

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 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 Policy on Sexual Harassment, Sexual Assault, Dating Violence and Stalking. This Policy has been adopted for each Component by the System as its Policy on Sexual Harassment, Sexual Assault, Dating Violence and Stalking. 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 that is easily accessible through a clearly identifiable link on the Component's internet website home page.

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.

2 A. Sexual Misconduct Violations. Sexual misconduct includes, Dating Violence, Family or Domestic Violence, Rape, Sexual Assault, Fondling, Incest, Statutory Rape, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, or Stalking as defined in the Glossary and 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 of a violation this policy, the violator may be subject to sanctions as defined herein.

3. Reporting

3.1 Employees That Must Report – Responsible Employees (as defined in this policy). A Responsible Employee who receives a report of sexual misconduct must report to the Title IX Coordinator or the Coordinator’s designee, all relevant details about the alleged sexual misconduct shared by the Victim or reporting party. A Responsible Employee shall share all information relevant to the investigation, and if applicable, redress of the incident, including whether an alleged Victim has expressed a desire for confidentiality in reporting the incident. 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 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 A Responsible Employee must promptly report to the Title IX Coordinator or the Coordinator’s designee incidents of sexual harassment, sexual assault, dating violence or stalking or any other sexual misconduct defined in this Policy, provided:

3.131 the employee is in the course and scope of employment, at the time the employee witnesses or receives information regarding the occurrence of sexual harassment, sexual assault, dating violence, or stalking, or any other sexual misconduct defined in this Policy; and,

3.132 the employee reasonably believes the incident constitutes sexual harassment, sexual assault, dating violence, or

stalking or any other sexual misconduct defined in this policy; and,

3.133 the incident of sexual harassment, sexual assault, dating violence or stalking or any other sexual misconduct defined in this policy, was either committed by or against an enrolled student or an employee of the component at the time of the incident.

3.2 No report required. A person is not required to report an incident of sexual harassment, sexual assault, dating violence, or stalking or any other sexual misconduct defined in this policy, to the Title IX Coordinator or Coordinator's designee if:

3.21 the person was the Victim of such conduct; or,

3.22 the person 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.

3.3 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 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.

3.31 A Confidential Source who receives information about an incident of sexual harassment, sexual assault, dating violence, domestic violence or stalking shall report to the Title IX Coordinator or Coordinator's designee only the type of incident reported. A Confidential Source shall also provide such information to the campuses' Clery Act Coordinator for purposes of the campus Clery Act Report.

- 3.4 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.
- 3.5 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.
- 3.6 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. Except as provided by section 3.2, 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 incidents of sexual harassment, sexual assault, dating violence, or stalking or any other sexual misconduct defined in this Policy. Victims are encouraged to go to a hospital for treatment and preservation of evidence as soon as practicable after such an incident if applicable.

3.9 Termination for Failure to Report or Making a False Report. A Component shall terminate an employee it determines to have either:

3.91 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

3.92 knowingly made a false report of sexual harassment, sexual assault, dating violence or stalking with intent to harm or deceive.

3.10 Confidentiality. 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:

- 3.101 an alleged Victim of an incident of sexual harassment, sexual assault, dating violence or stalking,
- 3.102 a person who reports an incident of sexual harassment, sexual assault, dating violence, or stalking,
- 3.103 a person who sought guidance from the Component concerning such an incident,
- 3.104 a person who participated in the Component's investigation of such an incident; or
- 3.105 a person who is alleged to have committed or assisted in the commission of sexual harassment, sexual assault, dating violence or stalking, provided that after completion of an investigation, the Component determines the report to be unsubstantiated or without merit.

3.11 The identity of the individual(s) referenced in Section 3.10 herein may only be disclosed to the following:

- 3.111 a Component as necessary to conduct an investigation,
- 3.112 to the extent required by other law, the person or persons alleged to have perpetrated the incident of sexual harassment, sexual assault, dating violence or stalking or any other sexual misconduct defined in this Policy,
- 3.113 a law enforcement officer as necessary to conduct a criminal investigation; or
- 3.114 a health care provider in an emergency situation, as determined necessary by the Component.
 - 3.1141 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 Victim's consent.
 - 3.1142 Health care providers must provide aggregate data or other nonidentifying information regarding incidents of sexual harassment, sexual assault, dating violence or stalking to the Component's Title IX Coordinator.

- 3.115 potential witnesses to the incident as necessary to conduct an investigation of the report.
- 3.12 If the individual referenced in Section 3.10 waives nondisclosure in writing, such waiver shall not be construed as a voluntary disclosure for purposes of the Texas Public Information Act.
- 3.121 The alleged Victim may use a pseudonym form when making a report to a law enforcement agency.
- 3.13 Victim Request Not to Investigate. When weighing a Victim's request that no investigation or discipline be pursued, the Component may investigate the alleged incident in a manner that complies with the confidentiality requirements as stated in this Policy.
- 3.14 In determining whether to investigate an alleged incident, the Component shall consider:
- 3.141 the seriousness of the alleged incident;
 - 3.142 whether the Component has received other reports of sexual misconduct committed by the alleged perpetrator or perpetrators;
 - 3.143 whether the alleged incident poses a risk of harm to others; and
 - 3.144 any other factors the institution determines relevant.
- 3.15 If a Component decides not to investigate an alleged incident of sexual harassment, sexual assault, dating violence, or stalking or any other sexual misconduct defined in the Policy, based on the alleged Victim's request not to investigate, the Component shall take any steps it determines necessary to protect the health and safety of the Component's community in relation to the alleged incident.
- 3.16 A Component shall inform an alleged Victim of sexual misconduct of its decision to either investigate or not investigate the alleged incident.

3.17 Equal Access. Each Component shall, to the greatest extent practicable, ensure 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.

4. Interim Measures also known as Support Services. 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 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.

5. Retaliation

- 5.1 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.
- 5.2 A Component may not discipline or discriminate against an employee who in good faith:
- 5.21 makes a report as required of sexual harassment, sexual assault, dating violence or stalking; or
 - 5.22 cooperates with an investigation, disciplinary process, or judicial proceeding regarding a report of sexual harassment, sexual assault, dating violence or stalking.
- 5.3 This subsection does not apply to an employee who perpetrates an incident of sexual harassment, sexual assault, dating violence or stalking or other sexual misconduct defined in this Policy.

6. Immunity/Amnesty

- 6.1 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 code of conduct, provided:

- 6.11 the person reports or assists in the investigation of a report of an incident of sexual harassment, sexual assault, dating violence or stalking or other sexual misconduct defined in this Policy;
 - 6.12 the person acts in good faith;
 - 6.13 the person testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such conduct;
 - 6.14 the violation of the code of conduct is reasonably related to the incident of sexual harassment, sexual assault, dating violence, or stalking; and
 - 6.15 the violation of the code of conduct is not punishable by suspension or expulsion.
- 6.2 A Component may investigate to determine whether a report was made in good faith.
- 6.3 A determination that a person is entitled to immunity is final and may not be revoked.
- 6.4 Immunity may not be given to a person who reports his or her own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.
- 6.5 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, including but not limited to disciplinary actions as set forth herein

8. Comprehensive Prevention and Outreach Program

Each Component shall develop and implement a comprehensive prevention and outreach program on sexual misconduct including but not limited, to

sexual harassment, sexual assault, dating violence and stalking. The comprehensive prevention and outreach program must address a range of strategies to prevent sexual misconduct, including sexual harassment, sexual assault, dating violence and stalking. 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.

8.1 Training

8.11 Primary Prevention Training. 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 contain a statement regarding 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. Additionally, 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, sexual harassment, domestic violence, dating violence, sexual assault, and stalking;
- 8.112 definitions of sexual misconduct offenses which are prohibited by the Component as defined by applicable 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,
- 8.11(10) descriptions of additional and ongoing sexual misconduct training and,
- 8.11(11) Name, office location and contact information of the Component's Title IX Coordinator with such information being provided at the student's orientation and by email at the beginning of each semester.

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.

- 8.4 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.

- 8.5 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:
 - 8.51 local law enforcement agencies;
 - 8.52 sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and
 - 8.53 hospitals or other medical resource providers.

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,
- 10.22(10) inform Complainant and Respondent of an incident of sexual misconduct 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 shall have reasonable and equitable access to all evidence relevant to the alleged violation in the Component's possession, including any statements made by the alleged Victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality. Each Party shall be given an opportunity to respond to the investigator's report in writing in advance of the decision of responsibility.

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 include, but are not 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);
- 12.1(10) expulsion from campus housing;
- 12.1(11) restricted access to activities or facilities;
- 12.1(12) mandated counseling (this may include, but not be limited to educational programs and batterer intervention);
- 12.1(13) disqualification from student employment positions;
- 12.1(14) revocation of admission and/or degree;
- 12.1(15) withholding of official transcript or degree;
- 12.1(16) bar against readmission;
- 12.1(17) monetary restitution;
- 12.1(18) withdrawing from a course with a grade of W, F, or WF; or,
- 12.1(19) 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.

12.4 Student Withdrawal Or Graduation Pending Disciplinary Charges. If a student withdraws or graduates from a Component pending a

disciplinary charge alleging that the student violated the Component's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking or any other sexual misconduct defined in this Policy, the institution may not end the disciplinary process or issue a transcript to the student until the Component makes a final determination of responsibility.

12.41 The Component shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged Victim's interest in a speedy resolution.

12.42 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 the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

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 Each Party shall have an opportunity to present witnesses and other evidence relevant to the alleged incident;
- 13.16 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.
- 13.17 **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).
- 13.18 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.
- 13.19 The Hearing Adjudicator Chair 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 hearing, semester breaks and time-sensitive considerations.
- 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 to 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 Administration 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.
- 14.6 Modification of Deadlines. The Appeal Officer 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.

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 polices 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. Administrative Reporting Requirements of the Title IX Coordinator and/or Coordinator's Designee.

- 16.1 The Title IX Coordinator of each Component shall, once every three months, submit a written report to the Component's President containing the following information:

- 16.12 the number of reports received of sexual harassment, sexual assault, dating violence and stalking during the reporting period;
 - 16.13 the number of investigations conducted during the reporting period;
 - 16.14 the final dispositions occurring during the reporting period;
 - 16.15 the number of reports for which the institution determined not to initiate a disciplinary process during the reporting period
- 16.2 The Title IX Coordinator or Coordinator's designee 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.

17. Administrative Reporting Requirements of the Component's Presidents

- 17.1 The President of each Component shall, once each academic year in either the fall or spring semester, submit a report to the Texas State University System Board of Regents containing the following information:
- 17.12 the number of reports received of sexual harassment, sexual assault, dating violence and stalking during the reporting period;
 - 17.13 the number of investigations conducted during the reporting period;
 - 17.14 the final dispositions occurring during the reporting period;
 - 17.15 the number of reports for which the institution determined not to initiate a disciplinary process during the reporting period, and,
 - 17.16 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.
 - 17.17 The report to the Texas State University System Board of Regents may not identify any person pursuant to Texas Education Code 51.253 (c) (1).

- 17.2 A President is not required to submit a report to the 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.
- 17.3 The President's report to the Board of Regents shall be posted on the Component's internet website.
- 17.4 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.

18. 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 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 Affiliated Program or Activity refers to any program or activity, on or off campus, which 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 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)

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*) and 34 CFR 668.46 (a).

Fondling - 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 his/her age or because of his/her temporary or permanent mental incapacity

Incest - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

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.

Rape – 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.

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, including members of a campus police or security, 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, employees, 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.

Sex Offenses – 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 means an offense classified as rape, fondling, incest, or statutory rape under the uniform crime reporting program of the Federal Bureau of Investigation and/or under the Texas Penal Code §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 means unwelcome, 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 a student's ability to participate in or benefit from educational programs or activities at a postsecondary educational institution.

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*) and (20 U.S.C. §1092 (a))

Statutory Rape—Sexual intercourse with a person who is under the statutory age of consent.

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.

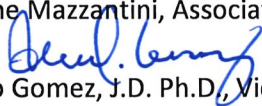
Third-Party Reporting refers to the submission of a complaint of sexual misconduct by a person on behalf of another person.

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.

TO: Title IX Coordinators and Title IX Deputy Coordinators

CC: Nelly Herrera, Deputy General Counsel
Bennett Bartlett, Associate General Counsel
Charmaine Mazzantini, Associate General Counsel

FROM:  Fernando Gomez, J.D. Ph.D., Vice Chancellor and General Counsel

RE: Memorandum of Opinion #2019-001

Date: November 4, 2019

TSUS Office of General Counsel Memorandum of Opinion #2019-001 issued November 4, 2019, and effective January 1, 2020, regarding the definition of a Responsible Employee and the reporting obligation of a Confidential Source in the TSUS Sexual Misconduct Policy.

Regarding definition of Responsible Employee in the TSUS Sexual Misconduct Policy - effective January 1, 2020, the definition of Responsible Employee in the Sexual Misconduct Policy shall state as follows:

Responsible Employee refers to a campus employee engaged in the course and scope of their employment, including campus police or security.

Regarding reporting obligation of a Confidential Source pursuant to Section 3.31 in the TSUS Sexual Misconduct Policy – effective January 1, 2020, Section 3.31 shall state as follows:

3.31 Notwithstanding any other provision in this policy, a Confidential Source who receives information about sexual misconduct, including an incident of sexual harassment, sexual assault, dating violence, domestic violence or stalking shall report to the Title IX Coordinator or Coordinator's designee only the type of incident reported. A Confidential Source shall also provide such information to the campuses' Clery Act Coordinator for purposes of the campus Clery Act Report.