

**TEXAS COLLEGE**  
**Title IX Sexual Harassment / Sexual Assault Policy**  
**Revised 08/2020**

**I. POLICY**

Texas College reaffirms the principle that its students, faculty, and staff have a right to work and pursue education in an environment free of sexual discrimination, sexual harassment and sexual assault. This kind of sexual misconduct seriously undermines the atmosphere of trust and respect that is essential to a healthy work and academic environment. The policy adopted by Texas College attempts to sensitize, inform, and enforce a strict code of conduct for all members of the College community. Any constituent of the College who has knowledge of an offense is encouraged to report promptly all complaints about sexual discrimination, sexual harassment, and sexual assault to the Title IX Coordinator. Employees found to be in violation of this policy shall be subject to disciplinary action which may include verbal or written reprimand, demotion, transfer, suspension or termination.

Sexual misconduct is reprehensible conduct that absolutely will not be tolerated. The College abhors the abuse potentially inherent in sexual relationships between faculty/staff members and students, as well as, between supervisors and subordinates. Moreover, the College recognizes that sexual misconduct may occur between persons of the same institutional status (peers). Such instances of behavior between or among members of the educational community that create an unacceptable environment will not be tolerated.

**II. DEFINITIONS:**

**Complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Any third party as well as the complainant may report sexual harassment.

**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 school) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party during a grievance process, and must comply with requirements for all Title IX personnel to be free from conflicts and bias,

**Formal complaint** is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator. There is no time limit or statute of limitations on a complainant's decision to file a formal complaint. When a Title IX Coordinator signs a formal complaint, such action is not taken on behalf of a complainant, and the Title IX Coordinator does not become a party.

**Respondent** is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual Assault** is a criminal act. It is defined as intentional sexual contact, characterized by the use of force, physical threat of force, or abuse of authority; or when the victim does not or cannot consent. Sexual assault is not restricted to any gender, race, or age.

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

- (1) A college employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
- (2) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access;
- (3) Any instance of sexual assault, dating violence, domestic violence, or stalking.

**Supportive measures** mean individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. A school must treat a person as a complainant any time the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported, or a third party reported the sexual harassment), and irrespective of whether the complainant ever chooses to file a formal complaint.

Supportive measures may include counseling, course related adjustments, modifications of work or class schedules, changes in work or class locations, campus escort services, increased security and monitoring of certain areas of campus, and restrictions on contact between the parties.

### **III. PROCEDURES FOR TITLE IX ALLEGATIONS**

The following procedures shall only apply to allegations of sexual misconduct addressed by the College per its obligations under Title IX of the Education Amendments of 1972. These procedures incorporate the regulations governing educational institutions' Title IX obligations, as promulgated by the Department of Education's Office for Civil Rights.

Any student, faculty member, or college staff may file a complaint of sexual harassment for violation of this regulation, (whether or not the individual reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, or by email, using the contact information listed below. Such a report may be made at any time, including during non-business hours, by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

The complaint should be submitted as soon as practicable. Unreasonable filing delays result in the dulling of memories and a loss of relevant evidence and witness testimony. Delays in filing shall not affect the complainant's eligibility for supportive measures from the college. Because the college is bound by its obligation to provide a fundamentally fair process, anonymous complaints may be filed, but anonymity may limit the college's ability to respond and may preclude disciplinary action.

The Title IX Coordinator is the individual designated by the College to coordinate its efforts to comply with Title IX responsibilities. All reports of Title IX prohibited sexual conduct should be reported to the Texas College Title IX Coordinator, 2404 N. Grand Avenue, Martin Hall, 2<sup>nd</sup> Floor, Tyler, TX 75702, [titleix@texascollege.edu](mailto:titleix@texascollege.edu), (903) 593-8311, ext. 2201.

## **How to Report – Initial Report**

Complainants who experience any type of sexual harassment or violence are encouraged to seek help as identified above. Any person may report Title IX prohibited conduct, whether or not the individual reporting is the person alleged to have experienced the conduct. To make an Initial Report of Title IX prohibited conduct, the Title IX Office asks for the following information, if known:

- Name of Complainant
- Complaint's role, of any, within the College (student, faculty, staff)
- Name of Respondent
- Respondent's role with the College (student, faculty, staff)
- Date of the incident
- Location of the incident
- Time of the incident
- Nature of the conduct (provide specific details of the report)
- Date of previous report (if any)
- To whom any previous report was made (if any)

Notice to the Title IX Coordinator, or other Senior College Official of conduct that could constitute Title IX prohibited conduct triggers the College's obligations under this Title IX Procedure. If the Title IX Coordinator, or other Senior College Official becomes aware that Title IX prohibited conduct is alleged to have occurred, the College has an obligation to review the available information and determine whether to proceed to an investigation.

## **Receipt of Initial Report**

Upon receipt of an initial report alleging sexual harassment, the Title IX Coordinator or designee will promptly contact the complainant, when identified, to offer supportive measures and interact with the complainant to:

- (1) Provide information about supportive measures;
- (2) Discuss the availability of supportive measures;
- (3) Consider the complainant's wishes concerning supportive measures;
- (4) Explain to the complainant the process for filing a formal complaint under Title IX; and
- (5) Provide complainant with a copy of the college's Title IX formal complaint process.

The Title IX Coordinator will document whether a complainant elects to accept or decline the supportive measure or measures offered.

If on the face of the initial report, the Title IX Coordinator determines that the conduct alleged does not fall within the scope of Title IX, the Title IX Coordinator may also inform the complainant that the matter may be referred to another College process. Even if the matter is referred, the Complainant will still receive an offer of supportive measures.

## **Filing a Formal Complaint**

After the initial report, the Title IX Procedure will not move forward until a formal complaint is filed. The filing of a written complaint is required in order to initiate a formal investigation into a complaint of sexual harassment and to make a determination about whether a violation of College policy prohibiting

sexual harassment has occurred. At the time of filing a formal complaint, the alleged victim must be participating in or attempt to participate in the school's education program or activity.

### **Receipt of a Formal Complaint**

Upon receipt of a formal complaint, the Title IX Coordinator will provide a Notice of Formal Complaint to the complainant and respondent, providing the College knows their identity and include the following details:

- A description of the College's Title IX Procedure, including any informal resolution process.
- A description of the allegations including sufficient details known at the time such as
  - i. the identities of the parties involved in the incident;
  - ii. the conduct allegedly constituting Title IX prohibited conduct; and
  - iii. the date and location of the alleged incident.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of a hearing.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described herein.
- A warning that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited.

The Notice of Formal Complaint will be provided with sufficient time to respond and prepare for any investigative interviews.

### **Initial Assessment of Formal Complaint**

The Title IX Coordinator shall make an initial assessment as to whether a formal complaint submitted by a complainant contains sufficient allegations on its face to describe an act of Title IX prohibited conduct covered by this Title IX procedure.

The Title IX Coordinator shall dismiss a formal complaint if the factual allegations of the complaint, if taken as true, either:

- a. Fail to constitute sexual misconduct under Title IX.
- b. Occur outside the College's jurisdiction
- c. Did not occur against a person in the United States.

The College may also dismiss a formal complaint at any time if:

- a. The complainant would like to withdraw the complaint.
- b. The respondent is no longer enrolled or employed by the College; or

- c. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination.

### **Request for More Information Prior to Investigation or Resolution**

If an assessment of a formal complaint submitted by a complainant reveals that there are insufficient allegations in the formal complaint to determine whether a Title IX Investigation can go forward and/or issue a Notice of Formal Complaint (for example, the identity of the Respondent is not provided), the Title IX Coordinator can request additional information from the complainant, and inform the complainant that a Notice of Formal Complaint cannot be issued and an investigation cannot go forward until more information is provided.

### **Notice of Formal Complaint**

If the Title IX Coordinator determines the factual allegations of the complaint, if taken as true, constitute sexual misconduct under Title IX, the College must provide written notice to the complainant and the respondent. This notice shall include:

- Parties involved in the incident;
- Specific section(s) of the Code allegedly violated;
- Conduct allegedly constituting sexual misconduct under Title IX;
- Date and location of alleged incident;
- Respondent's right to be presumed not responsible for the alleged conduct;
- Statement that a determination regarding responsibility is made at the conclusion of the grievance process;
- The right to an advisor of their choice, who may be an attorney;
- The right to request to inspect and review evidence; and
- A warning that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited.
- Parties must be advised of their obligations to:
  - Respond to all notices to appear for a meeting or hearing and requests for information;
  - Participate in the process in good faith; and
  - Provide true and accurate information to the best of their ability.

### **Informal Resolution Process**

At any time after a Formal Complaint is filed, the Title IX Coordinator or designee, may in their discretion, choose to offer and facilitate an informal resolution process, so long as both parties give voluntary, informed, written consent to attempt informal resolution. The College may not require the parties to participate in an informal resolution process or require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, and election to participate in an informal resolution does not constitute a waiver of the right to a formal investigation and adjudication of formal complaints of Title IX prohibited conduct. Any person who facilitates an informal resolution will be experienced and trained in dispute resolution and trained on this Title IX Procedure.

### **Withdrawing from an Informal Resolution Process**

At any time prior to agreeing to an informal resolution, any party has the right to withdraw from the informal resolution process and resume the process with respect to the formal complaint.

### **Matters Not Eligible for Informal Resolution**

- 1) No informal resolution process will be offered before a formal complaint is filed.
- 2) No informal resolution process will be offered to resolve formal complaints involving a student as complainant and a staff or faculty member as respondent.

### **Investigation**

For any allegations in any formal complaint not subject to dismissal under this Title IX Procedure, the matter will proceed to an investigation. The formal investigation phase is the period during which the investigator gathers information about the allegations. This period of time is the parties' opportunity to provide input regarding the collection of evidence, but the burden of gathering evidence and the burden of proof is on the College. The College may, in its discretion, consolidate the investigation of multiple formal complaints where the allegations arise out of the same facts.

### **Gathering Evidence**

After receiving the written complaint, the investigator will meet promptly with each party separately to conduct initial interviews, gather information, and collect evidence. While the College has the burden of proof for determining responsibility, the parties may submit evidence, testimony, witnesses, or other information that they wish the investigator to consider. Parties may also present fact and expert witness testimony in the form of written statements. The College is prohibited from accessing a party's health, psychiatric or counseling records without written consent. During the investigation, the College may not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence. Any deadlines or other restrictions related to the formal complaint process must apply equally to both parties. The investigator must provide to any party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of any investigative interview, hearing, or other meetings, with sufficient time for the party to prepare to participate.

### **Advisors**

Each party may be accompanied by an advisor of the party's choice during the interview with the investigator or other meetings during the formal complaint process. The advisor may, but does not have to be, an attorney. The College retains the ability to limit the role of the advisor in interviews and meetings as long as it does so equally for both parties. It cannot, however, limit the advisor's role in cross-examining the other party and witnesses at the hearing.

### ***Confidentiality***

The College shall inform any designated advisors that confidential information received during the Title IX formal complaint process, including the evidence received for inspection and review as well as the investigation report, may be used only for purposes of the Title IX formal complaint process and may not be further disclosed or disseminated. Any restriction or requirement regarding an advisor must apply equally to all parties.

## **Evidence**

In order to afford each party the opportunity to respond meaningfully to the evidence, the investigator will make available evidence submitted by the parties or obtained as part of the investigation that is directly related to the allegations raised in a formal complaint to both parties for inspection and review. This includes evidence upon which the College's decision-maker may choose not to rely when reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence.

Prior to completion of the investigative report, the investigator will send to each party and the party's advisor, if any, the evidence subject to review and inspection in an electronic format or hard copy. As required by law, each party must be allowed 10 days from the date of receipt of the evidence to inspect and review the evidence, and to submit a written response that the investigator will consider when completing the final investigative report. The College must make the evidence available again at any hearing, including for cross-examination.

## **Investigation Report**

The investigative report will fairly summarize all relevant evidence and may include the following content:

- Identification of the allegations potentially constituting sexual harassment;
- Any procedural steps taken by Title IX personnel from the receipt of the formal complaint through the conclusion of the investigation, including any notifications to the parties, interviews, site visits, and methods used to gather evidence;
- Responses of each party to the allegations in the formal complaint;
- Evidence obtained by the College;
- Relevant evidence considered by the investigator;
- The parties' responses to the evidence after review and inspection;
- Findings of fact;

The investigator will simultaneously provide the investigation report, at least 10 days prior to the hearing, to both parties and their advisors in an electronic format or a hard copy, including evidence the College does not intend to present or does not believe is relevant. Evidence not disclosed to parties may not be used by the College in any disciplinary proceedings. The investigator also will send a copy of the investigation report to the Title IX Coordinator, who immediately will assign a decision-maker and provide the decision-maker with a copy of the investigation report.

## **Hearing**

The investigation must be followed by a live hearing during which a "decision-maker", designated by the Title IX Coordinator, must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those bearing on credibility.

Cross-examination must be conducted "directly, orally and in real time" by the party's advisor of choice and "never by a party personally." This precludes the College from requiring that cross-examination be conducted by pre-submitted written questions or that questions be posed by a hearing panel chair.

If a party is unable to obtain an advisor, the College must provide one free of charge for the

purpose of conducting cross-examination for the party. The advisor provided does not have to be, but may be, an attorney.

The College will provide the parties with separate rooms and use technology so the decision-maker and parties may simultaneously see and hear the questions.

At the hearing, the decision-maker has the responsibility to determine the relevancy of questions and explain in real time any decision not to permit a question. Questioning concerning a complainant's sexual history is generally not permitted, (see Prior Sexual Behavior below).

If a party or witness refuses to submit to cross-examination, the College is required to ignore that person's statement and reach a decision based on the remaining body of relevant evidence. The College is not, however, permitted to draw an adverse inference based on the mere fact that an individual refused to submit to cross-examination.

The College must make an audio or video recording of the hearing, or a transcript, and make it available to the parties for inspection and review.

The "decision-maker(s)" who conducts the hearing cannot be the same person as the Title IX Coordinator or the investigator. The decision-maker can be a single person— similar to a judge—or a hearing panel—similar to a jury.

### **Determination Regarding Responsibility**

After the hearing, the decision-maker must issue a written determination of responsibility applying the institution's preponderance of evidence proof.

The written determination must have several required elements, including:

- a. Identification of the allegations at issue;
- b. Description of the procedural steps taken throughout the case;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding application of the Title IX policy;
- e. A statement and rationale as to the determination for each allegation;
- f. A statement of any disciplinary sanctions and whether any remedies will be provided to the complainant; and
- g. A description of the procedures and permissible grounds for appeal.

The institution must provide the written determination to the parties at the same time. Under the regulation, the written determination becomes final upon the earlier of when: (i) the parties are notified of the determination on appeal; or (ii) the time to file an appeal has passed with neither party appealing.

### **Prior Sexual Behavior**

In reaching a final determination, the decision-maker will not consider relevant any questions and evidence about the complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence



concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent to sexual contact. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.

## **Appeals**

In accordance with law and local policy, either party may appeal the written determination regarding responsibility or a dismissal of a formal complaint or any allegations therein on the following basis:

- Procedural irregularity that affected the outcome of the matter;
- New evidence not reasonably available at the time that could affect the outcome; or
- Conflict of interest or bias by the College participants that affected the outcome.

Title IX does not require the College to accept appeals based on any other reasons.

## **Appeal Procedures**

To initiate an appeal, a party must file a written request for appeal with the Title IX Coordinator within 5 days of a party's receipt of the final determination. If the reason for appealing the dismissal or determination of responsibility is not mandatory, the College may dismiss the appeal.

If the request for an appeal is not dismissed, the Coordinator will designate an appellate decision-maker to proceed. The designated appellate decision-maker will review the request for appeal and issue a written decision explaining why the appeal of the dismissal is granted or denied. The appellate decision-maker may not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator who investigated the complaint at issue, or the Title IX Coordinator.

The appeal will conclude with a written decision describing the appeal and the rationale for the result that is provided to the parties simultaneously.

Once an appellate decision-maker issues a written decision regarding the appeal of the determination of responsibility, the College will proceed with implementing Title IX disciplinary sanctions or remedies or take other appropriate action.

## **Remedies**

If a respondent has been determined through the formal complaint process to be responsible for the alleged sexual harassment, the College must provide remedies to the complainant that are designed to restore or preserve the complainant's equal access to the College's educational programs and activities. The Title IX Coordinator is responsible for effective implementation of remedies.

Remedies may include one or more of the following sanctions or measures:

- Verbal warning;
- Written reprimand;

- Probation and/or suspension
- Loss of privileges for a specific period of time (e.g. ineligibility to play sports or serve in student government position, etc.)
- Community service
- Research assignments, training programs
- Residence hall suspension, including terms for readmission;
- Residence hall expulsion;
- Suspension from the College, including terms for readmission;
- Expulsion;
- Any disciplinary measure provided by the College's Student Code of Conduct.

### **Retaliation**

Retaliation against a person who complains of sexual harassment is prohibited and constitutes a violation of institutional policy and federal law. Therefore, faculty, administrators, staff, applicants for employment, students, etc. may not be subjected to restraint, interference, coercion or reprisal for action taken in a sexual harassment matter; this includes filing a sexual harassment complaint, or serving as a witness, committee member, or investigator in a sexual harassment complaint.

### **Records Retention**

Records related to the College's entire response and process related to an allegation of sexual harassment must be maintained in accordance with the College's records control schedules or a minimum of seven years, whichever is longer.

### **Confidentiality**

The College must keep information confidential as required by law except as necessary to provide supportive measures, to conduct proceedings under the formal complaint process, when disclosure is required by law, or when permitted by the College in compliance with the Family Educational Rights and Privacy Act (FERPA) and state law, or to otherwise carry out the purposes of 34 C.F.R. Part 106.

However, the College may not restrict the ability of the parties to discuss the allegations under investigation or to gather and present relevant evidence. A complainant's identity, if known, must be disclosed to the respondent once a formal complaint is filed by a complainant or signed by the Title IX Coordinator.

### **Required Reporting**

At any point during a College's investigation that evidence is uncovered that requires reporting to law enforcement, Child Protective Services, or another entity, College employees must take the necessary actions to do so in compliance with law.