

# TEXAS STATE UNIVERSITY SYSTEM SEXUAL MISCONDUCT POLICY AND PROCEDURES

## 1. Introduction

- 1.1 Institutional Values. The Texas State University System, 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 diligently strives to foster an environment that permits and encourages everyone to perform at their highest levels. 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 harassment, exploitation, intimidation or other sexual misconduct. 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. Sexual Misconduct, as defined in this Policy, is a form of sex discrimination and will not be tolerated. The System and Components will maintain an environment that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of Sexual Misconduct complaints. The Components will take prompt and appropriate action to eliminate Sexual Misconduct, prevent its recurrence, and remedy its effects. This Policy defines and describes prohibited sexual conduct, establishes procedures for processing complaints of sexual misconduct, permits appropriate Sanctions, and identifies available resources.
  
- 1.3 Notice of Nondiscrimination. The System complies with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in educational programs or activities; Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment; and the Campus Sexual

Violence Elimination Act. Sexual misconduct, as defined in this Policy, constitutes a form of sex discrimination prohibited by Title IX and Title VII.

- 1.4 Applicability of this Policy. This Policy applies to all students, faculty, staff, and Third Parties within the System's or its Components' control. This Policy prohibits sexual misconduct committed by or against a student, faculty, staff, or Third Parties. This Policy applies to sexual misconduct:
  - 1.41 on Component premises;
  - 1.42 at Component-affiliated educational, athletic, or extracurricular programs or activities;
  - 1.43 that has an adverse impact on the education or employment of a member of the Component community;
  - 1.44 that otherwise threatens the health and/or safety of a member of the Component community; and
  - 1.45 occurring after the effective date of this Policy.
  - 1.46 All incidents occurring prior to the effective date of this Policy are controlled by the Policy in effect at that time.
  
- 1.5 Extent of Authority. While the Texas State University System is committed to investigating all complaints of sexual misconduct and there is no geographical limitation to invoking this Policy, sexual misconduct that is alleged to have occurred at a significant distance from the Component and/or outside the Component property may be difficult for the Component to investigate. While this Policy extends to those who are not students or employees of the Component, it may be very difficult for the component to follow up and/or take disciplinary action against Third Parties.
  
- 1.6 Effect of Criminal Prosecution, Continuation of Proceedings. Proceedings under this Policy will not be dismissed or delayed because criminal investigation or prosecution is pending or charges have been reduced or dismissed. Proceedings may also continue if a Party is no longer employed with or enrolled as a student of the Component.

- 1.7 Supersedes Existing Policies. In the case of allegations of sexual misconduct, this Policy supersedes any conflicting procedures and policies set forth in other Component policies.
- 1.8 Sexual Misconduct Policy also known as Sexual Assault Policy. This Policy has been adopted for each Component by the System as its sexual assault policy. It shall be made available to students, faculty and staff by including it in the Component's student, faculty and personnel handbooks and by creating and maintaining a web page on the Component's website dedicated solely to the Policy.
- 1.81 Each Component shall email students the protocol for reporting incidents of sexual assault, including the Component's Title IX Coordinator's name, office location and contact information at the beginning of each semester or academic term.
- 1.82 Each Component shall permit employees and enrolled students to electronically report allegations of sexual misconduct.
- 1.83 Electronic reporting of incidents of sexual misconduct shall be permitted to be made anonymously.
- 1.84 Electronic reporting of incidents of sexual misconduct shall be accessible through a clearly identifiable link on the Component's website home page.
- 1.9 Conflicts of Interest. In any situation where the investigator, administrator, Sanctioning Authority or Appellate Authority has a conflict of interest, a designated employee approved by the Title IX Coordinator shall assume duties imposed under this Policy.

## **2. Definitions**

A Glossary with definitions of sexual misconduct offenses and other terms used in this Policy is attached.

## **3. Reporting**

- 3.1 Employees That Must Report – Responsible Employees. A responsible employee who receives a report of sexual misconduct must report to the Title IX Coordinator all relevant details about the alleged sexual misconduct shared by the Victim. A responsible employee should not share information with law enforcement without the Victim's consent, unless the Victim has also reported the incident to law enforcement.
- 3.11 Before a Victim reveals any information to a Responsible Employee, the employee should ensure that the Victim understands the employee's reporting obligations. If the Victim requests anonymity and confidentiality, direct the Victim to Title IX Confidential Sources.
- 3.12 If the Victim reports an incident to the Responsible Employee but also requests anonymity and confidentiality or requests that the matter not be investigated, the employee should tell the Victim 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 Victim's request for confidentiality.
- 3.13 When weighing a Victim's request for anonymity and confidentiality or that no investigation or discipline be pursued, the Component will consider a range of factors, including the following:
- 3.131 the increased risk that the Alleged Perpetrator will commit additional acts of sexual or other violence;
  - 3.132 whether there have been other sexual misconduct complaints about the same Alleged Perpetrator;
  - 3.133 whether the Alleged Perpetrator has a history of arrests or records from a prior school indicating a history of violence;
  - 3.134 whether the Alleged Perpetrator threatened further sexual misconduct or other violence against the Victim or others;
  - 3.135 whether the alleged sexual misconduct was committed by multiple Perpetrators;

- 3.136 whether the alleged sexual misconduct was perpetrated with a weapon;
- 3.137 whether the Victim was a minor at the time of the alleged conduct;
- 3.138 whether the Component possesses other means to obtain relevant evidence of the alleged sexual misconduct (e.g., security cameras or personnel, physical evidence); or
- 3.139 whether the Victim's report reveals a pattern of conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.

- 3.2 Title IX Confidential Sources (as defined in the Glossary). Each Component will identify and provide contact information of Confidential Sources in various locations, including but not limited to the Component's website; the student's handbook; the Dean of Students Office; and Campus Police or Security. These Confidential Sources are required to maintain anonymity and shall not report any information about an incident to the Title IX Coordinator without a Victim's permission. They 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 Sources to be through their professional organizations, if any, and through the Title IX Coordinator.
- 3.3 Anonymity Requests. When considering reporting options, Victims should be aware that Title IX Confidential Sources as described in the Glossary, are permitted to honor a request for anonymity and can maintain confidentiality. Most Component personnel have mandatory reporting and response obligations, regardless of the Victim's request for anonymity or confidentiality. Once a complaint is made to a Responsible Employee, the Component must balance a Victim's request for anonymity and confidentiality with the responsibility to provide a safe and non-discriminatory environment

for the Component community. The Component will protect a Complainant's request for anonymity and confidentiality by refusing to disclose his or her information to anyone outside the Component to the maximum extent permitted by law.

- 3.4 Interim Measures when Anonymity is Requested. 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. The Complaint may also be used as an anonymous report for data collection purposes under the Clery Act.
- 3.5 Victim Identity Protected from Open Records. The Texas Public Information Act permits the identity of Victims of sexual assault to be withheld from those seeking records under the Act (*Texas Attorney General Open Records Decision 339 (1982)*).
- 3.6 Breaches of Confidentiality. Breaches of confidentiality or privacy committed by anyone receiving a report of alleged sexual misconduct or investigating the report of alleged sexual misconduct, may be considered a separate violation of this Policy and may result in disciplinary Sanctions.
- 3.7 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 individual or entity listed herein. A Victim of sexual misconduct is encouraged to report to any of the sources below.
  - 3.71 Local Law Enforcement. An individual may report an incident of sexual misconduct directly with local law enforcement agencies by dialing 911. Individuals who make a criminal complaint may also choose to pursue a complaint through the Title IX Coordinator.

- 3.72 Component Police or Security. An individual may also report an incident of sexual misconduct to the Component police or security. Reporting to such officials helps protect others from future victimization; apprehend the alleged assailant; and maintain future options regarding criminal prosecution, Component disciplinary action, and/or civil action against the alleged wrongdoer. For Components that employ sworn peace officers, a Victim may request that his or her identity be kept confidential when reporting sexual misconduct to a sworn peace officer. Filing a police report does not obligate the Victim to continue with criminal proceedings or Component disciplinary action. Components shall provide the Victim contact information for their campus police or security personnel.
- 3.73 Title IX Coordinator. Any incident of sexual misconduct may be brought to the attention of the Title IX Coordinator. 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.
- 3.74 Dean of Students Office. Any incident of sexual misconduct may be brought to the attention of the Dean of Students Office. 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. The Dean of Students Office will promptly inform the Title IX Coordinator of the complaint.
- 3.75 Campus Security Authority. A complaint of sexual misconduct may be brought to a Campus Security Authority (CSA) as defined in each Component's Annual Security Report. The CSA will promptly inform the Title IX Coordinator of the complaint. Each Component will identify and provide complete contact information for their CSA in various locations, including but not limited to the Component's web page; the student's handbook; the annual security report; and the Dean of Students Office.

- 3.76 Human Resources. A complaint of sexual misconduct may be brought to the Human Resources Department, which will promptly inform the Title IX Coordinator of the complaint.
- 3.77 Responsible Employee. An individual may report alleged sexual misconduct to a Responsible Employee, as that term is defined in the Glossary. A faculty or staff member with any knowledge (including firsthand observation) about a known or suspected incident of sexual misconduct (other than Title IX Confidential Sources) must promptly report the incident to the Component Title IX Coordinator or his or her designee.
- 3.78 Anonymous Reports. Each Component shall provide the phone number and web address available for anonymous reports. Individuals who choose to file anonymous reports are advised that it may be very difficult for the Component to follow up and/or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes.

3.8 Preservation of Evidence. Preservation of evidence is critical in instances of sexual misconduct. Prompt reporting may preserve options that delayed reporting does not, including the preservation of evidence (which may be helpful to prove sexual misconduct or to obtain a judicial order of protection), the support of crisis counseling, and immediate police response.

#### **4. Interim Measures**

When an incident of sexual misconduct is reported, the Component will consider interim measures while the incident is investigated and adjudicated.

4.1 Measures Imposed by the Title IX Coordinator and/or Investigator. The Investigator will determine and implement interim measures as appropriate and necessary and to limit potential retaliation. Interim measures may include, but not be limited to:

- 4.11 campus no-contact orders;
- 4.12 reassignment of housing or work assignments;



- 4.13 temporary withdrawal or suspension from the Component, in accordance with *System Rules and Regulations Chapters IV § 2.2(14), V § 2.141, and VI § 5.(14)*;
- 4.14 escort or transportation assistance;
- 4.15 modification of class or work schedules; or
- 4.16 restrictions from specific activities or facilities.

4.2 Any interim disciplinary action must comply with *System Rules and Regulations Chapters IV § 2.2(14), V § 2.141, and VI § 5.(14)*.

4.3 Failure to adhere to the parameters of any interim measures may be considered a separate violation of this Policy and may result in disciplinary Sanctions.

4.4 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.

4.5 The Component shall maintain as confidential any measures provided to the Victim, to the extent allowed by law and to the extent that maintaining such confidentiality will not impair the ability to provide the measures.

## **5. Retaliation**

The Component takes reports of sexual misconduct very seriously and will not tolerate retaliation against those who make such reports or participate in the investigatory or adjudicatory process. Retaliation includes, but is not limited to, any adverse employment or educational action taken for making a report of sexual misconduct, or otherwise participating in any way in the process of investigating or adjudicating an incident of sexual misconduct. Any actual or threatened retaliation, or any act of intimidation to prevent or otherwise obstruct the reporting, investigating, or adjudicating of sexual misconduct may be considered a separate violation of this Policy and may result in disciplinary Sanctions. Any person who believes that she or he has been subjected to retaliation should immediately report this concern to the Title IX Coordinator.

## **6. Immunity**

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 against an enrolled student who in good faith reports to the Component being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the reporting student of the Component's code of conduct occurring at or near the time of the incident.

6.1 A Component may investigate to determine whether a report was made in good faith.

6.2 A determination that a student is entitled to immunity is final and may not be revoked.

6.3 Immunity may not be given to a student who reports his or her own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

6.4 This section may not be construed to limit a Component's ability to provide immunity from application of the Component's policies in circumstances not described herein.

## **7. Prohibition on Providing False Information**

Any individual who knowingly files a false Complaint 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 shall be subject to disciplinary action.

## **8. 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.

8.1 Training.

- 8.11 Primary Prevention Training. Every incoming student, including undergraduate transfer students, and new employees shall attend prevention and education training or orientation regarding sexual misconduct and the campus sexual assault policy during the first semester or term of enrollment or employment. The Component shall establish the format and content of the training or orientation. 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. The Component training will be based upon research and will be assessed periodically for effectiveness. Specifically, training will include:
- 8.111 awareness and prevention of rape, acquaintance rape, domestic violence, dating violence, sexual assault, and stalking;
  - 8.112 definitions of sexual misconduct offenses which are prohibited by the Component as defined by Texas law;
  - 8.113 definition of consent as defined by Texas law;
  - 8.114 risk reduction, such as recognition of warning signs of possible sexual misconduct, situational awareness and safety planning;
  - 8.115 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;
  - 8.116 procedures for reporting, investigating, and accessing possible Sanctions for sexual misconduct as described in this Policy;
  - 8.117 options for reporting sexual misconduct and the confidentiality that may attach to such reporting;

- 8.118 campus and community resources available to Complainants or Respondents;
- 8.119 interim safety measures available for Complainants; and,
- 8.120 descriptions of additional and ongoing sexual misconduct training.

8.2 Ongoing Sexual Misconduct Training. The Component's commitment to raising awareness of the dangers of sexual misconduct may include, but is not limited to, offering ongoing education in the form of annual training, lectures by faculty, staff, mental health professionals, and/or trained non-Component personnel. Ongoing training may include, but is not limited to, dissemination of informational materials regarding the awareness and prevention of sexual misconduct.

8.3 Training of Title IX Coordinators, Investigators, Hearing and Appellate Authorities. All Coordinators, Deputy Coordinators, Investigators, and those with authority over sexual misconduct hearings and appeals shall receive training each calendar year including, knowledge of offenses, investigatory procedures, due process, and Component policy and procedures related to sexual misconduct.

## **9. Informal Resolution (Mediation)**

9.1 Eligibility for Mediation. Informal resolution is available and appropriate for claims of Sexual Harassment, only if:

- 9.11 both Parties are willing to engage in mediation and consent to do so in writing;
- 9.12 the Complainant and the Respondent are both students or are both employees of the Component;
- 9.13 the Title IX Coordinator agrees that informal resolution is an appropriate mechanism for resolving the Complaint;
- 9.14 the Complaint involves only Sexual Harassment as described in this Policy and does not involve any other sexual offense, and
- 9.15 Mediation shall be concluded within ten (10) class days

- 9.2 Mediation and Agreements. When the Title IX Coordinator determines informal resolution is appropriate and the Parties consent in writing, the Title IX Coordinator will arrange or facilitate mediation in attempt to resolve the complaint. Agreements reached in mediation will be reduced to writing and signed by both Parties. Agreements will be maintained by the Coordinator and shared only as necessary to implement the agreed resolution or as required by law.
- 9.3 Referral for Investigation. When mediation is not successful, or, if in the course of facilitating informal resolution the Title IX Coordinator learns of sexual offenses beyond sexual harassment, the informal resolution process will immediately terminate. The matter will then be referred for investigation in accordance with the procedures outlined herein.

## **10. Investigation Procedures and Protocols**

- 10.1 Authority to Investigate. Complaints shall only be investigated and/or resolved at the direction of the Title IX Coordinator.
- 10.2 Actions Upon Receiving Report. Upon Component's receipt of a report of sexual misconduct:
- 10.21 Assignment. The Title IX Coordinator will review the complaint and investigate or assign the investigation to a Deputy Coordinator or Investigator. The Complainant shall be notified of the name and contact information of the individual assigned. Subsequent references to Investigator in this section refers to the individual investigating the complaint, whether a Title IX Coordinator, Deputy Coordinator, or Investigator.
- 10.22 Initial Meeting with Complainant. As soon as is practicable, the Investigator shall contact the Complainant and schedule an initial meeting. At the initial meeting the Investigator will:
- 10.221 provide an electronic and/or hard copy of this Policy which explains the process and rights of all Parties;

- 10.222 request additional information regarding the reported incident;
- 10.223 explain the investigatory process;
- 10.224 explain the options for reporting to law enforcement authorities, whether on campus or local police;
- 10.225 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;
- 10.226 determine whether the Complainant wishes to pursue a resolution;
- 10.227 refer the Complainant, as appropriate, to the counseling center or other resources which may include, but are not limited to, law enforcement, medical assistance, psychological counseling, victim advocacy resources, legal resources, Component disciplinary action, immigration services, and criminal prosecution;
- 10.228 discuss with the Complainant, possible interim measures as described in this Policy;
- 10.229 inform Complainant and Respondent that, to the greatest extent practicable based on the number of counselors employed by the Component, the Component will ensure that each Complainant or Respondent of an incident of sexual assault, or any other person who reports such incident, are offered counseling provided by a counselor who does not provide counseling to any other person involved in the incident; and,
- 10.230 inform Complainant and Respondent of an incident of sexual assault of the option of dropping a course in which both parties are enrolled without any academic penalty.

10.23 Interim Measures. The Title IX Coordinator and/or Investigator will determine and implement interim measures.

10.3 Prompt, Fair, and Equitable Investigation.

10.31 Timing of Investigation and Resolution. The Component shall make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as efficient a manner as possible, with an expectation that the process (exclusive of any appeal procedures) will generally be completed within sixty (60) calendar days of the Complaint, absent extenuating circumstances. The Title IX Coordinator may modify this and any other deadlines contained in this Policy as necessary to accomplish the purposes stated and for good cause, including, but not limited to, the complexity of the investigation and semester breaks.

10.32 Notice of Investigation and Allegations to Respondent. At the outset of an investigation, the Investigator will provide the Respondent prompt notice of the investigation to include the allegation(s) in writing together with a copy of this Policy. Written notice of the investigation will be provided to the Complainant concurrently with Respondent.

10.33 Equitable Treatment.

10.331 Investigator shall not have a conflict of interest or bias, and will remain neutral throughout the investigation. Complainant and Respondent shall have opportunities to respond in person and/or in writing, submit relevant documents, and identify relevant witnesses.

10.332 Complainant and Respondent will receive a minimum of forty-eight hours' notice of any Sanction or appellate meeting, and a minimum of five (5) class days' notice of a due process hearing, if any.

10.333 Complainant and Respondent may have one representative and/or one advisor present at all

meetings a Party has with the Investigator, Title IX Coordinator, Deputy Coordinator or other Component administrator related to a complaint. The representative or advisor may provide support, guidance or advice to Complainant or Respondent, but may not otherwise directly participate in the meetings or hearing.

10.334 Complainant, Respondent, and appropriate Component officials will have timely access to any documentation that will be used during a due process hearing or a meeting to dispute Findings and/or Sanctions. Access to such materials will be consistent with FERPA and will not be allowed until after the investigation is concluded.

10.34 Investigation Activities. Investigator will gather and review information from Complainant, Respondent, and Witnesses. Investigator shall conduct site inspection, if necessary, and obtain other information from sources as appropriate.

10.35 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 for review and Finding.

## **11. Standard of Review and Finding**

11.1 Review. The Title IX Coordinator will review the Investigative Report under the “preponderance of the evidence” standard as defined in the Glossary.

11.2 Title IX Coordinator Finding and Recommended Sanction.

11.21 The Title IX Coordinator will make a written Finding as to whether:



- 11.211 no reasonable grounds exist that the Sexual Misconduct Policy was violated and the matter is closed, or
- 11.212 it is more likely than not that Respondent violated the Sexual Misconduct Policy, and the nature of the violation(s).
- 11.22 The Finding shall include the Title IX Coordinator's basis for the decision and recommended Sanctions when there is a Finding of a violation.
- 11.23 Communication of the Finding and Recommended Sanctions.
- 11.231 When there is a Finding of no violation of the Sexual Misconduct Policy, the Title IX Coordinator will communicate the Finding in writing simultaneously to the Complainant AND Respondent.
- 11.232 When there is a Finding that it is more likely than not that Respondent violated the Sexual Misconduct Policy, the Title IX Coordinator will communicate the Finding in writing to the Component Administrator with authority to determine and issue appropriate Sanctions.
- 11.233 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.

## **12. Sanctions**

- 12.1 Possible 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 are limited to the following:
- 12.11 withholding a promotion or pay increase;
- 12.12 reassigning employment, including, but not limited to demotion in rank;
- 12.13 terminating employment;
- 12.14 barring future employment;

- 12.15 temporary suspension without pay;
- 12.16 compensation adjustments;
- 12.17 expulsion, suspension or dismissal from the Component and/or System;
- 12.18 no-contact orders,
- 12.19 probation (including disciplinary and academic probation);
- 12.20 expulsion from campus housing;
- 12.21 restricted access to activities or facilities;
- 12.22 mandated counseling (this may include, but not be limited to educational programs and batterer intervention);
- 12.23 disqualification from student employment positions;
- 12.24 revocation of admission and/or degree;
- 12.25 withholding of official transcript or degree;
- 12.26 bar against readmission;
- 12.27 monetary restitution;
- 12.28 withdrawing from a course with a grade of *W*, *F*, or *WF*;  
or
- 12.29 relevant training.

12.2 Sanction Decision. Within seven (7) class days of receipt of the Finding, the responsible Component Administrator will issue written Sanctions 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.

12.3 Administrators responsible for imposing Sanctions are:

12.31 Student Respondent Sanctions. 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 AVP of Human Resources or equivalent prior to issuing Sanctions.

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

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

### **13. 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.

13.1 Students. Complainants or Respondents may elect to dispute the Finding and/or Sanction through a due process hearing. Student Complainants or Respondents must submit a written request for a hearing to the Component Chief Student Affairs Officer or his or her designee within five (5) class days. Procedures for the hearing are outlined in the *System Rules and Regulations, Chapter VI §§ 5.7-5.9*, with exceptions as follows:

13.11 The Component Representative for student due process hearings related to Sexual Misconduct shall be the Component's Title IX Coordinator or designee;

13.12 When the matter is heard by more than one individual, the Component will establish a Hearing Adjudicator Chair.

13.13 The Hearing Adjudicator Chair is responsible for arranging the due process 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.

13.14 Each Party shall receive a copy of the written request for hearing, notice of the hearing and has a right to be present; however, neither Party shall be compelled to attend any hearing and any Complainant, Respondent, or Witness that does not want to be in the same room as one of the Parties shall, upon advance request, be accommodated;

- 13.15 Complainant and Respondent may submit written questions for the other Party and any witnesses to the Hearing Adjudicator Chair. Such questions shall be submitted by the Parties in accordance with the deadline established. The Hearing Adjudicator Chair will determine, and shall ask the questions relevant to the inquiry. Any individual participating as a Hearing Adjudicator may ask relevant questions of the parties and/or witnesses.
- 13.16 Hearing Decision. When a Finding of sexual misconduct is upheld, Sanctions listed herein shall be imposed. When the Hearing Adjudicator(s) find substantial doubt about the thoroughness, fairness, and/or impartiality of the investigation or determines there is insufficient evidence to support the recommended Finding, it may remand the matter to the Title IX Coordinator for further investigation and/or other action, or reject the recommended Finding(s) or Sanction(s).
- 13.17 The Hearing Adjudicator Chair shall issue a written, final Decision and shall provide a copy of the Decision to Complainant, Respondent, Title IX Coordinator, and Dean of Students.
- 13.2 Staff. Complainants or Respondents may elect to dispute the Finding and/or Sanction as follows.
- 13.21 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) class days of receipt of the Finding or Sanction.
- 13.22 The Chief Human Resources Officer shall provide a copy of the materials submitted to the other Party, the Title IX Coordinator, and the appropriate divisional Vice President within three (3) class days of receipt.
- 13.23 A Party who has not requested review, including the Component, may, but is not required to, submit a written response to the appropriate divisional Vice President within five (5) class days of receiving the materials.

- 13.24 The reviewing Vice President may approve, reject, modify, or remand the Decision. The Vice President's Decision is final.
- 13.25 The reviewing Vice President will inform Complainant, Respondent, Title IX Coordinator, appropriate supervisor and Chief Human Affairs Officer of the Decision in writing.

13.3 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 due process hearing.

13.31 No later than thirty (30) business days after the faculty member receives notice of the Finding and/or Sanction, he or she shall request review from the President by submission of the grievance form prescribed by the Component together with any supporting materials.

13.32 The Component President shall designate a Hearing Officer to review.

13.33 The Hearing Officer shall provide a copy of the materials submitted to the other Party, the Title IX Coordinator, within five (5) class days of appointment.

13.34 The Hearing Officer will meet with the faculty member at a mutually convenient time to review the dispute.

13.35 The Hearing Officer may secure any information the officer determines necessary to review the dispute.

13.36 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.

13.37 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.

- 13.4 Faculty Due Process 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 due process hearing. Hearing procedures are outlined in the *System Rules and Regulations, Chapter V, § 4.54* with the following exceptions:
- 13.41 The role of the Hearing Tribune is to review the investigation and the appropriateness of the Sanction for significant procedural errors or omissions;
- 13.42 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.
- 13.43 Within five (5) class 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.
- 13.44 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.
- 13.45 Cross examination shall proceed as follows: Complainant and Respondent may submit written questions for the other Party and any witnesses to the Hearing Tribunal Chair. Such questions shall be submitted by the Parties in accordance with the deadline established by the Hearing Tribunal Chair. The Chair will determine, and shall ask, the questions relevant to the inquiry. Any individual participating as a Hearing Tribunal member may ask relevant questions of the parties and/or witnesses.
- 13.46 Complainant, Respondent, or Component may be assisted or represented by counsel.
- 13.47 The Hearing Tribunal Chair shall issue the 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) class days of the hearing.

13.48 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).

13.49 The President shall issue a written, final Decision and shall provide a copy of the Decision to the Required Parties.

13.5 Other Faculty Disputes. All other faculty disputes of the Finding and/or Sanction against faculty shall follow the procedures for Staff stated herein.

13.6 Third Parties. Third Party Complainants or Respondents have no right to dispute or appeal Findings or Sanctions.

13.7 Sanctions During Dispute. Any Sanction(s) imposed will remain in place while any dispute is pending, unless, in the discretion of the Component Administrator imposing the Sanction, good cause exists to stay the Sanction.

#### **14. Appeal of Finding or Sanctions**

14.1 Right to Appeal. If a student or faculty member Complainant or Respondent is dissatisfied with the determination of a due process hearing, either Party may appeal. Third Party Complainants or Respondents have no right of appeal of Findings or Sanctions.

14.2 Grounds for Appeal. Grounds for appeal are limited to the following:

14.21 previously unavailable relevant evidence;

14.22 substantive procedural error in the investigation or hearing; or

14.23 Sanction is substantially disproportionate to the Finding;

14.3 Procedure for Student Appeals.

14.31 An appeal is only available after a Decision in a due process hearing.

14.32 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 (Appeal Officer), within five (5) class days of the due process hearing Decision.

14.33 The Appeal Officer shall provide a copy of the appeal submission(s) to the other Party and the Title IX Coordinator within three (3) class days of receipt.

14.34 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) class days of receipt. The Appeal Officer shall provide a copy of the response, if any, to the other Party and the Title IX Coordinator within three (3) class days of receipt.

14.35 The Appeal Officer may approve, reject, modify, or remand the decision. The Appeal Officer shall issue a written Decision and shall provide a copy to Complainant, Respondent, Title IX Coordinator, and Dean of Students. The Appeal Officer's Decision is final.

14.4 Appeal of the Decision of a Faculty Due Process Hearing. Appeals of faculty due process hearings are governed by *System Rules and Regulations, Chapter V. § 4.56* with exceptions as follows:

14.41 A faculty member must submit a written appeal stating grounds with any supporting documentation to the System Administrative Office within thirty (30) calendar days of receipt of the President's decision.

14.42 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.



14.43 The President may submit a written response to the appeal within thirty (30) calendar days of receipt of the appeal from the System Office.

14.44 The 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.

14.5 Sanctions Pending Appeal. Any Sanction(s) imposed will remain in place while any appeal is pending, unless, in the discretion of the Component Administrator imposing the Sanction, good cause exists to stay the Sanction.

## **15. Final Decision**

15.1 No Appeal. Decisions and Sanctions imposed under this Policy are final when the period for appeal under the rules and policies referenced herein have expired without initiation of an appeal by either Party.

15.2 Conclusion of Appeal. An appealed Decision is final as outlined in the rules and policies referenced herein.

15.3 Notification of Outcomes.

A notice of outcome provided to a Complainant, to include a Finding, Sanction, Decision of a due process hearing, or appeal Decision must include:

15.31 Whether the alleged conduct was more likely than not to have occurred;

15.32 Any Sanction imposed on the Respondent that directly relate to the Complainant, and

15.33 Other steps the school has taken to eliminate the hostile environment, if the Component finds one exist(ed), and to prevent recurrence.

## **16. Biennial Policy Review**

Each biennium, this Policy shall be reviewed. Any revisions determined necessary shall be brought before the System's Board of Regents for approval.

## **GLOSSARY DEFINITIONS**

Complainant refers to the person making a complaint of sexual misconduct, and shall be referred to herein as either Complainant, or Alleged Victim, and these terms may be used interchangeably throughout this Policy.

Component refers to all member institutions of the Texas State University System, including but not limited to, Lamar University, Lamar Institute of Technology, Lamar State College - Orange, Lamar State College - Port Arthur, Sam Houston State University, Sul Ross State University, Sul Ross State University Rio Grande College and Texas State University.

Component Affiliated Program or Activity refers to any program or activity, on or off campus, that is initiated, aided, authorized or supervised by the Component or by an officially-recognized organization of, or within, the Component.

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 Source 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 include confidentiality requirements under Texas law.

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.

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 by the Victim with consideration of the following factors:
  - (a) the length of the relationship;
  - (b) the type of relationship; and
  - (c) the frequency of interaction between the persons involved in the relationship

(Texas *Family Code Section 71.0021*).

Dean of Students Office includes the Student Affairs Office, the Student Services Office and the Dean of Student Life Office.

Family (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 (*Texas Family Code Section 71.004*).

Incoming Student refers to a student in their first semester of enrollment.

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 his or her latest date of hire with the Component.

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

Parties refers to 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 action is more likely to have occurred than not.

Respondent refers to the person accused of sexual misconduct and shall be referred to herein as either Respondent, Alleged Perpetrator, Accused, or Perpetrator, and these terms may be used interchangeably throughout this Policy.

Responsible Employee refers to a campus employee who has the authority to redress sexual misconduct; who has the duty to report incidents of sexual misconduct to the Title IX Coordinator or other appropriate designee, or whom a student could reasonably believe has this authority or duty. Responsible employees shall include all administrators, faculty, staff, student workers, except:

- 1) any employee with confidentiality obligations as described as a Confidential Source herein;
- 2) cafeteria staff who are not assigned administrative duties;
- 3) custodial staff who are not assigned administrative duties;

- 4) groundskeeper staff who are not assigned administrative duties;
- 5) maintenance staff who are not assigned administrative duties;
- 6) ranch/agricultural staff who are not assigned administrative duties;  
or
- 7) staff of campus physical plant who are not assigned administrative duties.

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 Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.

Sexual Assault means any form of non-consensual sexual activity representing a continuum of conduct from forcible rape to non-physical forms of pressure designed to compel individuals to engage in sexual activity against their will (Texas Penal Code Section 22.011).

Examples of sexual assault include, but are not limited to, the following non-consensual 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.

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 is any unwelcome verbal, nonverbal, written, electronic or physical behavior of a sexual nature directed at someone, or against a particular group, because of that person's or group's sex, or based on gender stereotypes, severe or pervasive, and where it meets either of the following criteria:

- 1) Submission, consent, or rejection of the behavior is believed to carry consequences for the individual's education, employment, on-campus living environment or participation in a Component affiliated activity. Examples of this type of sexual harassment include, but are not limited to:
  - (a) pressuring another to engage in sexual behavior for some educational or employment benefit; or
  - (b) making a real or perceived threat that rejecting sexual behavior will result in a negative tangible employment or academic consequence.
- 2) The behavior has the purpose or effect of substantially interfering with another's work or educational performance by creating an intimidating or hostile environment for employment, education, on-campus living or participation in a Component affiliated activity. Examples of this type of sexual harassment can include, but are not limited to:
  - (a) persistent unwelcome efforts to develop a romantic or sexual relationship;
  - (b) unwelcome commentary about an individual's body or sexual

- activities;
- (c) unwanted sexual attention;
- (d) repeatedly engaging in sexually-oriented conversations, comments or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office or classroom, even if such conduct is not objected to by those present; or
- (e) gratuitous use of sexually-oriented materials not directly related to the subject matter of a class, course or meeting even if not objected to by those present.

Sexual Intimidation includes but is not limited to:

- 1) threatening another with a non-consensual sex act;
- 2) stalking or cyber-stalking; 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.

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 means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- 1) fear for his or her safety or the safety of others; or
- 2) suffer substantial emotional distress (Texas *Penal Code Section 42.072*).

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



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 complaint 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. 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.

Title IX Investigator refers to the person who conducts the Title IX investigation.