Education Program or Activity also includes employment with the Component.

**Employee** refers to both faculty and staff.

**Finding** means the written decision made by the Title IX Coordinator or Decision Maker, per the applicable grievance process.

**Fondling** means 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 their age or because of their temporary or permanent mental incapacity.

**Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the Component investigate the allegation of Sexual Harassment.

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 the Component ) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

**Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Informal Resolution** means the process utilized by a Component to resolve Formal Complaints or Reports as an alternative to the investigation and adjudication procedures stated in this Policy. Informal Resolution may include but is not limited to mediation.

**Informal Resolution Facilitator** means the person who assists and guides the Parties toward their own resolution. The **Informal Resolution Facilitator** does not decide the outcome.

**Investigator** refers to the person who conducts the Sexual Misconduct investigation.

**New Employee** refers to a faculty or staff member who has not been previously employed by the Component, or whose previous employment with the Component was more than one year from their latest date of hire with the Component.

**Non-Title IX Sexual Misconduct** refers to Sexual Misconduct that does not meet the definition of Title IX Sexual Harassment in this Policy.

**Notice** means notification. Notice may be provided via electronic or hard copy methods. Every effort will be made to notify each Party using the same method.

**Official with Authority** refers to the Title IX Coordinator or any official, as determined by the Component, who has authority to institute corrective measures on behalf of the Component.

**Parties** means the Complainant and Respondent.

**Preponderance of the Evidence** means the greater weight and degree of credible evidence. Preponderance of the evidence is the standard for determining allegations of Sexual Misconduct under this Policy. Preponderance of the evidence is satisfied if the Sexual Misconduct is more likely to have occurred than not.

**Rape** means 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. See also definition of Sexual Assault herein.

**Report** refers to a report of Sexual Misconduct that is not Title IX Sexual Harassment.

**Respondent** refers to the person accused of Sexual Misconduct.

**Responsible Employee** refers to a Component Employee engaged in the course and scope of their employment, including campus police or security. All Employees are Responsible Employees except Confidential Employees. Responsible Employees include all administrators, faculty, staff, residence life directors and Advisors, and graduate teaching assistants.

**Retaliation** means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Formal

Complaint of Sexual Misconduct, including, but not limited to direct and indirect intimidation, threats, and harassment. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve Sexual Misconduct, but arise out of the same facts or circumstances as a Formal Complaint or Report of Sexual Misconduct, for the purpose of interfering with any right or privilege secured by Title IX or this Policy, constitutes retaliation.

**Sex Discrimination** also referred to herein as sexual discrimination involves treating a person unfavorably because of that person's sex.

**Sex Offenses** include any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent.

**Sexual Assault** is defined as forcible or nonforcible sex offenses under the FBI's Uniform Crime Reporting (U.C.R) program [20 U.S.C. 1092 (f)(6)(A)(v)], which includes these two offense categories:

- (i) **Sex Offenses, Forcible:** Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent
  - (a) **Forcible Rape:** (Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.
  - (b) **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
  - (c) **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or

because of his/her temporary or permanent mental or physical incapacity.

(d) **Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

(ii) **Sex Offenses, Nonforcible:** (Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse.

(a) **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(b) **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent.

Examples of sexual assault include, but are not limited to, the following nonconsensual sexual activity:

- 1) sexual intercourse (vaginal or anal);
- 2) oral sex;
- 3) Rape or attempted Rape;
- 4) penetration of an orifice (anal, vaginal, oral) with the penis, finger or other object;
- 5) unwanted touching of a sexual nature;
- 6) use of coercion, manipulation or force to make someone else engage in sexual touching, including touching of breasts, chest, buttocks and genitalia;
- 7) engaging in sexual activity with a person who is unable to provide Consent; or
- 8) knowingly transmitting a sexually-transmitted disease to another.

See also definition of Sexual Assault pursuant to Texas Penal Code §22.011.

**Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited.

Examples of sexual exploitation can include, but are not limited to, the following behaviors:

- 1) prostituting another;
- 2) non-consensual electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images without the knowledge and consent of all Parties involved;
- 3) voyeurism (spying on others who are in intimate or sexual situations);
- 4) going beyond the boundaries of consent (such as letting friends hide in a closet to watch another friend having consensual sex); or
- 5) distributing intimate or sexual information about another person without that person's Consent.

### **Sexual Harassment:**

**Title IX Sexual Harassment** refers to Sexual Misconduct that meets one or more of these three types of behavior:

- (i) A Component's Employee conditioning provision of an aid, benefit or service of the Component on an individual's participation in unwelcome sexual conduct ("quid pro quo" harassment which may be express or implied and need not be "severe" or "pervasive" as a single incident is inherently "offensive" and jeopardizes equal educational access;
- (ii) Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the Component's Education Program or Activity, or
- (iii) "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in referenced statutes.

**Sexual Harassment under other applicable state and federal law** means unwelcomed sex-based verbal or physical conduct that:

- 1) in the employment context, unreasonably interferes with a

person's work performance or creates an intimidating, hostile, or offensive work environment; or

2) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with the student's ability to participate in or benefit from Education Programs or Activities at a post-secondary educational institution.

**Sexual Intimidation** includes but is not limited to: 1) threatening another with a non-consensual sex act; 2) Stalking or Cyber-stalking of a sexual nature as defined in Texas Penal Code 42.072; or 3) engaging in indecent exposure as defined in Texas Penal Code 21.08.

**Sexual Misconduct** is a broad term encompassing a range of non-consensual sexual activity or unwelcome behavior of a sexual nature. The term includes but is not limited to Sexual Assault, Sexual Exploitation, Sexual Intimidation, Sexual Harassment, Domestic Violence, Dating Violence, and Stalking. Sexual Misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex. This term also includes Title IX Sexual Harassment.

**Sexual Violence** Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving Consent. All such acts are forms of Sexual Misconduct.

**Stalking** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. [34 U.S.C. 12291 (a)(30) and Texas Penal Code Section 42.072.]

**Statutory Rape** means sexual intercourse with a person who is under the statutory age of Consent.

**Student** refers to any person who has matriculated, or who is currently or was previously enrolled in the Component on either a full-time or part-time basis.

**Supportive Measures** include:

- 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 Report or where no Formal Complaint or Report has been filed. Such measures are designed to restore or preserve equal access to the Component's Education Program or Activity without unreasonably burdening the other Party.

- Immediate and appropriate corrective action, including measures designed to protect the safety of all Parties or the Component's educational environment, or deter Sexual Harassment. See Section 3 of this Policy.

**Third Party** refers to any person who is not a current Student or Employee of the Component, including but not limited to vendors and invited and uninvited visitors.

**Third-Party Reporting** refers to the submission of a Formal Complaint or Report of Sexual Misconduct by a person on behalf of another person.

**Title IX Coordinator** is the person who has been designated by each Component to coordinate efforts to comply with and implement this Policy. The Title IX Coordinator is responsible for conducting the administrative investigation of reports of Sexual Misconduct and is available to discuss options, provide support, explain Component policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators. Throughout this Policy, the use of the term "Title IX Coordinator" includes such designees.

**Title IX Sexual Harassment.** See "Sexual Harassment" in this Glossary.